

Oregon Department of Environmental Quality

**October 1, 2013**

Notice of Proposed Rulemaking

 **Air Quality Rule Changes and Updates**

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|  **Overview** |

Short summary

DEQ proposes changes to rules as a continuing effort to streamline, reorganize and update Oregon’s air quality permit programs to improve air quality with a more efficient and effective permitting program. Previous improvement efforts began with the Environmental Quality Commission’s adoption of Revisions to Point Source Air Management Rules in 2001 and Air Quality Permit Program Streamlining and Updates in 2007.

DEQ proposes changes to statewide particulate matter standards and the pre-construction permitting program that would align with EPA’s adoption of the ambient air quality standard for fine particulates, commonly called“PM2.5,” and respond to problems identified with Oregon’s permitting program that must be addressed to protect air quality. Along with these changes, DEQ proposes additional pre-construction permitting flexibility for smaller businesses.

To improve community outreach, DEQ proposes rules to allow the use of technological advances when holding public hearings and meetings.

DEQ proposes minor changes to the Heat Smart program, the clean diesel grant and loan program and the gasoline dispensing facility program to improve implementation.

This notice organizes and describes the proposed rules under the following nine main categories.

1. Clarify and update rules

2. Update particulate matter standards

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

4. Change the pre-construction permitting program (also called New Source Review or “NSR”)

5. Designate Lakeview as a sustainment area (new designation created by the New Source Review revisions under item 4, above)

6. Provide more flexibility for public hearings and meetings

7. Update the Heat Smart program

8. Implement Senate Bill 249A – Update clean diesel grant and loan rules

9. Remove annual reporting requirement for small gasoline dispensing facilities

Brief history

Below is a brief history for each of the nine main categories of proposed rules.

1. Clarify and update rules

After years of rulemakings and updates Oregon’s air quality rules need some reorganizationi. Multiple definitions for the same term, missing details, obsolete or outdated rules and rules that do not align with EPA rules cause confusion and create an ongoing need to clarify and make corrections.

1. Update particulate matter standards and compliance demonstration method

Following other states, Oregon adopted statewide particulate matter standards in 1970 but did not specifically address Oregon businesses. With changes in ambient air quality standards over the years, the statewide standards for businesses in operation before 1970 no longer protect air quality. DEQ proactively proposes changes to the compliance demonstration method used for one of the statewide standards that was challenged in Washington state court.

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

EPA recently adopted National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The adoption added requirements for emergency generators that DEQ previously treated as insignificant emissions. DEQ also treated small gas and oil-fired equipment emissions as insignificant but has not concluded that, in aggregate, they could be significant and should require a permit.

1. Change the pre-construction permitting program (also called 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. The proposed rules would clarify permitting requirements, provide more opportunities for businesses to reduce pollution and make it possible for construction projects to demonstrate air quality improvements attributable to the project.

1. Designate Lakeview as a sustainment area

Air quality in Lakeview currently exceeds the ambient air quality standards for fine particulates. However, EPA has not designated Lakeview as a nonattainment area. This makes it nearly impossible for any business to build or expand in the Lakeview area because only nonattainment area requirements currently provide flexibility to allow new development while also requiring offsets to achieve net air quality benefitin areas that exceed ambient air quality standards. This proposal remedies that problem while still protecting ambient air quality.

1. Provide DEQ more flexibility for public hearings and meetings

DEQ is committed to public engagement and stays up-to-date with emerging and innovative ways to reach people and hold hearings. This proposal would make it easier and cheaper for people to participate. Current rules require DEQ to hold informational meetings on the most complex permit actions and public hearings when requested. The requirements are very prescriptive and in some cases, do not allow DEQ to use technology such as the internet to hold “virtual” meetings.

1. Update Heat Smart Program- Oregon Administrative Rules chapter 340 division 262

DEQ proposes rules to allow small biomass boilers to be sold in Oregon. DEQ’s Heat Smart program regulates small biomass boilers, a subset of small commercial, industrial and institutional boilers, that have heat output less than 1 million Btu per hour from burning solid fuel such as biomass. The following regulations create a conflict for allowing small biomass boilers to be sold in Oregon.

