

Oregon Department of Environmental Quality

**June 16, 2014**

Notice of Proposed Rulemaking

**Air Quality Rule Changes and Updates**

|  |
| --- |
| **Overview** |

Short summary

DEQ proposes rules to streamline, reorganize and update Oregon’s air quality permit programs. The changes would allow DEQ to improve air quality with more efficient and effective permitting programs. The proposed rules include changes to the Continuous Monitoring Manual and the Source Sampling Manual (Volumes I and II).

DEQ also proposes changes to statewide particulate matter standards and the pre-construction permitting program. This would help Oregon align its particulate matter standards with the U.S. Environmental Protection Agency’s adoption of the ambient air quality standard for fine particulates, commonly called PM2.5, and ensure Oregon’s permitting programs protect air quality.

In addition, DEQ proposes rules to expand pre-construction permitting flexibility for smaller businesses, allow DEQ to use technology such as teleconferencing for holding public meetings to improve community outreach, and make minor changes to the Heat Smart program and gasoline dispensing facility rules to improve program implementation.

This document organizes and describes the proposed rules under the following nine categories:

1. Clarify and update air quality rules

2. Update particulate matter emission standards

3. Change permitting requirements for emergency generators and small natural gas or oil-fired equipment

4. Establish two new state air quality area designations (“sustainment” and “reattainment”) to help areas avoid and more quickly end a federal nonattainment designation

5. Identify Lakeview as a state sustainment area while retaining its federal attainment designation

6. Change the pre-construction permitting program (New Source Review)

7. Provide more flexibility for public hearings and meetings

8. Re-establish woodstove replacement program (Heat Smart) exemption for small commercial solid fuel boilers that the permitting program regulates

9. Remove annual reporting requirements for small gasoline dispensing facilities

DEQ proposes the Environmental Quality Commission approve the proposed rules for incorporation into Oregon’s State Implementation Plan. With EQC’s approval, DEQ would submit the proposed rules to the United States Environmental Protection Agency to be included in and revise the State Implementation Plan required by the Clean Air Act.

Note: See DEQ’s crosswalk of all rules changes, including the rules in the State Implementation Plan, for details

Regulated parties

The proposed rules affect:

* All businesses, agencies and local governments holding air quality permits;
* Businesses required to submit construction approval notices;
* Businesses that sell small solid fuel boilers; and
* Businesses that dispense less than 10,000 gallons of gasoline a month.

Request for other options

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

|  |
| --- |
| **Statement of need** |

| 1. Clarify and update air quality rules | |
| --- | --- |
| After years of rulemakings and updates, DEQ proposes to clarify, update and reorganize Oregon’s air quality rules. Previous improvements to these programs began with EQC’s adoption of revisions to point source air management rules in 2001 and air quality permit program streamlining and updates in 2007. The rules contain multiple definitions for the same term, missing details, obsolete or outdated rules and rules that do not align with EPA rules, which causes confusion. This proposal would clarify and update the rules to address the needs listed in this table. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| Some important details are missing from the rules, such as specific compliance methods for determining compliance with an emission standard. This creates uncertainty for DEQ and regulated parties implementing the air quality programs. | The proposed rules would incorporate the missing compliance methods and help businesses understand how to comply with the standards. |
| Some procedures are in definitions rules instead of procedural rules, creating confusion for regulated parties. For example, the procedures for determining a major modification, actual emissions and netting basis are in the definitions rules. | The proposed rules would move procedures from definitions rules to procedural rules. For example, a business would find the procedure for determining actual emissions in procedural rules instead of in definitions. |
| The rules contain different definitions for the same term and definitions are located in multiple divisions, making it difficult for regulated parties to find definitions or know how to apply the definitions. | The proposed rules would move all common definitions to division 200, General Air Pollution Procedures and Definitions. They would provide only one definition per term and add definitions for undefined terms such as control efficiency, internal combustion source and removal efficiency. |
| Some of the tables in the rules are difficult to find and understand. | The proposed rules change the layout of some tables and move rule language from the tables into the text to make information easier to find and understand. This includes information about significant emission rates, de minimis levels, generic Plant Site Emission Limits, significant impact levels and Prevention of Significant Deterioration increments. |
| The rules contain requirements for industries that no longer operate in Oregon. | DEQ proposes to repeal rules for the following industries that no longer operate in Oregon:   * + Neutral sulfite semi-chemical pulp mills   + Sulfite pulp mills   + Primary aluminum standards   + Laterite ore production of ferronickel   + Charcoal producing plants   If a business in these industries wants to build in Oregon and requires an air quality permit, DEQ would issue the permit under more stringent federal requirements for new sources. Oregon rules incorporate the federal rules by reference. |
| Some rules became unnecessary when Oregon adopted federal and state standards.These rules no longer align with more stringent EPA standards, which creates conflict between DEQ’s rules and federal law. | DEQ proposes to repeal the following rules:   * Spray paint rules for sale or use in the Portland area. Federal rules that apply to manufacturers of consumer spray paint will continue to reduce ozone from consumer products. * Western Backstop (WEB) Sulfur Dioxide (SO2) Trading Program rules. Oregon no longer needs the general sulfur dioxide trading program to address regional haze because Oregon adopted individual emission limits (based on Best Available Retrofit Technology requirements) to directly reduce haze-causing emissions from sources like the PGE Boardman plant. * Open burning rules that regulate emissions from forced-air pit or air curtain incinerators. Federal rules for commercial and industrial solid waste incineration require facilities with forced-air pit or air curtain incinerators to obtain Title V permits. Therefore, DEQ must repeal the rules that allow forced-air pit incineration as an alternative to open burning. |
| The excess emission rules do not contain all of the sources required to report excess emissions. They also do not contain source specific criteria for determining enforcement action.  The excess emission rules require sources to report excess emissions to DEQ:   * Large sources must report all excess emissions immediately (within one hour of the event)   A “large” source is defined as any Title V source, any source whose emissions are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants.   * Small sources must notify DEQ immediately only of excess emissions events that could endanger public health.   A "small” source means any other stationary source with a basic, general, simple or standard Air Contaminant Discharge Permit. In the definition of “small” sources in the excess emission rules, DEQ inadvertently did not include sources that are on basic permits.  Since EQC’s initial adoption of the excess emission rules, EPA adopted NESHAPs for many smaller sources, such as gas stations, hospital ethylene oxide sterilizers, and dry cleaners. These sources are missing from DEQ’s rules, which creates conflict between DEQ’s rules and federal law.  The general provisions for NESHAP sources and some individual NESHAPs include excess emission reporting; therefore, DEQ’s rules do not need to include these small sources with large sources that are required to report exess emissions immediately.  Source specific technology based standards such as New Source Performance Standards and NESHAPs consider the achievable emissions of a facility that uses best demonstrated technology. Adding this criterion when determining whether to take enforcement action for excess emissions allows DEQ to recognize that while a source may violate the general statewide standard,the source is still complying with the source specific technology based standard.  On Feb. 22, 2013, EPA proposed to take action on a petition for rulemaking that the Sierra Club filed. The petition concerned how air agency rules in EPA-approved SIPs treat excess emissions during periods of startup, shutdown, or malfunction of industrial process or emission control equipment. In EPA’s review of the petition, they found DEQ’s excess emissions rules incorrectly allow an emergency to constitute an affirmative defense to penalty actions due to noncompliance with technology-based emission limits if the owner or operator notifies DEQ immediately of the emergency condition and follows the correct procedural requirements for all permitted sources, rather than just Title V sources. | The proposed rules would add omitted sources required to report excess emissions and add the criteria for determining whether to take enforcement action for excess emissions, including   * Whether any federal New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants apply and whether the excess emission event caused a violation of the federal standard; and * Whether the excess emissions event was due to an emergency.   In addition, DEQ proposes to limit affirmative defense (the ability to introduce new information about emergencies as a way to counter or defend against Title V violations) to Title V permitted sources only and not sources that are regulated under the State Implementation Plan. |
| Portions of the Source Sampling Manual (Volumes I and II) and the Continuous Monitoring Manual are no longer current, which creates problems for DEQ staff and regulated parties implementing the manuals. DEQ last updated the manuals in 1992. | The proposed rules update the Source Sampling Manual (Volumes I and II) and the Continuous Monitoring Manual.  DEQ extensively revised the Source Sampling Manual Volume I to incorporate revised EPA methods for measuring fine particulate matter and other changes to sampling and monitoring methods made since 1992. The manual addresses air emissions source sampling practices and procedures for sampling projects conducted within the State of Oregon. DEQ requests that stakeholders who perform air source sampling work and associated laboratories familiarize themselves with the entire manual.  DEQ also extensively revised the Continuous Monitoring Manual to address:   * Continuous Emission Monitoring Systems; * Continuous Parameter Monitoring Systems; * Continuous Opacity Monitoring Systems; * Federal monitoring requirements pertaining to NSPS, NESHAP, and Acid Rain programs; and * DEQ specific monitoring requirements.   DEQ requests the following stakeholders who do business in Oregon familiarize themselves with the entire manual:   * Commercial operations that are required to install and operate Continuous Monitoring Systems; * Contractors that audit or certify Continuous Monitoring Systems; and * Venders who sell or design Continuous Monitoring Systems.   The manuals are part of the Proposed Rules in this rulemaking package. |
| The Lane Regional Air Protection Agency’s authority is unclear in some rules. This agency (known as LRAPA) implements the air quality permitting program in Lane County. | The proposed rules clarify LRAPA’s authority in the rules that LRAPA implements in Lane County. LRAPA is authorized to implement DEQ rules unless it adopts its own rules that are at least as strict as DEQ rules. |

