Oregon Department of Environmental Quality

**December 16, 2014**

Notice of Proposed Rulemaking

**Grants Pass PM10 and Carbon Monoxide Limited Maintenance Plans**

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| Overview |

## Short summary

DEQ proposes rules to update the maintenance plans designed to protect air quality in Grants Pass for carbon monoxide and particulate matter 10 microns and smaller as required by federal law. Because CO and PM10 pollution levels have been very low and the area is unlikely to exceed health standards in the future, DEQ proposes limited maintenance plans that streamline requirements and eliminate costly computer modeling requirements for transportation conformity analysis.

DEQ proposes the Environmental Quality Commission approve the proposed rules for incorporation into the Oregon Clean Air Act State Implementation Planand submittal to the U. S. Environmental Protection Agency for its approval under the Clean Air Act.

## Brief history

Under the federal Clean Air Act, EPA sets air quality standards to protect public health for six common air pollutants. EPA established the CO standard at 35 parts per million (ppm) for a 1-hour average and at 9 ppm for an 8-hour average. EPA established the PM10 standard at 150 micrograms per cubic meter (μg/m3) for a 24-hour average and at 50 μg/m3 for an annual average. The federal Clean Air Act requires that communities which exceed these health standards adopt plans to achieve and maintain good air quality.

In the mid to late 1980s, Grants Pass exceeded the 8-hour CO standard and the 24-hour PM10 standard. The area was designated as a nonattainment area for CO in 1985 and for PM10 in 1990. In response, DEQ adopted attainment plans with various CO and PM10 control measures to reduce pollution levels within the urban growth boundary to meet the federal standards. This resulted in significant improvement in air quality and Grants Pass was reclassified to attainment for CO in 2000 and PM10 in 2002. EQC adopted the first maintenance plans for Grants Pass at that time.

The current CO and PM10 maintenance plans for Grants Pass expire in 2015. Grants Pass’s CO and PM10 levels have steadily declined and the area is unlikely to exceed these standards again. EPA provides an option for states to adopt simplified limited maintenance plans for low risk areas like Grants Pass.

EPA requires Oregon to establish a second maintenance plans for the Grants Pass area to ensure compliance with the standards through 2025. The proposed rules update the existing maintenance plans designed to protect public health in Grants Pass by continuing to provide good air quality over the next 10 years. If adopted, this second set of maintenance plans would be the final maintenance plans required for Grants Pass under the federal Clean Air Act.

## Regulated parties

The proposed amendmentof OAR 340-200-0040 to incorporate the limited maintenance plans into State of Oregon Clean Air Act Implementation Plan does not change the regulated parties.

## Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rules’ substantive goals while reducing negative economic impact of the rule on business.

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| Statement of need |

## What need would the proposed rule address?

The current CO and PM10 maintenance plans for Grants Pass expire in 2015. EPA requires Oregon establish a second set of maintenance plans to ensure Grants Pass continues to comply with the CO and PM10 health standards through 2025.

## How would the proposed rule address the need?

By following EPA guidance documents that provide states the option of adopting a limited maintenance plan for CO and PM10 nonattainment areas like Grants Pass, Oregon has the option to adopt limited maintenance plans for Grants Pass that require no new control measures and eliminate the need for costly computer modeling for transportation conformity analysis. To qualify for this option, the second maintenance plan being proposed in this rulemaking must continue existing control measures from the first maintenance plan. The exception to this is the transportation conformity requirements which apply to new transportation projects. On-road motor vehicles are a major source of CO emissions in Grants Pass and a smaller but significant source of PM10. There have been few new transportation projects in Grants Pass and DEQ expects limited growth in these emissions. Under the limited maintenance plan option, the transportation conformity requirements can be met without the need for a motor vehicle emissions budget (or cap) on emissions and without the need to conduct a regional emissions analysis, which avoids the cost of conducting computer modeling.