* Current State rules allow small biomass boilers to be sold in Oregon 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. These proposed rules create another pathway for small biomass boilers to be sold in Oregon.
* The proposed State limits will require all commercial, industrial and institutional boilers to meet particulate emissions and opacity limits.
1. Implement Senate Bill 249A – Update clean diesel grant and loan rules

The 2013 Oregon Legislature adopted Senate Bill 249. The bill authorized DEQ to administer federal grants for clean diesel projects and to complete the projects according to federal grant guidelines rather than the more limited state guidelines. Although the legislation included an emergency clause making it effective upon filing, DEQ must now adopt implementing rules. Failure to adopt the proposed rule would delay implementation of projects that would reduce harmful emissions from diesel engines through vehicle and equipment replacement projects.

1. Remove annual reporting requirement for small gasoline dispensing facilities

DEQ proposes repealing the annual reporting requirement for small gasoline dispensing facilities after finding it unnecessary.

Regulated parties

The proposed rules affect all businesses, agencies, and local governments who now have or are required to obtain air quality permits.

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|  **Statement of need** |

| **Proposed Rule or Topic** | **Discussion** |
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| 1. Clarify and update rules
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| What problem is DEQ trying to solve? | 1. Air quality rules lack clarity because some important details are missing. This creates problems implementing the air quality program. An example of missing details is the identification of specific compliance methods for determining compliance with an emission standard.
2. Procedures included in definitions rather than specific rules cause confusion. Examples of definitions that include procedures are *major modification*, *actual emissions* and *netting basis*.
3. Different definitions for the same term and duplicate definitions in multiple divisions makes it difficult to find a definition or know which definition applies.
4. Separate tables containing reference emissions level and other numbers are difficult for readers to find and cross-reference
5. Some industries no longer operate in Oregon and there is no longer a need for rules specific to these industries.
6. Some DEQ rules no longer align with more stringent EPA standards
7. DEQ last updated the Source Sampling Manual and Continuous Monitoring Manual in 1992, contained in rules. Portions of the manuals are no longer current.
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| How would the proposed rule solve the problem?  | 1. The proposed rules would clarify and update the air quality rules. DEQ proposes to:
2. Include compliance methods with all standards to make sure businesses know how to comply with the standards.
3. Remove procedures from definitions and instead add the procedures to a procedural rule. For example, the procedure for how actual emissions are determined is contained in definitions. It will now become a procedural rule.
4. Move most definitions to division 200, General Air Pollution Procedures and Definitions
5. Provide only one definition per term; and add definitions for undefined terms such as “control efficiency”, “internal combustion source” and “removal efficiency”
6. Move tables containing reference emissions level and other numbers into the text whenever possible to make the information easier to find and cross-reference, such as: significant emission rates, de minimis levels, generic Plant Site Emission Limits, significant impact levels and PSD increments.
7. Repeal rules for the following specific types of businesses that no longer exist in Oregon:
	* Neutral Sulfite Semi-Chemical Pulp Mills
	* Sulfite Pulp Mills
	* Primary Aluminum Standards
	* Laterite Ore Production of Ferronickel
	* Charcoal Producing Plants

If one of these types of businesses wants to build in Oregon, they would be permitted under the more stringent and recent federal rules.1. The proposal would repeal the following rules made unnecessary by EPA’s adoption of standards:
* EPA adopted national rules that apply to manufacturers of consumer spray paint. Therefore, DEQ proposes to repeal the state rules. The federal rules will continue to reduce ozone from consumer products.
* DEQ worked with the western states on a general sulfur dioxide trading program to address regional haze. Like several other western states, Oregon has decided not to further pursue the regional program and has instead adopted specific rules such as Best Available Retrofit Technology (BART) requirements for haze causing sources like the PGE Boardman plant.
* EPA’s rules for commercial and industrial solid waste incineration require forced-air pit or air curtain incinerators to have Title V air quality permits. Therefore, open burning rules no longer allow forced-air pit or air curtain incinerators.
1. DEQ’s Source Sampling Manual and Continuous Monitoring Manual were last adopted in 1992. The manuals need to be updated because EPA methods have changed and fine particulate standards have since been adopted.
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| 1. Update particulate matter standards
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| What problem is DEQ trying to solve? | 1. There are areas in the state where air quality is close to or over the fine particulate matter ambient air quality standard. Work on the Klamath Falls attainment plan showed that impacts from a single business along with the background concentration could be up to 70 percent of the standard. Similar areas with similar sources are also in danger of violating the ambient air quality standard. This is a big risk for public health and economic development. If emissions from a single business can push an area to the brink of violating ambient air quality standards, new businesses may not able to come into the area.
2. DEQ relies on several types of standards when issuing air quality permits. One standard for particulate matter – dust, dirt, etc. – involves concentration-based (mass per unit of volume) emission limits. A second standard is referred to as a visible emissions standard that limits the maximum visual density – or opacity – of an emission plume. The rules include different particulate matter 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