| 1. Update particulate matter emission standards | |
| --- | --- |
| DEQ proposes more stringent particulate matter standards to help prevent violations of the federal fine particulate standard.  Like many other states, Oregon adopted statewide particulate matter standards in 1970 as part of Oregon’s initial State Implementation Plan. Since 1970, health researchers have concluded that exposure to particulate pollution is more harmful than previously indicated. As a result, EPA lowered the ambient air quality standard for particulates from 260 micrograms per cubic meter; it established separate standards, including a coarse particulates standard at 150 micrograms per cubic meter and a fine particulates standard at 35 micrograms per cubic meter.  EPA designates areas that violate air quality standards as nonattainment areas and designates all other areas as attainment or unclassified areas. With EPA’s adoption of the fine particulate ambient air quality standard in 2011, Klamath Falls and Oakridge are now designated as nonattainment areas for fine particulate. Lakeview also violates the standard but was not designated nonattainment because its data was not available at the time EPA designated Klamath Falls and Oakridge. Numerous other areas in Oregon are only slightly below the standard. More stringent state particulate matter standards may help prevent additional violations of the federal fine particulate standard in the future, especially if EPA continues to lower the standard.  The initial State Implementation Plan included less protective emission standards for businesses that were in operation in 1970; these are known as grandfathered businesses. However, emissions from grandfathered businesses subject to the particulate matter standards no longer protect air quality. Routine exposure to air pollution at these levels can cause significant adverse health impacts to sensitive individuals.  In addition, emissions from these businesses can create barriers to economic development in the community. If a single business consumes the majority an airshed’s acceptable pollution levels, other businesses may not be able to expand and new businesses may not be able to come into the area. Work on the Klamath Falls fine particulate attainment plan showed when the background particulate matter concentration is added to a business’s impacts, the impacts from a single grandfathered business could consume a significant portion of the available airshed. DEQ found similar results when analyzing emissions from a grandfathered business near Lakeview.  DEQ relies on two types of general standards to control emissions from permitted sources of particulate matter such as dust or smoke. One type of standard sets concentration-based emission limits as mass per unit volume of exhaust gas. A second type of standard, referred to as a visible emissions standard, limits the maximum visual density, or opacity, of a plume. Existing rules include different particulate concentration and opacity standards for units installed before or after 1970:  Pre-1970 unit 0.2 grain/dry standard cubic foot (gr/dscf) and 40 percent opacity  Post-1970 unit 0.1 gr/dscf and 20 percent opacity | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| Particulate matter emissions are putting Oregon areas at risk of exceeding ambient air quality standards and being designated as nonattainment by EPA. Once EPA designates an area as nonattainment for fine particulate emission, DEQ and the local government must develop and implement a federally-approved attainment plan, which is costly to all involved and can require severe restrictions for businesses that want to build or expand in these areas. Attainment plans for fine particulate nonattainment areas typically include stringent regulations to reduce emissions from existing and new industry, residences and commercial establishments. An example of the type of restrictions imposed on businesses are in the rules adopted for the Medford/Ashland air quality maintenance area (known as AQMA) PM10 attainment plan under OAR 340-240-0100 through 340-240-0250. | Reducing emissions from grandfathered businesses before areas exceed ambient air quality standards and are designated as nonattainment areas helps Oregon avoid the costs of developing and implementing attainment plans. This would help avoid severe restrictions for businesses that want to build or expand in these areas.  The proposed rules would affect both the statewide particulate matter and opacity standards for grandfathered units built before June 1970 by phasing in a requirement for these businesses to meet lower standards based on typically available control technology, such as multiclones.  The particulate matter standard for all businesses (both pre- and post-1970) that are currently emitting less than 0.080 grains per dry standard cubic foot will be reduced to 0.10 gr/dscf. Under current rules, businesses are required to operate at their highest and best practicable treatment and control of air contaminant so as to maintain overall air quality at the highest possible levels, and to maintain pollution at the lowest possible levels. Therefore, businesses that are operating at levels much lower than existing standards must continue to do so.  Pre-1970 businesses will be required to meet 0.15 gr/dscf rather than 0.2 gr/dscf. Post-1970 businesses will be required to meet 0.14 gr/dscf. The standard for equipment or modes of operation that are used less than 876 hours per year remains at 0.20 gr/dscf.  The opacity standard would be reduced for all businesses to 20 percent with the following exceptions that are currently allowed:   * 40 percent during 12 minutes in an hour; and * 40 % during grate cleaning operations for wood fired boilers.   The proposal would allow a five-year transition period, ending no later than Jan. 1, 2020, but includes an opportunity for a one-year extension, if necessary.  The proposed rules provide an option to request a source-specific limit if boiler or multiclone optimization does not result in emissions low enough to meet the revised standards. This would ensure the proposed rules would not require any business to replace a boiler or convert to fossil fuel. |
| DEQ’s rules conflict with federal requirements. Oregon’s current particulate matter standards have only one significant figure (e.g., 0.1 gr/dscf) whereas EPA expects all standards to have two significant figures (e.g., 0.10 gr/dscf) when comparing measured emissions data to the standards. | The proposed rules add a significant figure to all particulate matter standards to align with the EPA policy that standards have two significant figures. The intent of the proposed rules is to ensure that Oregon’s particulate standards are consistent with current EPA policy for significant figures when determining compliance with standards. |
| DEQ’s rules do not contain a reference method necessary to demonstrate compliance with opacity standards.  Oregon based its first adopted opacity standard on an aggregate of three minutes in a 60-minute period. However, Oregon didn’t develop a reference test method for the three-minute aggregate limit. As a workaround to demonstrate compliance with this standard, Oregon businesses used a modifiedversion of EPA’s Method 9 reference test method; however, this workaround is inconsistent with EPA and other states’ methods.  In addition, current rules for the four-county area around Portland include a 20 percent opacity standard that is an aggregate of 30 seconds in a 60-minute period for non-fuel burning equipment such as material handling equipment. However, just like the statewise standard, Oregon didn’t develope a reference method for the 30-second aggregate limit.  Not having reference methods for these opacity standards makes it difficult for businesses to demonstrate compliance with the standards, and creates difficulty for DEQ in assuring compliance with and enforcing the standards. | The proposed rules would help ensure Oregon businesses use a reliable and defined method to measure compliance with statewide opacity standards that are consistent with EPA and other states’ methods.  The proposed rules would amend all opacity standards, both statewide and industry specific, to a six-minute block average except for the recovery furnace opacity limit that remains the same. This six-minute block average is consistent with other states in the region and EPA and is compatible with EPA’s Method 9 reference test method. DEQ does not expect this to change the overall stringency of the standards.  The proposed rules would repeal the 20 percent opacity standard for the four-county area around Portland to eliminate the problem of complying with or enforcing the standard. This equipment would be subject to the statewide opacity standard. While it may appear the 30 second visible emissions standard in OAR 340-208-0600 is more stringent than the current statewide standard, the rule has limited applicability. More importantly, emissions standards are only enforceable if there are defined reference methods for determining compliance with the standards. |
| DEQ needs a different method for addressing opacity from fugitive emission sources. DEQ and businesses currently use EPA Method 9 to determine compliance with opacity standards and ensure fugitive emissions are not causing a nuisance, but this method isn’t specific for fugitive sources. Fugitive particulate matter emissions are not emitted from a smoke stack and typically originate from storage piles, material conveying systems, unpaved roads or other dusty activities. In many situations, it is possible to take opacity readings to determine if the emitting source exceeded the opacity standard and then require action to abate the emissions. However, in other situations, opacity readings are difficult to take or the emissions do not exceed the opacity standard, but are nevertheless objectionable to surrounding neighbors. Therefore, rules are needed to control fugitive emissions from leaving a business’s property, regardless of their opacity. | The proposed rules would require businesses to take reasonable precautions to prevent fugitive emissions. DEQ may request a business develop and implement a fugitive emissions control plan to prevent visible emissions from leaving the property for more than 18 seconds in a six minute period . This is a simpler, more comprehensive and effective approach to controlling these emissions than the current approach that requires DEQ to make a nuisance determination outside of special control areas. DEQ and businesses would use EPA Method 22, Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares to determine compliance. Method 22 is specific for fugitive sources and would be a much better method for determining compliance than the currently used Method 9. |