The CO limited maintenance plan would continue CO control strategies including the federal emission standards for new motor vehicles, Best Available Control Technology requirements for large new or expanding industrial CO sources, and the residential woodstove curtailment program, which also reduces CO in addition to PM10. Since the majority of CO emissions in Grants Pass are from motor vehicles, the federal standards for new motor vehicles have been the most effective measure in reducing CO levels.

The PM10 limited maintenance plan would continue PM10 control strategies, including a residential woodstove curtailment program, ban on the use of uncertified woodstoves, Best Available Control Technology requirements for large new or expanding industrial sources, outdoor open burning restrictions, and prescribed forestry burning smoke management protection.

Both plans would continue to demonstrate compliance with federal health standards. Direct monitoring of CO and PM10 in Grants Pass was discontinued (with EPA approval) in 2008 and 2005 respectively, due to very low pollution levels and budget considerations. Under the proposed PM10 limited maintenance plan, DEQ could use an existing PM2.5 monitor in Grants Pass to calculate PM10 levels and verify continued attainment with the standard. For CO, no other direct monitoring exists in Grants Pass, so DEQ would determine continued attainment by tracking CO emission trends (mostly from on-road mobile sources) and confirming that these emissions are continuing to decline.

Both plans must have contingency measures that DEQ would implement in the unlikely event that current trends do not continue to show improvement. The first part of the contingency plans addresses the need to prevent a violation of the health standard. The second part of the contingency plans addresses action needed if there is a violation. To prevent a violation, both plans identify a process by which direct CO and PM10 monitoring would be re-established. Should a violation of the standard occur while conducting this monitoring, both plans identify a range of corrective actions DEQ would take.

## How will DEQ know the rule addressed the need?

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If EQC approves the proposed rules, DEQ would submit the rules to EPA to be incorporated into the State Implementation Plan required under the Clean Air Act. DEQ would know the need was addressed if EPA approves the rules and if CO and PM10 levels in Grants Pass continue to meet the federal health standards.

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| Rules affected, authorities, supporting documents |

## Lead division Program or activity

Environmental Solutions Air Quality Planning

## Chapter 340 action

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| Amend | ORS 340-200-0040 |

## Statutory authority

ORS 468.020 and 468A.025

## Statute implemented

ORS 468A.025 and 468A.035

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.oregonlaws.org/ors/183.335)

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| Document title | Document location |
| EPA guidance documents |  |
| 2001 Wegman Memo: Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas | [www.epa.gov/ttn/caaa/t1/memoranda/lmp\_final.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/lmp_final.pdf) |
| 1995 Paisie Memo: Limited Maintenance Plan Option for Nonclassifiable CO  Nonattainment Areas | <http://www.epa.gov/ttn/naaqs/aqmguide/collection/cp2/bakup/19951006_paisie_lmp_nonclassifiable_co_naa.pdf> |
| DEQ proposed Limited Maintenance Plans |  |
| A Limited Maintenance Plan for Particulate Matter (PM10) The Grants Pass Urban Growth Boundary  A Limited Maintenance Plan for Carbon Monoxide The Grants Pass Urban Growth Boundary | Provided as part of the proposed rules and available by contacting:  DEQ Headquarters  811 SW 6th Ave.  Portland, OR 97204 |

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| Fee Analysis |

This rulemaking does not involve fees.

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| Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.oregonlaws.org/ors/183.335) |

Fiscal and Economic Impact

The proposed rules have little fiscal and economic impacts. The proposed limited maintenance plans for Grants Pass would streamline existing requirements, require no new control measures and eliminate the need for costly computer modeling for the transportation conformity analysis. As required by federal law, for Grants Pass to qualify for this option, the proposed rules carry-over existing control measures from the existing maintenance plans that expire in 2015 into the proposed maintenance plans.