These statewide particulate matter standards were adopted in the early 1970’s as part of Oregon’s initial State Implementation Plan. At that time, DEQ and EPA used an ambient air quality standard for total particulates that did not differentiate between coarse particulates and fine particulates. With the adoption of the fine particulate ambient air quality standard in 2011, Oregon now has two areas that exceed the standard, Klamath Falls and Oakridge. These changes in the statewide particulate matter standards are proactive measures to help prevent violations of current standards and potentially even more stringent standards in the future. DEQ adopted similar, more stringent rules when areas like Medford and La Grande exceeded the coarse particulate ambient air quality standard and were designated as nonattainment areas by EPA. Adopting more stringent rules before areas exceed ambient air quality standards and become nonattainment areas, will help to avoid the severe nonattainment area restrictions that are required for businesses that want to build or expand in a nonattainment area. 1. The current particulate matter standard is 0.1 gr/dscf. However, this value is inconsistent with current EPA policy that standards be specified to the hundredths decimal place when determining compliance with standards. EPA considers all standards to be specified to the hundredths decimal place (0.10 gr/dscf) when comparing measured emissions data to the standards.
2. When Oregon first adopted the opacity standard, it was based on an aggregate of three minutes in a 60-minute period. However, Oregon never developed a reference method for the 3-minute aggregate limit. Not having a reference method for showing compliance makes a standard unenforceable. In order to show compliance with this standard, people use an ad hoc modified EPA Method 9 test based on a 6-minute block average to read opacity.

Current rules include a 20 percent opacity standard that is an aggregate of 30 seconds in a 60-minute period for non-fuel burning equipment. This rule only applies in the four-county area around Portland. In the context of this rule, “non-fuel burning equipment” essentially means equipment that is not a boiler, such as material handling equipment. Therefore, this rule is not just limited to the four-county area, but has limited applicability within the four-county area making this visible emissions standard for the four-county area more stringent than the current statewide standard. However, just like the 3-minute aggregate standard, Oregon never developed a reference method for the 30-second aggregate limit. As stated above, emissions standards are only enforceable if there is a defined method for determining compliance with the standard. 1. There is also a problem with trying to read opacity from fugitive emission sources. Fugitive particulate matter emissions are not emitted from a stack and typically originate from storage piles, material conveying systems, unpaved roads or other dusty activities. It may be possible in many situations to take opacity readings to determine if the emitting source exceeded the opacity standard and to then require action to abate the emissions. However, there may be situations where opacity readings are difficult to take or the emissions do not exceed the opacity standard but are nevertheless objectionable.
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| How would the proposed rule solve the problem?  | The proposed changes to existing rules would improve and maintain air quality and allow economic development.The proposed changes would:* Reduce the particulate matter emissions from pre-1970 units.
* Align the particulate matter standard with EPA policy on enforcement.
* Practically increase enforceability of the opacity standard by aligning it with the reference compliance method.
* Require abatement of any visible fugitive emissions that leave a business's property, regardless of the actual opacity level

The proposed rulemaking changes would affect both the statewide particulate matter and opacity standards for units built before June 1970 by requiring these industries to meet the same standards as post-1970 units. To align the particulate matter standard with EPA’s policy that standards have 2 significant figures, DEQ is proposing to add a zero to the particulate matter standard, changing it from 0.1 gr/dscf to 0.10 gr/dscf. New standards would begin to apply on April 1, 2015 for the lower opacity standard and on April 1, 2019 for the lower particulate matter standard, giving businesses transition time to develop appropriate methods to achieve the standards.The proposed rules would change the measurement protocols for all opacity standards (both statewide and industry specific) to a 6-minute block average, consistent with other states in the region and EPA opacity standards. DEQ does not expect this to change the overall stringency of the standards.Repealing the Portland-area four-county 20 percent opacity standard would solve the problem of limited applicability and unenforceability.Changing the visible emissions limit for fugitive sources from 20 percent opacity to a limit on any visible emissions leaving a source’s property would solve the problem of trying to read opacity from fugitive emission sources. This is a simpler, more stringent and more effective approach to controlling these emissions. EPA Method 22, Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares, is specific for fugitive sources and would be a much better method for determining compliance than the method that is currently used (EPA Method 9). |
| 1. Change permitting for emergency generators and small natural gas or oil-fired equipment
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| What problem is DEQ trying to solve? | When Oregon established the Title V permitting program in the mid 1990’s, DEQ developed a list of insignificant activities to account for all emissions in Title V permits. This list was called “categorically insignificant activities” and includes examples like:* Janitorial activities
* Groundskeeping activities
* Emergency generators