| 3. Change permitting requirements for emergency generators and small natural gas or oil-fired equipment | |
| --- | --- |
| Federal law requires Title V permits to account for emissions from all activities at a regulated facility, including insignificant activities that do not warrant the kind of effort applied to the main emitting activities. When Oregon established the Title V permitting program in 1993, DEQ developed a list of “categorically insignificant activities” that may take place at a source but are not addressed individually in the permit. This list includes activities such as:   * Janitorial activities * Groundskeeping activities * Emergency generators   Businesses indicate they have categorically insignificant activities in their permit applications, but these activities are exempt from rigorous monitoring requirements because DEQ determined emissions from these activities are insignificant compared to other activities onsite. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| EPA recently adopted National Emission Standards for Hazardous Air Pollutants for stationary reciprocating internal combustion engines. EPA’s adoption added requirements for emergency generators currently exempt from permitting in Oregon because DEQ lists them as categorically insignificant activities. In addition, the growing need for large amounts of backup power from emergency generators at data centers has shown that emissions from emergency generators can be significant.  DEQ also determined that small fuel burning equipment, currently listed as categorically insignificant because each unit has low emissions, could have significant aggregate emissions if a business has multiple units. For example, DEQ identified one business that has eight small boilers that together have significant potential emissions of approximately 12 tons per year of nitrogen oxides. | The proposed rules would remove emergency generators and small natural gas or oil-fired equipment from the list of categorically insignificant activities if:   * Those units are above size thresholds that make them subject to emission limits, or * Their aggregate emissions are greater than de minimis levels.   DEQ would add these activities to existing permits.  In cases where emissions from a non-permitted business with these activities exceed permitting thresholds, the non-permitted business might need to obtain a permit for these activities alone.If the aggregate emissions are less than permitting thresholds, the owner or operator may only need to obtain pre-construction approval from DEQ when installing new units and not a permit. |

| 4. Establish two new state air quality area designations (“sustainment” and “reattainment”) to help areas avoid and more quickly end a federal nonattainment designation | |
| --- | --- |
| EPA designates areas that violate air quality standards as “nonattainment” areas and designates all other areas as “attainment” or “unclassified” areas. Oregon law designates former nonattainment areas that EPA reclassified to attainment as “maintenance” areas to ensure those areas avoid future violations. DEQ proposes to establish two new Oregon air quality area designations (“sustainment” and “reattainment”) to help areas avoid and more quickly end a federal nonattainment designation. If EQC approves these proposed rules, it would be able to designate specific areas of the state as “sustainment” or “reattainment” based on a local air quality analysis and public comment. To designate a specific area as “sustainment” or “reattainment” would require public notice and a rule change. These designations would provide communities and businesses with additional tools and incentives to improve air quality. Please view DEQ’s Lakeview Sustainment Area document for supplemental information about these designations. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| There are gaps in the current designation system, described in the next two sections, that can create disincentives for affected communities to improve air quality and unnecessarily impede economic development. While EPA does not establish designations for these areas, there is a need for Oregon to establish designations to help these areas avoid and more quickly end a federal nonattainment designation. | The proposed rules would establish two new designations with different permitting requirements for companies proposing a new or modified facility in areas that are close to or violating air quality standards:   * *Sustainment* area for a federally designated attainment area that is in danger of failing to meet air quality standards and which EPA has not yet designated a nonattainment area. * *Reattainment* area for a federally designated nonattainment area that is meeting air quality standards and which EPA has not yet redesignated an attainment area.   EQC would designate specific areas of the state as sustainment or reattainment based on a local air quality analysis, DEQ recommendations and public comment. These classifications would provide communities and businesses with additional tools and incentives to improve air quality, as described below. |
| Communities are not provided sufficient opportunities to avoid nonattainment designation.  This first gap in area designations is for attainment areas where the air quality is in danger of failing to meet air quality standards. While air pollution in these areas can cause health effects, new or modified businesses are not necessarily the sources that contribute to the problem. However, air pollution levels in the area make it difficult or impossible for new and expanding businesses to demonstrate that their added emissions will not cause or contribute to air quality violations. The current permitting rules for attainment areas do not include provisions for these businesses to offset their emission increases by a reduction in emissions from existing sources in the area. Designating these areas as nonattainment areas may be appropriate in some cases. However, in other cases, a nonattainment designation could impose prescriptive federal requirements and timelines that interfere with the more effective local efforts to improve air quality. | Establishing *sustainment* areas would provide communities more opportunities to avoid nonattainment designation.  The proposed rules would allow DEQ to work with the local community to determine if a state sustainment designation would be the best approach to improve air quality and prevent a nonattainment designation. DEQ would identify potential sustainment areas based on an air quality analysis that may include monitoring, development of an emission inventory, and air quality modeling. The analysis would identify the air pollution sources that primarily contribute to public health concerns, and a boundary for the potential sustainment area. Upon approval by the local community, DEQ would then propose the sustainment designation for public comment through its rulemaking process.  An EQC-designated sustainment area would remain a federal attainment area and new and modified facilities that are above the federal major source threshold would continue to be subject to federal attaianment area requirments. However, the proposed rules for sustainment areas would address industrial source emissions that the community could rely upon as part of an overall plan, such as EPA’s PM Advance program, for improving the ambient air quality. Within a sustainment area, new and modified facilities would receive incentives to obtain emission offsets from those existing air pollution sources that are identified as the primary cause of degraded air quality in the sustainment area under category six below (Change the pre-construction permitting program (New Source Review)). |
| Communities designated as nonattainment areas must continue to require costly elements of an attainment plan when those elements are no longer necessary to protect air quality.  This second gap in area designations is for nonattainment areas that have met federal ambient air quality standards by implementing an approved attainment plan. For these areas to be designated as federal attainment areas and state maintenance areas, DEQ must develop and EPA must approve a long-term air quality maintenance plan. In developing the maintenance plan, DEQ may determine that some elements of the attainment plan are no longer required to maintain air quality. However, until EPA redesignates the area to attainment – a process that can take years – the area must continue implementing all elements of the attainment plan. | Establishing *reattainment* areas would allow communities to discontinue costly elements of an attainment plan when those elements are no longer necessary to protect air quality.  The proposed rules would allow DEQ to propose to EQC a state reattainment designation for a federal nonattainment area with an approved attainment plan where air quality reliably meets the federal ambient air quality standard. The potential for a reattainment area designation would create an incentive for a community to improve air quality as quickly as possible. The boundary for the reattainment area would be the same as the nonattainment area boundary.  An EQC designated reattainment area would remain a federal nonattainment area. All elements of the area’s attainment plan would continue to apply until EPA approves a maintenance plan and redesignates the area to attainment. However, within the reattainment area, new and modified facilities that fall below the federal major source threshold would be subject to less stringent requirements unless DEQ has identified the facility as a significant contributor to the air quality problems in the area under category six below (Change the pre-construction permitting program (New Source Review)). |