Statement of Cost of Compliance

For each entity below, consider both positive and negative impact in the description of the estimated fiscal and economic impacts and costs to comply with the proposed rules. If there is no impact, describe why there is no impact – it is not enough to say, “There is no fiscal impact.” If unable to estimate or quantify the impact, say something like, “DEQ is unable to quantify the impact at this time because …” then explain why. It is OK to say we do not have available data to make this estimate. Rather than repeat identical impacts, its OK to reference the impact on other entities such as, “For large businesses, the cost to comply with the proposed rules is identical to costs described under small businesses. Do not change the order of the entities in the list below because it aligns with our electronic filing with Secretary of State.

1. State OPTION: and federal agencies Discuss impacts to DEQ in this section if different from other agencies.

The proposed rules would have no negative fiscal or economic impacts on state and federal agencies. Because the proposed rules would greatly simplify transportation conformity requirements, the rules would have a slight positive fiscal and economic impact on DEQ indirectly in the form of reduced staff time spent evaluating the compliance with the limited maintenance plans.

1. Local governments

Direct Impacts The proposed rules would have no negative fiscal or economic impacts on local government directly.

The proposed rules would have some positive impacts on local government directly. Under the federal Clean Air Act and federal transportation act, metropolitan planning organizations in maintenance areas are subject transportation conformity rules. The organization for the Grants Pass area is the Middle Rogue Metropolitan Planning Organizations. Each time a new Regional Transportation Plan or Transportation Improvement Program is adopted, the conformity rules require the organization to demonstrate that emissions won’t exceed the transportation emissions budgets in the Grants Pass CO and PM10 maintenance plans. The organization demonstrates this by preparing a regional emissions analysis which combines computer modeling of the highway system and computer modeling of the emission characteristics of the area’s cars and trucks. One of the benefits of the proposed limited maintenance plans is that an emissions budget is no longer needed and the organization can demonstrate conformity without a regional analysis. DEQ estimates that not having to conduct this regional emissions analyses would save the organization approximately $30,000, primarily by not having to conduct the modeling.

Indirect Impacts The proposed rules would have no indirect fiscal or economic impacts on local government.

1. Public

The proposed rules would have no fiscal or economic impacts on the public.

1. Large businesses - businesses with more than 50 employees

Direct Impacts The proposed rules would have no fiscal or economic impacts on large businesses directly because the rules would not regulate large businesses.

Indirect Impacts The proposed rules may have some impact fiscal or economic impacts on large businesses indirectly.

DEQ anticipates CO or PM10 pollution levels will continue to decline under both limited maintenance plans. However, both plans are required to have a contingency plan should a violation of the CO or PM10 standards occur in the future. This would trigger DEQ having to reinstate the New Source Review requirement for Lowest Achievable Emission Rate and emission offsets, for new and expanding industrial sources, pursuant to OAR Chapter 340 Division 224. Based on recent trends, very little industrial growth is anticipated, and any new or expanding sources that are large businesses may not be large enough trigger the New Source Review requirements. At this time, DEQ cannot accurately estimate the possible fiscal and economic impacts should the contingency plan be triggered, because such impacts are inherently case-specific and DEQ lacks the necessary data to provide an estimate that would not be speculative.

1. Small businesses – businesses with 50 or fewer employees [ORS 183.336](http://www.oregonlaws.org/ors/183.336)

Direct Impacts The proposed rules would have no direct fiscal or economic impacts on small businesses because the rules would not regulate small businesses. As noted above for large businesses, both limited maintenance plans are required to contain contingency plans in the unlikely event of a violation of the CO or PM10 standards, which would trigger more stringent requirements for new and expanding industry. However, small businesses are unlikely to be large enough to trigger New Source Review.

Indirect Impacts The proposed rules would likely have no fiscal or economic impacts on small business indirectly.