Businesses would indicate whether they had the categorically insignificant activities onsite and these activities were exempt from rigorous monitoring requirements. EPA has since adopted new standards for emergency generators. DEQ also discovered one business that has about 8 small emergency-use boilers and their potential aggregate emissions are significant, approximately 12 tons per year of nitrogen oxides. Therefore, these units should not be included in a list of “categorically insignificant activities.” |
| How would the proposed rule solve the problem?  | DEQ proposes rules that would remove small natural gas or oil-fired equipment and emergency generators from the list of categorically insignificant activities if those units are above certain size thresholds and if their emissions in the aggregate are greater than de minimis emission levels. These activities usually become part of an existing permit and in some cases, a business would need a permit for these activities alone. If the aggregate emissions are less than permitting thresholds, the owner/operator may only need to obtain pre-construction approval from DEQ when installing new units. |
| 1. Change the pre-construction permitting program (New Source Review)
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| What problem is DEQ trying to solve? | 1. New Source Review is a nationwide 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 New Source Review program is designed to prevent areas from becoming nonattainment areas (areas that don’t meet ambient air quality standards) and to improve the air quality in nonattainment areas to get back into attainment.

DEQ adopted new ambient air quality standards for fine particulate, PM2.5, in 2010. These standards are much lower than the existing PM10 standards. There are areas in the state close to or exceeding the fine particulate matter standard. The air quality problems in these areas are mainly due to area sources such as woodstoves, not industrial sources. The current rule structure does not adequately address these PM2.5 ambient air quality problems. In addition, the current rules include modeling requirements that can’t be met, effectively creating an unnecessary construction ban. 1. Before less rigorous permitting requirements apply to areas cleaned up after exceeding ambient air quality standards, EPA must redesignate that area. The redesignation process can take years. The more rigorous permitting requirements, which are no longer necessary, discourage economic growth in the area.
2. Any business that requests a significant increase in their permitted emissions must show that the increase along with any emission reductions required will improve or “benefit” the air quality in the area. Current rules define this as a net air quality benefit. The current criteria are impossible to meet unless the increasing and offsetting businesses are co-located. This prevents other potentially more beneficial local air pollution reduction projects from occurring and effectively creates an unnecessary construction ban. The proposed rules would fix that problem.

If construction approved under the New Source Review program is delayed for good cause, an extension may be granted but there are no criteria in the current rules. |
| How would the proposed rule solve the problem?  | To solve these problems, the proposed rules would change the definition of a major source to match EPA’s definition and provide different requirements for small and large businesses. The proposed program name for smaller businesses is ‘State New Source Review.’ This proposal would provide the needed flexibility for smaller businesses to implement the other proposed NSR changes, which cannot be granted to larger businesses because of EPA requirements.The proposed rules provide incentives for non-major new or modified businesses to help address ambient air quality problems. The incentive encourages more emission reductions from priority sources – the sources that cause the problem in the local area. If the new or modified business does not use emission reductions from priority sources, this proposal would maintain or raise the current offset ratios, meaning the business may need to reduce more emissions than they would generate. The proposed rules would establish two new transitional area designations. Such areas would be designated by the Environmental Quality Commission, not EPA. This change, along with the change to the definition of major source, would allow more flexibility in permitting smaller businesses while still protecting air quality. The two new transitional areas would be:* Sustainment areas designed to prevent attainment areas from becoming nonattainment areas.
* Reattainment areas to help transition anon-attainment areas area back to attainment before the EPA redesignation.