|  |  |
| --- | --- |
| 5. Identify Lakeview as a state sustainment area while retaining its federal attainment designation | |
| Air quality in Lakeview currently does not meet the ambient air quality standards for fine particulates. However, EPA has not yet designated Lakeview a nonattainment area because Lakeview was not exceeding the standard at the time EPA made its designations throughout the United States. Oregon did not have the required three years of monitoring data to determine if the area was violating the federal standards.  Please view DEQ’s Lakeview Sustainment Area document for supplemental information about the designation for Lakeview. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| Lakeview’s status as violating the federal air quality standard without a nonattainment designation has created problems in permitting new and modified facilities. The construction approval process for attainment and unclassified areas includes an analysis that a new or expanding major pollution source will not cause or contribute to a violation of air quality standards. However, meeting this test is not possible for an area that already violates the standards. This, in effect, prevents DEQ from approving construction permits for new and expanding facilities in Lakeview. | | The proposed rules would designate Lakeview as a state sustainment area proposed under category four above. While Lakeview would retain its federal designation as an attainment area, a state designation of sustainment would help the community in its efforts to improve air quality by:   * Providing more flexible permitting requirements for non-federal major emission sources and * Avoiding a federal nonattainment designation.     The Lakeview Sustainment Area document includes DEQ’s technical analysis to identify the boundary and primary sources of air pollution in the proposed sustainment area. |
| Designating Lakeview as a nonattainment area would preclude the community’s active voluntary efforts to meet federal air quality standards under the PM Advance program. | | The Lakeview community voluntarily participates in EPA’s “PM Advance” program to develop an air quality improvement and prevention plan. Local officials hope to bring the area quickly back into attainment with the standard to avoid a federal nonattainment designation and the resulting impacts on costs for businesses seeking to locate there. DEQ assists the community with technical analysis and administrative support for the PM Advance planning process.  The PM Advance plan that Lakeview is currently developing outside the rulemaking process will address all PM2.5 emission sources, including residential wood stoves and open burning. DEQ determined that the PM Advance plan and designation as a sustainment area would complement each other to address stationary sources within the Lakeview area.  Under the sustainment area designation, new and expanding businesses that do not exceed the federal major source threshold of 250 tons per year of particulate matter could be permitted by obtaining offsets under category six below. The offset requirement would be lowered for businesses that obtain offsets from residential wood heating, which is the primary cause of air quality violations in Lakeview. |

| 6. Change the pre-construction permitting program (New Source Review) | |
| --- | --- |
| DEQ proposes changes to the New Source Review program to improve air quality in all areas of the state, especially those that are close to or exceed ambient air quality standards. New Source Review is a federally required preconstruction program that ensures new or modified facilities install the latest control technologies and do not have adverse impacts on ambient air quality standards. The intent of the Prevention of Significant Deterioration portion of the New Source Review program is to prevent degradation of air quality in areas that meet federal air quality standards. The intent of the nonattainment New Source Review program is to improve the air quality in designated nonattainment areas that violate air quality standards. DEQ’s proposal would also establish New Source Review requirements for the proposed new sustainment and reattainment area designations described in category four above.  Please view DEQ’s NSR Program Discussion document for supplemental information about these changes. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| The current New Source Review program rules do not distinguish between requirements for facilities that emit more than the federal major source threshold and those that emit less. Federal law requires states to have both a major and a minor New Source Review program. The requirements for the major New Source Review program are very prescriptive. States have more flexibility in designing the minor New Source Review program if the state demonstrates that it will protect air quality. Oregon’s current requirements for minor and major New Source Review are the same. This limits DEQ’s ability to use the minor New Source Review program in the most effective way to protect air quality while enabling economic development. | The proposed rules for new and modified facilities would distinguish those facilities above the federal major source threshold from facilities below the threshold. To do this, the proposed rules would:   * Amend the definition of a major source to match the EPA definition. * Establish a minor New Source Review program for smaller businesses called “State New Source Review.” * Tailor New Source Review requirements for smaller businesses to the air quality needs of an area in ways that cannot apply to larger businesses because of EPA requirements. |
| Current criteria for determining if a major new or modified facility would improve air quality in or near a nonattainment or maintenance area are known as Net Air Quality Benefit. The problems with the criteria are as follows:   * Are based solely on air quality modeling, * Are impossible for businesses to meet, unless the increasing and offsetting businesses are co-located, * Prevent potentially more beneficial local air pollution reduction projects from occurring, thereby creating an unnecessary construction ban, and * Require new or modified businesses to reduce emissions from other existing businesses and demonstrate that together the emission increases and reductions result in improved air quality at most receptors within the area. | The proposed rules would establish a new process for companies proposing a new or modified facility in or near a nonattainment, sustainment or maintenance area. The proposal provides a simplified modeling demonstration that requires emission offsets to be greater than emission increases. The offset ratio would depend on:   * The area classification, and * Whether the new or modified source of emissions is a federal major source or minor source.   The proposed rules would provide incentives for new or modified businesses to help address ambient air quality problems. The incentives would reduce the emission-offset ratio if the business obtains reductions from priority sources, those that primarily cause air quality problems in the local area. In addition, the proposed rules would ensure no degradation of air quality in relation to the ambient monitoring for the area. |
| The current New Source Review program rules allow extensions of construction permits for good cause. The rules do not include criteria for approving or denying extensions of construction permits or the number of extensions allowed.  Allowing construction permits to be extended multiple times without limit or additional review could:   * Tie up the business’s designated allowable emissions portion of the airshed indefinitely, * Result in the installation of less effective control technology if control technology has improved since the approval of the original construction permit, and * Result in higher impacts on air quality than necessary. | The proposed rules provide two 18-month extensions and procedures for requesting and approving extensions for New Source Review construction permits:   * For the first extension, the proposed rules would require a review of any new pollution control technologies that could be applied to the proposed source. * For the second extension, the proposed rules would require a review of the pollution control technology and a review of the impacts on the ambient air quality in the area. |

