

Oregon Department of Environmental Quality

**June 16, 2014**

Notice of Proposed Rulemaking

**Air Quality Rule Changes and Updates**

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| **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 to incorporate the proposed rules into the Oregon Clean Air Act State Implementation Plan adopted by the Environmental Quality Commission in OAR 340-200-0040.

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.

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| **Statement of need** |

| 1. Clarify and update air quality rules | |
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| 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 02/22/13, 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 allows 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 authority for Lane Regioanl Air Pollution Authority, which implements the air quality permitting program in Lane County, is unclear in some rules. | DEQ has added authority for LRAPA in the rules that it implements in Lane County. LRAPA can implement DEQ rules unless it adopts its own rules that are at least as strict. |

| 1. Update particulate matter emission standards | |
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| 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, e grandfathered businesses the 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 in the communityWork 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 develope 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 | |
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| 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 | |
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| 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. , as |
| 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)). |

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| 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) | |
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| 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 | |
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| 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 in the future for DEQ to hold and people to participate in public hearings and meetings by removing the prescriptive language from the rules. For now, people must still travel to a local DEQ office to attend a hearing or meeting but DEQ continues to work on ways to make it easier for Oregonians to participate. Things such as calling in from homes or participating in video web based conferencing are being researched as possibilities. |

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

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| 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, 340-262-0450, 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> |
| 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. |
| 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> |