The proposed rules would change the net air quality benefit requirements, an aspect of the New Source Review program, to ensure air quality is protected while fixing flaws discovered with the current modeling criteria.All of these changes would allow construction that is currently effectively prohibited, while still protecting air quality.DEQ proposes rules to clarify how a business may get an extension of their New Source Review permit if construction is delayed. Current rules provide extensions if there is simply good cause. The rules do not specify the criteria for approving extensions or the number of extensions allowed. Potential projects delayed without additional review could tie up their designated portion of an airshed’s emissions capacity indefinitely, cause significant impacts on air quality and result in the installation of less effective control technology. The proposed rules would allow two 18-month extensions, as well as describing the procedures for requesting and approving extensions. |
| 1. Designate Lakeview as a sustainment area
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| What problem is DEQ trying to solve? | The air quality in Lakeview is currently over the PM2.5 ambient air quality standard even though the area is not designated as nonattainment (an area that exceeds an ambient air quality standard). Without this designation, there effectively is a construction ban for new and modified businesses, even though uncertified residential wood fuel-fired devices are the main cause of the air quality problem. |
| How would the proposed rule solve the problem?  | The proposed rules provide incentives for new and modified businesses to address emissions from uncertified residential wood fuel-fired devices, and thereby improve air quality in Lakeview. DEQ is working with the Lakeview community to avoid nonattainment area designation. Designating Lakeview as a sustainment area is one part of the overall plan.  |
| 1. Provide DEQ more flexibility for public hearings and meetings
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| What problem is DEQ trying to solve? | The rules are very prescriptive regarding how public hearings and meetings must be held. The rules were first adopted in 1974, long before the technological advances that are currently available. Traveling to hearings and meetings around the state can be resource intensive and wasteful if no one shows up for the hearing or meeting.  |
| How would the proposed rule solve the problem?  | The proposed rules would make it easier and cheaper for people to participate in public hearings and meetings by removing the prescriptive language from the rules and allowing DEQ to use a level of public process commensurate with the significance of, and level of public interest in, the decision that DEQ is making. DEQ is committed to public engagement and is looking for new and innovative ways to reach people and hold hearings, and ensuring that members of the public have a fair and full opportunity to provide input prior to DEQ decisions. |
| 1. Update Heat Smart Program
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| What problem is DEQ trying to solve? | Due to recent EPA rule changes, small biomass boilers with heat output less than 1 million Btu per hour are no longer subject to federal requirements. Small-scale commercial, industrial and institutional biomass boilers were subject to federal requirements and currently are exempt from DEQ’s Heat Smart rules that prevent them from being sold in Oregon. With EPA’s rule changes, these devices are subject to the Heat Smart rules.  |
| How would the proposed rule solve the problem?  | The proposed rule changes would provide a pathway for small scale commercial, industrial and institutional biomass boilers to be sold in Oregon again, while ensuring they are still subject to existing state limits on particulate and opacity. This proposal would eliminate the reference to the federal regulations and allow these boilers (those with a heat output less than 1 million Btu per hour) to be sold in Oregon. |
| 1. Implement SB 249A - Clean diesel grant and loan rules
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| What problem is DEQ trying to solve? | In 2007 the Oregon Legislature adopted a grant, loan and tax credit supported program to reduce environmental and public health risks from diesel engine pollution. Oregon’s original authorization for clean diesel grants, loans and tax credits is currently limited to exhaust retrofits, nonroad engine repowers, and truck scrapping. Federal program guidelines currently allow for ten other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement. Oregon has not appropriated state funds for clean diesel work since the 2007-09 biennium and the tax credit program ended in 2012. Remaining funding incentives for clean diesel work is available primarily through the federal Diesel Emission Reduction Act. While the Act allows a broad range of eligible activities, DEQ is constrained in applying for and managing federal grants by Oregon’s original statutory authority. This hampers DEQ’s ability to successfully recruit projects and secure federal awards. As a consequence, despite widespread outreach, diesel owners were not interested in retrofitting vehicles or equipment during the FY 2012 grant cycle and no federal grants were awarded in Oregon that year.  |
| How would the proposed rule solve the problem?  | The proposed rule would allow DEQ to administer grants that meet the federal funding criteria authorized by Senate Bill 249 to include a broader variety of clean diesel implementation methods than currently authorized under Oregon rules. Expanding the scope of allowable activities broadens the range of fundable projects in Oregon and supports the Oregon Clean Diesel Initiative’s effort to reduce the adverse impacts from toxic air pollutants and mitigate climate change. |
| 1. Annual reporting requirement for small gasoline dispensing facilities
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| What problem is DEQ trying to solve? | A gasoline dispensing facility with a monthly throughput of less than 10,000 gallons of gasoline is currently required to:* meet work practice standards
* have a submerged fill tube installed on their tank(s)
* submit a one-time initial notification and notification of compliance status submit annual reports of throughput