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| a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | Not applicable |
| b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | Not applicable. |
| c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | Not applicable. |
| d. Describe how DEQ involved small businesses in developing this proposed rule. | DEQ did not involve small businesses in developing the proposed rules because the rules would not affect small businesses. |

## Documents relied on for fiscal and economic impact

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| Document title | Document location |
| EPA guidance documents |  |
| 2001 Wegman Memo: Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas | [www.epa.gov/ttn/caaa/t1/memoranda/lmp\_final.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/lmp_final.pdf) |
| 1995 Paisie Memo: Limited Maintenance Plan Option for Nonclassifiable CO  Nonattainment Areas | <http://www.epa.gov/ttn/naaqs/aqmguide/collection/cp2/bakup/19951006_paisie_lmp_nonclassifiable_co_naa.pdf> |
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## Advisory committee

DEQ did not convene an advisory committee because the proposed rules would not create new control measures, they will only extend the applicability of current control measures for another ten years, as required under the federal Clean Air Act.

DEQ consulted with the Middle Rogue Metropolitan Planning Organization Technical Advisory Committee during the development of the limited maintenance plans to confirm that a regional emissions analyses and modeling would no longer be needed to demonstrate conformity and to discuss the schedule for this rulemaking.

## Housing cost

To comply with [ORS 183.534](http://www.oregonlaws.org/ors/183.534), DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

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| Federal relationship |

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."* [ORS 183.332](http://www.oregonlaws.org/ors/183.332)

## Relationship to federal requirements

This section complies with [OAR 340-011-0029](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html) and [ORS 468A.327](http://www.oregonlaws.org/ors/468A.327) to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rules are not “different from or in addition to federal requirements” and impose stringency equivalent to federal requirements.

The proposed rules would ensure that DEQ continues to comply with federal requirements in the Clean Air Act. The proposed limited maintenance plans must demonstrate that the Grants Pass area will continue to meet the federal CO and PM10 standards for the next 10 years. EPA policy allows areas that are at low risk of exceeding these standards the option of submitting a simplified limited maintenance plan. The limited maintenance plans provide streamlined requirements, no new control measures and eliminate the need for costly computer modeling for the transportation conformity analysis.

What alternatives did DEQ consider if any?

Since this action is necessary to comply with the requirements of the Clean Air Act, DEQ has not considered other options for this proposal.

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| Land use |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*  [OAR 340-018-0010](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html)

## Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

* Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

**Goal Title**

5 Open Spaces, Scenic and Historic Areas, and Natural Resources

6 Air, Water and Land Resources Quality

11 Public Facilities and Services

16 Estuarial resources

9 Ocean Resources

* [OAR 340-018-0030](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
* Comply with statewide land-use goals, and
* Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

## Determination

DEQ determined that the proposed rules **do not affect** existing rules, programs or activities considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

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| Stakeholder and public involvement |

## Advisory committee

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## EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director’s Report. did not present additional information specific to this proposed rule revision.

Public notice

DEQ provided notice of the Notice of Proposed Rulemaking with Hearing for this rulemaking.

DEQ submitted notice to Secretary of State for publication in the January 2015[*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html)

On Dec. 16, 2014, DEQ provided notice to:

* EPA
* The Rulemaking Web page <http://www.oregon.gov/deq/RulesandRegulations/Pages/proposedrule.aspx>
* Approximately \_\_\_\_ interested parties on the Agency Rulemaking List through GovDelivery.
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
  + Jules Bailey, Chair, House Energy and Environment Committee
  + Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
* \_\_\_\_ interested parties through mail by the notice by U.S. Postal Service

DEQ published legal notice in the following newspapers December 16, 2014:

- *The Oregonian*

*- The Eugene-Register Guard*

*- The Medford Mail Tribune*

*- The Klamath Falls Herald and News*

Public hearings and comment

DEQ plans to hold one public hearing. The table below includes information about how to participate in the public hearings.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), the staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html) and respond to any questions about the rulemaking.

DEQ will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. DEQ will consider all oral and written comments received at the hearings listed below before finalizing the proposed rule. DEQ will summarize all comments and DEQ will respond to comments on the Environmental Quality Commission staff report.

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Close of public comment period

The comment period will close Jan. 23, 2015, at 5 p.m.