| 7. Provide more flexibility for public hearings and meetings | |
| --- | --- |
| DEQ is committed to public engagement and staying current with emerging and innovative ways to reach people and hold hearings. This proposal would make it easier and more cost effective for DEQ to hold and people to participate in permit actions and public hearings. Current rules require DEQ to hold informational meetings on the most complex permit actions and public hearings when requested. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| The existing rules are very prescriptive regarding how DEQ holds public hearings and meetings for air quality permits. These rules, first adopted by Oregon in 1974, do not allow for technological advances like Internet-based virtual meetings in lieu of statewide travel. Having staff travel to local hearings and meetings around the state can be resource intensive and wasteful if no one attends to present comments or gather information. | The proposed rules would make it easier and more cost-effective for DEQ to hold and people to participate in public hearings and meetings by removing the prescriptive language from the rules. |

| 8. Re-establish woodstove replacement program (Heat Smart) exemption for small commercial solid fuel boilers that the permitting program regulates | |
| --- | --- |
| DEQ proposes revisions to residential wood heating rules to remedy the inadvertent prohibition of selling small commercial biomass boilers in Oregon. DEQ’s Heat Smart program requires biomass and other solid fuel burning devices that have heat output of less than one million Btu per hour to meet certification requirements. The existing rules exempt small biomass boilers from certification requirements if they are subject to federal National Emission Standards for Hazardous Air Pollutants. However, EPA revised its rules in 2012 to exempt small biomass boilers from these standards. DEQ’s proposed rules reestablish the Heat Smart exemption for small commercial biomass boilers regulated through the construction approval and permit programs. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| Small commercial biomass boilers with heat output less than one million Btu per hour cannot be sold in Oregon. DEQ’s existing rules exempt small biomass boilers from the Heat Smart program if they are subject to National Emission Standards for Hazardous Air Pollutants. The Heat Smart Program is intended to ensure that commercial and residential wood stoves and other wood heating devices meet certification standards. The certification standards were not designed to apply to biomass boilers. However, EPA recently exempted small biomass boilers from the National Emission Standards for Hazardous Air Pollutants. EPA’s exemption subjected these devices to Oregon’s Heat Smart rules unintentionally. | The proposed rule changes would allow small scale commercial biomass boilers to be sold in Oregon again, while ensuring they are still subject to existing state limits on particulate matter and opacity. This proposal would eliminate the reference to the federal regulations and allow boilers with a heat output less than one million Btu per hour to be sold in Oregon. |

| 9. Remove annual reporting requirements for small gasoline dispensing facilities | |
| --- | --- |
| DEQ proposes repealing the annual reporting requirement for small gasoline dispensing facilities after finding the reports unnecessary to ensure compliance with emission standards for preventing leaks and spills. | |
| What need would the proposed rules address? | How would the proposed rules address the need? |
| The annual reporting requirement for these small gasoline-dispensing facilities is unnecessary. A gasoline dispensing facility with a monthly throughput of fewer than 10,000 gallons of gasoline is currently required to:   * Meet work practice standards, * Have a submerged fill tube installed on any tank at the facility that has a capacity of 250 gallons or more, * Submit to DEQ a one-time initial notification and later a notification of compliance status, if subject to the submerged fill tube requirement, and * Submit annual reports of throughput.   These facilities are not required to have an air quality permit. DEQ collected one-time throughput data from these facilities and may request additional information if needed. | The proposed rules would remove the annual reporting requirement for facilities with monthly throughput less than 10,000 gallons. DEQ would still have authority to request throughput information from these facilities. DEQ would request this information as needed for businesses close to the 10,000-gallon permitting threshold. |

How will DEQ know the rules have addressed the needs stated above?

To determine whether the rulemaking met its objectives, DEQ would confirm, as part of ongoing relationships with regulated parties, whether regulated parties have a clearer understanding of the program and their obligations. DEQ expects to see a reduction in the number of business that request help interpreting the rules.

DEQ expects to see an improvement in air quality, and therefore, fewer nonattainment areas, based on the following reductions in emissions from:

* Updates to the particulate matter standards;
* Offsets of priority sources causing air quality problems in areas that chose to become sustainment areas;
* Changes to the pre-construction permitting program (New Source Review),

DEQ expects to see more participation in public meetings and hearings with more flexibility on how these meetings are held along with reductions in costs.

If EQC adopts the proposed rules after considering public comments, DEQ would submit the rules to EPA to update Oregon’s State Implementation Plan. DEQ would know the goals of this rulemaking have been addressed when EPA reviews and approves the State Implementation Plan revision.

|  |
| --- |
| Rules affected, authorities, supporting documents |

Adopt OAR:

340-200-0035, 340-202-0225, 340-204-0300, 340-204-0310, 340-204-0320, 340-208-0005, 340-212-0005, 340-214-0005, 340-222-0046, 340-222-0048, 340-222-0051, 340-224-0025, 340-224-0045, 340-224-0055, 340-224-0245, 340-224-0250, 340-224-0255, 340-224-0260, 340-224-0270, 340-224-0500, 340-224-0510, 340-224-0520, 340-224-0530, 340-226-0005, 340-234-0005, 340-234-0540, 340-236-0005, 340-240-0050

Amend OAR:

340-200-0010, 340-200-0020, 340-200-0025, 340-200-0030, 340-200-0040, 340-200-0050, 340-200-0100, 340-200-0110, 340-200-0120, 340-202-0010, 340-202-0020, 340-202-0050, 340-202-0070, 340-202-0100, 340-202-0110, 340-202-0130, 340-202-0200, 340-202-0210, 340-202-0220, 340-204-0010, 340-204-0020, 340-204-0030, 340-204-0040, 340-204-0050, 340-204-0060, 340-204-0070, 340-204-0080, 340-204-0090, 340-206-0010, 340-206-0020, 340-206-0030, 340-206-0040, 340-206-0050, 340-206-0060, 340-206-0070, 340-208-0010, 340-208-0110, 340-208-0210, 340-208-0300, 340-208-0310, 340-208-0320, 340-208-0450, 340-209-0010, 340-209-0020, 340-209-0030, 340-209-0040, 340-209-0050, 340-209-0060, 340-209-0080, 340-210-0010, 340-210-0020, 340-210-0100, 340-210-0110, 340-210-0120, 340-210-0205, 340-210-0215, 340-210-0225, 340-210-0230, 340-210-0240, 340-210-0250, 340-212-0010, 340-212-0110, 340-212-0120, 340-212-0130, 340-212-0140, 340-212-0150, 340-212-0200, 340-212-0210, 340-212-0220, 340-212-0230, 340-212-0240, 340-212-0250, 340-212-0260, 340-212-0270, 340-212-0280, 340-214-0010, 340-214-0100, 340-214-0110, 340-214-0114, 340-214-0130, 340-214-0200, 340-214-0210, 340-214-0220, 340-214-0300, 340-214-0310, 340-214-0320, 340-214-0330, 340-214-0340, 340-214-0350, 340-214-0360, 340-216-0010, 340-216-0020, 340-216-0025, 340-216-0030, 340-216-0040, 340-216-0052, 340-216-0054, 340-216-0056, 340-216-0060, 340-216-0062, 340-216-0064, 340-216-0066, 340-216-0068, 340-216-0070, 340-216-0082, 340-216-0084, 340-216-0090, 340-216-0094, 340-218-0010, 340-218-0020, 340-218-0030, 340-218-0040, 340-218-0050, 340-218-0060, 340-218-0070, 340-218-0080, 340-218-0090, 340-218-0100, 340-218-0110, 340-218-0120, 340-218-0140, 340-218-0150, 340-218-0160, 340-218-0170, 340-218-0180, 340-218-0190, 340-218-0200, 340-218-0210, 340-218-0220, 340-218-0230, 340-218-0240, 340-220-0010, 340-220-0020, 340-220-0060, 340-220-0070, 340-220-0080, 340-220-0090, 340-220-0100, 340-220-0110, 340-220-0120, 340-220-0130, 340-220-0170, 340-220-0180, 340-220-0190, 340-222-0010, 340-222-0020, 340-222-0030, 340-222-0040, 340-222-0041, 340-222-0042, 340-222-0060, 340-222-0080, 340-222-0090, 340-224-0010, 340-224-0020, 340-224-0030, 340-224-0040, 340-224-0050, 340-224-0060, 340-224-0070, 340-225-0010, 340-225-0020, 340-225-0030, 340-225-0040, 340-225-0045, 340-225-0050, 340-225-0060, 340-225-0070, 340-226-0010, 340-226-0100, 340-226-0110, 340-226-0120, 340-226-0130, 340-226-0140, 340-226-0200, 340-226-0210, 340-226-0310, 340-226-0320, 340-226-0400, 340-228-0010, 340-228-0020, 340-228-0100, 340-228-0110, 340-228-0120, 340-228-0130, 340-228-0200, 340-228-0210, 340-228-0300, 340-232-0010, 340-232-0020, 340-232-0030, 340-232-0040, 340-232-0050, 340-232-0060, 340-232-0080, 340-232-0085, 340-232-0090, 340-232-0100, 340-232-0110, 340-232-0120, 340-232-0130, 340-232-0140, 340-232-0150, 340-232-0160, 340-232-0170, 340-232-0180, 340-232-0190, 340-232-0200, 340-232-0210, 340-232-0220, 340-232-0230, 340-234-0010, 340-234-0100, 340-234-0140, 340-234-0200, 340-234-0210, 340-234-0220, 340-234-0240, 340-234-0250, 340-234-0270, 340-234-0500, 340-234-0510, 340-234-0520, 340-234-0530, 340-236-0010, 340-236-0310, 340-236-0320, 340-236-0330, 340-236-0400, 340-236-0410, 340-236-0420, 340-236-0440, 340-236-0500, 340-240-0010, 340-240-0020, 340-240-0030, 340-240-0100, 340-240-0110, 340-240-0120, 340-240-0130, 340-240-0140, 340-240-0150, 340-240-0160, 340-240-0180, 340-240-0190, 340-240-0210, 340-240-0220, 340-240-0250, 340-240-0300, 340-240-0320, 340-240-0330, 340-240-0340, 340-240-0350, 340-240-0360, 340-240-0400, 340-240-0410, 340-240-0420, 340-240-0430, 340-240-0440, 340-240-0510, 340-240-0550, 340-240-0560, 340-240-0610, 340-242-0400, 340-242-0410, 340-242-0420, 340-242-0430, 340-242-0440, 340-242-0500, 340-242-0510, 340-242-0520, 340-242-0600, 340-242-0610, 340-242-0620, 340-242-0630, 340-244-0232, 340-244-0234, 340-244-0236, 340-244-0238, 340-244-0239, 340-244-0240, 340-244-0242, 340-244-0244, 340-244-0246, 340-244-0248, 340-244-0250, 340-246-0230, 340-262-0450, 340-264-0010, 340-264-0020, 340-264-0030, 340-264-0040, 340-264-0050, 340-264-0060, 340-264-0070, 340-264-0075, 340-264-0078, 340-264-0080, 340-264-0100, 340-264-0110, 340-264-0120, 340-264-0130, 340-264-0140, 340-264-0150, 340-264-0160, 340-264-0170, 340-264-0180, 340-268-0010, 340-268-0020, 340-268-0030

Amend and renumber OAR:

current OAR 340-216-0020 Table 1 amended and renumbered to 340-216-8010;

current OAR 340-216-0020 Table 2 amended and renumbered to 340-216-8020;

current OAR 340-222-0043 amended and renumbered to 340-222-0035;

current OAR 340-222-0045 amended and renumbered to 340-222-0055;

current OAR 340-224-0080 amended and renumbered to 340-224-0034;

current OAR 340-224-0100 amended and renumbered to 340-224-0038;

current OAR 340-226-0310 Table 1 amended and renumbered to 340-226-8010;

current OAR 340-236-0410 Table 1 amended and renumbered to 340-236-8010;

Repeal OAR:

340-208-0100, 340-208-0200, 340-208-0600, 340-209-0070, 340-214-0400, 340-214-0410, 340-214-0420, 340-214-0430, 340-218-0250, 340-222-0070, 340-225-0090, 340-226-0200, 340-228-0400, 340-228-0410, 340-228-0420, 340-228-0430, 340-228-0440, 340-228-0450, 340-228-0460, 340-228-0470, 340-228-0480, 340-228-0490, 340-228-0500, 340-228-0510, 340-228-0520, 340-228-0530, 340-234-0300, 340-234-0310, 340-234-0320, 340-234-0330, 340-234-0340, 340-234-0350, 340-234-0360, 340-234-0400, 340-234-0410, 340-234-0420, 340-234-0430, 340-236-0100, 340-236-0110, 340-236-0120, 340-236-0130, 340-236-0140, 340-236-0150, 340-236-0200, 340-236-0210, 340-236-0220, 340-236-0230, 340-236-0430, 340-240-0170, 340-240-0230, 340-240-0310, 340-242-0700, 340-242-0710, 340-242-0720, 340-242-0730, 340-242-0740, 340-242-0750, 340-242-0760, 340-242-0770, 340-242-0780, 340-242-0790, 340-264-0190

Divisions 210, 216 and 218 include rules, programs or activities considered land use programs under the DEQ State Agency Coordination Program.

Statutory authority

ORS 468 and 468A

Statutes implemented

ORS 468, 468A, 468A.025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070, 468A.135, 468A.155, 468A.310, 468A.327, 468A.460 through 468A.515

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

| Document title | Document location |
| --- | --- |
| 06/06/90 EPA guidance titled “Performance Test Calculation” | <http://www.epa.gov/ttn/emc/rounding.pdf> |
| EPA Method 9—Visual Determination of the Opacity of Emissions From Stationary  Sources | http://www.epa.gov/ttn/emc/promgate/m-09.pdf |
| Method 22 - Visual Determination of Fugitive Emissions From Material Sources and Smoke Emissions From Flares | http://www.epa.gov/ttn/emc/promgate/m-22.pdf |
| Standards of Performance for Stationary Compression Ignition Internal Combustion Engines | <http://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol6/pdf/CFR-2011-title40-vol6-part60-subpartIIII.pdf> |
| Standards of Performance for Stationary Spark  Ignition Internal Combustion Engines | <http://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol6/pdf/CFR-2011-title40-vol6-part60-subpartJJJJ.pdf> |
| National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines | <http://www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-01288.pdf> |
| Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; Final Rule | <http://www.epa.gov/ttn/atw/area/fr18ja08.pdf> |
| Regulations Pertaining to NPDES and WPCF Permits (OAR 340-45) | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_045.html> |
| 2011 Oregon Air Quality  Data Summaries | <http://www.deq.state.or.us/aq/forms/2011AirQualityAnnualReport.pdf> |
| National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Final Rule | <http://www.gpo.gov/fdsys/pkg/FR-2013-02-01/pdf/2012-31645.pdf> |
| Stationary Source Reporting Requirements - OAR 340-214-0110 | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_214.html> |
| 40 CFR Part 58, Appendix D — Network Design Criteria for Ambient Air Quality Monitoring | <http://www.gpo.gov/fdsys/granule/CFR-2012-title40-vol6/CFR-2012-title40-vol6-part58-appD/content-detail.html> |
| Air Contaminant Discharge Permits – Table 1, DEQ relied on OAR 340-216-0020 | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/_340_tables/340-216-0020_3-27.pdf> |
| Consumer Price Index Conversion Factors 1774 to estimated 2021 to Convert to Dollars of 1998. 2013 Robert C. Sahr, Political Science, Oregon State University, Rev 05/08/2013 | <http://oregonstate.edu/cla/polisci/sites/default/files/faculty-research/sahr/inflation-conversion/excel/cv1998.xls> |
| EPA Cost Control Manual, Sixth Edition. U.S EPA report #EPA/452/B‐02‐001, January 2002. | http://www.epa.gov/ttn/catc/dir1/c\_allchs.pdf. |
| Emission Controls for Small Wood-Fired Boilers,Prepared for: United States Forest Service, Western Forestry Leadership Coalition, May 2010 | <http://www.wflccenter.org/news_pdf/361_pdf.pdf> |
| Western Forestry Leadership Coalition & Council of Western State Foresters: Resource Systems Group, Inc. Emission Control Technologies for Small Wood‐Fired Boilers – 6 May 2010. | <http://www.wflccenter.org/news_pdf/361_pdf.pdf> |

|  |
| --- |
| Fee Analysis |

This rulemaking does not involve any change in fees.