These facilities are not required to have an air quality permit. DEQ determined the annual reporting requirement for these small gasoline dispensing facilities is unnecessary. DEQ collected one time throughput data from these facilities and may request additional information if needed. |
| How would the proposed rule solve the problem?  | The proposed rules remove the annual reporting requirement for facilities with monthly throughput less than 10,000 gallons. As mentioned above, DEQ would still have the authority to request throughput information from these facilities, and may do so, for businesses close to the 10,000 gallon permitting threshold. |

How will DEQ know the problem has been solved?

For all of nine categories in the table above, DEQ would submit the rules to EPA to update Oregon’s State Implementation Plan after the EQC adopts the proposed rules. DEQ would know the goals of this rulemaking have been addressed when EPA reviews and approves the State Implementation Plan revision. DEq will know that the state-level rules have solved the problem once it starts successfully permitting air contaminat emission sources in sustainment and reaattainment areas under the new rules.

Request for other options

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

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|  Rules affected, authorities, supporting documents |

Adopt

OAR 340-200-0035, 340-202-0225, 340-204-0300, 340-204-0310, 340-222-0046, 340-222-0048, 340-222-0051, 340-224-0025, 340-224-0045, 340-224-0055, 340-224-0200, 340-224-0210, 340-224-0245, 340-224-0250, 340-224-0255, 340-224-0260, 340-224-0270, 340-224-0500, 340-224-0510, 340-224-0530, 340-224-0540, 340-224-0550, 340-234-0540, 340-240-0050

Amend

340-200-0010, 340-200-0020, 340-200-0025, 340-200-0040, 340-202-0010, 340-202-0050, 340-202-0110, 340-202-0200, 340-202-0210, 340-204-0010, 340-204-0020, 340-204-0030, 340-204-0060, 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, 340-208-0610, 340-209-0010, 340-209-0020, 340-209-0030, 340-209-0040, 340-209-0050, 340-209-0060, 340-209-0070, 340-209-0080, 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, 340-212-0120, 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, 340-214-0110, 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, 340-216-0020, 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, 340-218-120, 340-218-0140, 340-218-0150, 340-218-0160, 340-218-0170, 340-218-0190, 340-218-0200, 340-218-0210, 340-218-0220, 340-218-0230, 340-218-0240, 340-218-0250, 340-220-0010, 340-220-0020, 340-220-0030, 340-220-0040, 340-220-0050, 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, 340-222-010, 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, 340-226-0120, 340-226-0130, 340-226-0140, 340-226-0210, 340-226-0310, 340-226-0320, 340-226-0400, 340-228-0020, 340-228-0120, 340-228-0130, 340-228-0200, 340-228-0300, 340-232-0010, 340-232-0020, 340-232-0030, 340-232-0040, 340-232-0060, 340-232-0080, 340-232-0085, 340-232-0090, 340-232-0100, 340-232-0110, 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, 340-234-0200, 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, 340-236-0410, 340-236-0420, 340-236-0440, 340-236-0500, 340-240-0030, 340-240-0110, 340-240-0120, 340-240-0130, 340-240-0140, 340-240-0160, 340-240-0180, 340-240-0210, 340-240-0220, 340-240-0250, 340-240-0320, 340-240-0330, 340-240-0350, 340-240-0360, 340-240-0410, 340-240-0420, 340-240-0430, 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, 340-242-0510, 340-242-0520, 340-242-0610, 340-242-0620, 340-242-0630, 340-244-0250, 340-262-0450, 340-259-0010, 340-264-0010, 340-264-0030, 340-264-0040, 340-264-0050, 340-264-0060, 340-264-0070, 340-264-0075, 340-264-0078, 340-264-0110, 340-264-0120, 340-264-0130, 340-264-0140, 340-264-0160, 340-264-0170, 340-264-0180, 340-268- 0030

Renumber

Current OAR 340-222-0070 renumbered to 340-222-0035(5), (6) and (7)

Amend and renumber

Current OAR 340-216-0020 Table 1 amended and renumbered to 340-216-8005; current OAR 340-216-0020 Table 2 amended and renumbered to 340-216-8010; 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 340-225-0090 amended and renumbered to 340-224-0520

Repeal

OAR 340-208-0100, 340-208-0200, 340-208-0600, 340-214-0400, 340-214-0410, 340-214-0420, 340-214-0430, 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, 340-228-510, 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, 468A.803

 Legislation Year

Clean Diesel Engine ORS 468A.803 (1) SB 249 2013

 <http://www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf>

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

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| --- | --- |
| Document title | Document location |
| 06/06/90 EPA guidance titled “Performance Test Calculation”  | <http://www.epa.gov/ttn/emc/rounding.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 SparkIgnition 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> |

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| 2011 Oregon Air Quality Data Summaries | http://www.deq.state.or.us/aq/forms/2011AirQualityAnnualReport.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 |
| 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 |
| 2013 SB 249A | http://www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf |
|  |  |
| Stationary Source Reporting Requirements - OAR 340-214-0110 | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_214.html> |

A crosswalk of all rules changes, including the rules in the State Implementation Plan, with more detail is available as part of the rulemaking package.

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|  Fee Analysis  |

This rulemaking does not involve any changes in fees.

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

Fiscal and economic impacts

The proposed rules would have fiscal and economic impacts on the public, businesses, state agencies and units of local governments. DEQ proposes:

* Streamlining, reorganizing and updating Oregon’s air quality permit programs to improve air quality with a more efficient and effective permitting program
* Amending statewide particulate matter standards and the pre-construction permitting program that would align with EPA’s adoption of the ambient air quality standard for fine particulate (PM2.5) and respond to problems identified with Oregon’s permitting program that must be addressed to protect air quality.
* Adding pre-construction permitting flexibility for smaller businesses
* Improving community outreach
* Making minor changes to the Heat Smart program, the clean diesel grant and loan program and the gasoline dispensing facility program to improve implementation.

Statement of Cost of Compliance

Impacts state agencies, units of local government and the public

1. **Clarify and update rules**

State agencies: DEQ workload would increase until staff becomes familiar with the proposed rules and then would decrease due to reorganization and added clarity. The proposed rules in this category would not have fiscal or economic impacts on other state agencies.

Units of local governments: Proposed rules in this category would not have fiscal or economic impacts on local governments.

Public: This category does not affect the stringency of the rules; therefore, DEQ does not anticipate any direct fiscal or economic impacts on the public.

1. **Update particulate matter standards**

By proactively updating the particulate matter standards, DEQ hopes to avoid additional nonattainment area designations in Oregon. If EPA designates an area as nonattainment, DEQ is responsible for collaborating with communities that violate federal air pollution health standards to develop a plan that must decrease the pollution to safe levels. Recent work with the Klamath Falls Air Quality Advisory Committee and other community members took two years.

During the development of an attainment plan, DEQ extensively considers impacts on local businesses and the economy. Plan elements try to minimize local economic impacts as much as possible. When EPA designates an area as nonattainment, however, federal requirements automatically apply for industrial sources, such as requiring the most stringent control equipment for new or expanding sources or reasonable control measures, such as opacity standards, operation and maintenance plans, and fugitive plans, for existing sources. Such restrictions may prevent some industries from expanding or moving to the nonattainment area, though they are designed to help clean up the air and ensure the health of all residents.

In addition, if DEQ does not adopt a plan, the federal restrictions become more stringent, such as requiring an even higher emissions offset ratio requirement for industry to expand or build new facilities, and the area could even risk losing federal highway funds, both of which could have negative economic impacts.

State agencies: DEQ anticipates the 26 state (6 federal government) agencies currently subject to air permitting regulations could experience negative impacts described under the fiscal and economic impact section above.

DEQ workload would initially increase and eventually decrease as staff becomes familiar with the proposed rules. Preventing areas from being designated as nonattainment areas would avoid future increases in DEQ workload.

Units of local governments: DEQ anticipates the 55 county and local governments currently subject to air permitting regulations could experience impacts described under the fiscal and economic impact section above.

Public: DEQ does not anticipate the proposed rules would have any direct fiscal or economic impacts on the public due to the lower particulate matter standards. However, indirect impacts could occur if the costs of additional control or process equipment installed by businesses to meet lower particulate matter standards increase the costs for consumer services or products. DEQ expects any such price increases to be small but lacks available information to estimate potential increases accurately.