|  |
| --- |
| Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.leg.state.or.us/ors/183.html) |

*[For Jill 5/27/14 – FYI – the first portion of Fiscal removed. - Andrea]*

Documents relied on for fiscal and economic impact

Air Contaminant Discharge Permits – Table 1, DEQ relied on OAR 340-216-0020

<http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/_340_tables/340-216-0020_3-27.pdf>

EPA Air Pollution Control Cost Manual, Report No. 452/B-02-001, January 2002, Section 6, Chapter 1, Baghouses and Filters <http://www.epa.gov/ttn/catc/dir1/cost_toc.pdf>

Consumer Price Index Conversion Factors 1774 to estimated 2021 to Convert to Dollars of 1998. 2013 Robert C. Sahr, Political Science, Oregon State University, Rev 05/08/2013 <http://oregonstate.edu/cla/polisci/sites/default/files/faculty-research/sahr/inflation-conversion/excel/cv1998.xls>

Emission Controls for Small Wood-Fired Boilers,Prepared for: United States Forest Service, Western Forestry Leadership Coalition, May 2010 <http://www.wflccenter.org/news_pdf/361_pdf.pdf>

Advisory committee for fiscal and economic impact statement

DEQ appointed an advisory committee for the sole purpose of making a recommendation on this fiscal and economic impact statement.

To comply with [ORS 183.333](http://www.oregonlaws.org/ors/183.333), DEQ asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant impact on small businesses and complies with [ORS 183.540](http://www.oregonlaws.org/ors/183.540).

The committee reviewed the draft fiscal and economic impact statement and documented its recommendations in the **[SELECT PHRASE b]** Enter title and date of document **[OR SELECT PHRASE b]** approved minutes dated Enter date using style guide format – mmm dd, yyyy, EXAMPLE: Jan. 14, 2013.

The committee Enter specifics about the committee’s fiscal impact review. **[PICK ONE PHRASE. PHRASE FOR SMALL BUSINESS INVOLVEMENT a]** To meet requirements in [ORS 183.540](http://www.oregonlaws.org/ors/183.540), the committee considered how to reduce the economic impact on small business and determined Describe applicable elements under [ORS 183.540](http://www.leg.state.or.us/ors/183.html). **[PHRASE FOR SMALL BUSINESS INVOLVEMENT b]** The committee determined the proposed rules would not have a positive or negative, or a direct or indirect economic impact on small businesses in Oregon.

DEQ considered input from the advisory committee and DEQ’s standing Small Business Compliance Advisory Panel when completing this fiscal and economic impact statement.

Housing cost

To comply with ORS 183.534, DEQ determined the following three categories of the proposed rules may have an 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.

**Update particulate matter emission standards:** The costs for additional control or process equipment could be passed through by businesses providing products and services for such development and construction.

**Change permitting requirements for emergency generators and small natural gas or oil-fired equipment:** The costs for additional permits could be passed through by businesses providing products and services for such development and construction.

**Change the pre-construction permitting program (New Source Review):** The costs for additional permits, control or process equipment could be passed through by businesses providing products and services for such development and construction.

The possible impact of these proposed changes appears to be minimal. DEQ cannot quantify the impact at this time because the information available to it does not indicate whether the costs would be passed on to consumers and any such estimate would be speculative.

The other proposed changes do not have an effect on house costs. The other proposed changes would make it easier for people to use and understand air quality rules, provide more flexibility for public hearings and meetings, remove reporting requirements, affect the sales of small biomass boilers, and affect whether businesses can construct or modify in sustainment or reattainment areas.

|  |
| --- |
| **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 following six categories of DEQ’s proposed changes contain rules that are “in addition to federal requirements."

**Clarify and update air quality rules:** EPA does not have identical rules that clarify and update existing DEQ rules.

What alternatives did DEQ consider, if any?

DEQ considered doing nothing, but did not pursue this alternative because the existing rules contain errors and create confusion and misinterpretations for regulated parties.

1. **Update particulate matter standards:** The proposed rules protect public health and the environment. DEQ has statewide opacity limits for new and existing sources, including fugitive emission sources. While some of EPA’s New Source Performance Standards have opacity and particulate matter limits for specific regulated industries, EPA regulations do not apply an equivalent opacity standard to all sources.

The proposed rules are in addition to federal requirements for two New Source Performance Standards that have opacity limits for fugitive emissions. The proposed rules would require a permit holder to abate any fugitive emissions that leave the permit holder’s property. Using EPA Method 9 to determine compliance, the New Source Performance Standard for Metallic Mineral Processing Plants (Subpart LL) requires fugitive emissions to meet 10 percent opacity and the NSPS for Nonmetallic Mineral Processing Plants (Subpart OOO) contains a limit of 7 percent opacity and allows an affected facility to rely on water carryover from upstream water sprays to control fugitive emissions.

DEQ’s proposed changes to the current statewide visible emission standards that apply to non-fugitive sources would make DEQ’s standards substantively equivalent to EPA’s visible emissions standards. DEQ proposes changing the standards from an aggregate period to a six-minute average in order for DEQ and permit holders to use EPA Method 9 for determining compliance.

The proposed change to add a significant figure to the particulate matter standard from 0.1 gr/dscf to 0.10 gr/dscf would align DEQ rules with applicable federal requirements and policies.

What alternatives did DEQ consider, if any?

DEQ considered not amending Oregon’s particulate matter standards, but did not pursue this alternative because protecting air quality and supporting economic development are important to Oregon. Most businesses constructed before 1970 have already updated their facilities and now meet the lower particulate matter standards.

DEQ considered phasing out the standards that apply to pre-1970 sources and requiring all sources to meet the post-1970 standard with the addition of a significant digit (0.10 gr/dscf, for example) by Jan. 1, 2019. Based on input from stakeholders suggesting that complying with a limit of 0.10 gr/dscf would present a significant economic hardship, DEQ proposes a different set of standards that will not require any businesses to replace existing equipment or change the type of fuel being used. The proposed changes to the standards are based on well maintained typically available control technology that will minimize particulate matter emissions to the extent practicable with existing equipment.

DEQ considered not amending the averaging time for opacity standards, but did not pursue this alternative because DEQ’s ability to enforce the standards is uncertain without a reference test method for demonstrating compliance.

DEQ considered not amending the opacity limits for fugitive emission sources, but did not pursue this alternative because implementation issues would still exist and abatement of fugitive emissions leaving the property boundary reduces emissions more than would trying to determine compliance with a 20 percent opacity limit.

1. **Change permitting requirements for emergency generators and small natural gas or oil-fired equipment:** The proposed rules protect public health and the environment. The proposed rules would require facilities to obtain construction approvals or permits when emissions from emergency generators and small natural gas or oil-fired equipment are significant; these units’ operations were previously treated as insignificant activities. Oregon’s Plant Site Emission Limit rules require DEQ permits to regulate smaller units than EPA requires. emission ,

What alternatives did DEQ consider, if any?

DEQ did not consider alternatives because failure to change the permitting requirements would result in small sources potentially violating the internal combustion engine standards and DEQ rules for operating without a permit.

1. **Establish two new state air quality area designations (“sustainment” and “reattainment”) to help areas avoid and more quickly end a federal nonattainment designation; and**
2. **Identify Lakeview as a state sustainment area while retaining its federal attainment designation:** The proposed rules would designate sustainment and reattainment areas. EPA does not have equivalent designations. The changes would protect public health by improving air quality , while improving Oregon’s New Source Review Program and increasing DEQ’s flexibility in permitting smaller businesses.

What alternatives did DEQ consider, if any?

DEQ considered doing nothing, but did not pursue this alternative because EPA, Lakeview and county officials support the new area designations.

1. **Change the pre-construction permitting program (New Source Review):**

The proposed rules would continue to protect public health and the environment while addressing economic concerns. DEQ’s pre-construction permitting program, although different from EPA’s, accomplishes the same Clean Air Act goal of preventing significant deterioration of air quality. EPA considers DEQ’s program substantively equivalent.

* DEQ has separated the New Source Review program for federal major sources from that of minor sources with different requirements for large and small businesses. The program for smaller businesses would be called State New Source Review. This change, along with the designation of sustainment and reattainment areas, would increase DEQ’s flexibility in permitting smaller sources while protecting ambient air quality.
* The proposed rules would create new differences between the Oregon and EPA New Source Review pre-construction programs by defining two new area designations, sustainment and reattainment. These two new designations would help areas avoid exceedancing ambient air quality standards and encourage economic development when a nonattainment area has improved air quality.

What alternatives did DEQ consider, if any?

DEQ considered doing nothing, but did not pursue this alternative because the existing pre-construction permitting program essentially creates a construction ban in areas that exceed the ambient air quality standard, but are still designated as attainment areas. The existing rules governing demonstration of net air quality benefit in nonattainment areas are too prescriptive and do not meet the goals of the program.

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

1. **Provide more flexibility for public hearings and meetings:** EPA does not have rules regarding the technology DEQ uses at public hearings and meetings.

What alternatives did DEQ consider, if any?

DEQ considered doing nothing, but did not pursue this alternative because DEQ’s proposal would create economic benefits and improve access to hearings and meetings.

1. **Re-establish woodstove replacement program (Heat Smart) exemption for small commercial solid fuel boilers that the permitting program regulates:** Sales of small commercial biomass boilers were inadvertently prohibited in Oregon when EPA amended National Emission Standards for Hazardous Air Pollutants.

What alternatives did DEQ consider, if any?

DEQ did not consider alternatives. DEQ’s proposal would return the woodstove replacement program to its previous state, before EPA amended the NESHAP.

1. **Remove annual reporting requirement for small gasoline dispensing facilities**

The proposed rules are consistent with the federal gasoline dispensing facility NESHAP that does not require gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline to submit annual reports.

What alternatives did DEQ consider, if any?

DEQ considered doing nothing, but did not pursue this alternative because annual reports from these small gasoline dispensing facilities are unnecessary and create additional work for regulated parties.

Request for other options

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

|  |
| --- |
| 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

19 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 would 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 following proposed rules, listed under the Rules affected, authorities, supporting documents section above, are existing rules that affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program:

OAR 340-210 Source Notification Requirements

OAR 340-216 Air Contaminant Discharge Permits

OAR 340-218 Oregon Title V Operating Permits

The air quality permit programs require that a new business provide a Land Use Compatibility Statement from local government when applying for a permit. This assures that the business has an approved use for the property where it is located. Existing permittees have provided a Land Use Compatibility Statements, which are on file with DEQ. This rule proposal does not include any changes to land use procedures in the air quality permitting program.

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules.

* OAR 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans
* OAR 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement.

|  |
| --- |
| Stakeholder and public involvement |

Advisory committee

DEQ convened a fiscal and economic impact advisory committee on Jan. 23, 2014. DEQ requested that the committee provide comments and recommendations on DEQ’s draft notice of proposed rulemaking which included the statement of fiscal and economic impact.

The 12-member committee included representatives from affected businesses, environmental groups and the general public. The committee met once. In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee Summarize involvement and link to any formalized recommendation here.

Roster

|  |  |
| --- | --- |
| Name | Representing |
| Aubrey Baldwin | Earthrise Law Center |
| Bart Barlow | Boise Cascade |
| Peter Brewer | Jeld-Wen |
| Jess Brown | Collins Pine Company |
| Tony Flagor | Interfor Pacific |
| Paul Fouch | Save Our Rural Oregon |
| Jim Huddleston | Asphalt Pavement Association |
| Cameron Krauss | Swanson Group |
| Glen Keown | Columbia Forest Products |
| Bill Moir | Steam Engineering |
| Randy Walker | Frank Lumber |
| Chris Winter | Crag Law Center |

DEQ sent advisory committee meeting notifications to all people who signed up for notices described under [ORS 192.640](http://www.oregonlaws.org/ors/192.640) [OPTION]and Name of permittee or other group notified. DEQ sent the meeting notices by email using Oregon’s GovDelivery system, a free e-mail subscription service, and posted the announcement on the DEQ website.

The committee agreed that the proposed rules will have a fiscal and economic impact butfound it difficult to assess the extent of the impact. The committee had mixed opinions on whether the rules will have a significant impact on small business although most agreed that the direct impacts would not be significant. Only one committee member suggested that economic impacts on small businesses could be reduced by providing funds such as tax credits or sinking funds. No other committee members offered suggestions. AND LINK TO ANY FORMAL RECOMMENDATION.]

 Information meetings

DEQ held stakeholder meetings in Portland, Pendleton, Eugene and Medford in Aug. 2013 forpreliminary input on the potential rules. DEQ sent meeting information to all permitted facilities and people who expressed interest in air quality rulemakings. DEQ sent meeting notices by email to permit holders and postcards to permit holders not signed up for email notices. DEQ also sent meeting notices by email using Oregon’s GovDelivery system, a free e-mail subscription service that provides subscribers with automatic notices of updates to the Oregon DEQ Web page on topics they select; and posted the announcement on the DEQ website.

In the fall of 2013, DEQ also called all the businesses identified as being affected by the more stringent particulate standards and offered to meet with them individually.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Directors Report and Information Items. DEQ shared information about this rulemaking with the commission in the February 2014 Director’s Report.

Public notice

DEQ will provide Notice of Proposed Rulemaking with Hearing for this rulemaking June 16,

2014, by:

* Posting notice on the DEQ Rulemaking Web page at http://www.oregon.gov/deq/RulesandRegulations/Pages/2014/AQPerm.aspx
* Email to:
  + - Environmental Protection Agency, Region 10, Seattle
    - Approximately 6,762 interested parties through GovDelivery including subscribers of the groups Rulemaking, Title V Permit Program Public, and Air Quality Permits
    - X,XXX representatives of permit holders
    - XXX interested parties and stakeholders provided to DEQ by LRAPA
* U.S. Postal Service to:
  + - XX representatives of permit holders not signed up for email notification
    - XX interested parties and stakeholders provided to DEQ by LRAPA
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
  + Michael Dembrow, Chair, Senate Environment and Natural Resources
  + Representative Jules Bailey, Chair, House Energy and Environment
  + Senator Whitsett
  + Senator Lee Beyer, Chair, Senate Business and Transportation

DEQ will provide legal notice in the following newspapers:

* *The Oregonian* publication date – June 18, 2014
* *Daily Journal of Commerce* publication date – June 16, 2014

Public hearings

DEQ plans to hold one statewide public hearing accessible at the regional offices listed in the table below.

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 hearing before completing the draft rules. DEQ will summarize all comments and respond to comments on the EQC staff report.

****

Close of public comment period

The comment period will close June 27, 2014 at 5 p.m.