Particulate matter causes serious health problems ranging from increased respiratory and pulmonary symptoms, hospital admissions and emergency room visits to premature death for people with heart and lung disease. These health problems have negative economic impacts. The proposed rules could create positive economic benefits and improvements in public health and welfare by reducing particulate matter emissions statewide.

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

The proposed rules may have a negative fiscal and economic impact on state agencies and units of local governments that own emergency generators or multiple small natural gas or oil-fired equipment if these units are required to get permits. The cost of each such permit is approximately $1,300. For permitted facilities that have this equipment, DEQ would add them to existing permits at the time of renewal. There may be costs associated with additional recordkeeping depending on current environmental managements systems in place but DEQ lacks available information to estimate this cost accurately.

State agencies: DEQ anticipates the 26 state (6 federal government) agencies currently subject to air permitting regulations could experience negative impacts described above. DEQ workload would increase but could level off or decrease depending on the number of new facilities that require permits.

Units of local governments: DEQ anticipates the 55 county and local governments currently subject to air permitting regulations could experience impacts described above.

Public: DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the public due to the new requirements to get a new permit or modify an existing permit to add emergency generators or small natural gas or oil-fired equipment. However, the cost of the new permits could increase the cost of consumer services or products creating an indirect fiscal or economic impact to the public. DEQ expects such price increases to be small but lacks available information to estimate potential increases accurately.

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

State agencies: DEQ anticipates the 26 state (6 federal government) agencies currently subject to air permitting regulations could, though not likely, experience negative impacts described under the fiscal and economic impact section above.

DEQ workload would increase, but would eventually decrease, as staff becomes familiar with the proposed rules. Preventing areas from being designated as nonattainment areas would avoid future increases in DEQ workload.

Units of local governments: DEQ anticipates the 55 county and local governments currently subject to air permitting regulations could, though not likely because these facilities would probably never trigger the this program, experience impacts described under the fiscal and economic impact section above.

Public: DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the public due to the modified requirement to get a New Source Review permit based on the amount of emissions or the location of the new or modified business. However, the cost of the new permits could increase the cost of consumer services or products creating an indirect fiscal or economic impact to the public. Designating areas as sustainment or reattainment would have positive indirect fiscal or economic impacts by moving away from the nonattainment designation with its associated major negative fiscal or economic impacts. The sustainment or reattainment designations would help prevent areas from being desingated as nonattainment areas and to transition them back into attainment more quickly. DEQ expects any such price increases for goods or services to be small and lacks available information upon which it could accurately estimate potential increases. Some members of the public may benefit by receiving financial incentivesfrom the woodstove replacements program.

1. **Designate Lakeview as sustainment area**

State agencies: DEQ workload would initially increase as staff becomes familiar with the proposed rules. Preventing areas from becoming nonattainment would avoid future DEQ workload increases. Proposed rules under this category would have no fiscal or economic impacts for other agencies.

Units of local governments: The proposed rules would have a positive fiscal and economic impact in Lakeview by allowing businesses to build or expand in the area as long as businesses protect air quality.

Public: DEQ does not anticipate the proposed rules would have any direct fiscal or economic impacts on the public because of the Lakeview sustainment area designation. However, positive indirect fiscal or economic impacts to the public could occur as more businesses locate in Lakeview. In addition, if a new business locates in Lakeview and buys woodstove offsets, some members of the public may benefit from woodstove replacements. DEQ expects any beneficialprice decreases to be small and lacks available information to estimate potential decreases accurately.

1. **Provide DEQ more flexibility for public hearings and meetings**

The proposed rules would have a positive fiscal and economic impact on hearing/meeting attendees because they would be able to call in from around the state rather than travel. Cost savings will depend on the physical location of the hearing/meeting. DEQ lacks available information to estimate costs to attendees because the travel distance is unknown.

State agencies: The proposed rules would have a positive fiscal and economic impact on DEQ because DEQ would have the flexibility to hold virtual hearings with people calling in from around the state. This would reduce the amount of agency travel expenses. Currently, DEQ staff travels to hearings/meetings, not knowing whether there will be any attendees. DEQ tries to hold hearings/meetings in offices that are free of charge. The cost of using a state car is $0.565/mile and accommodation rates are approximately $77 to $113 per night. The average hourly rate of a permit writer, including benefits, is $70 to $85/hour. The cost of the hearing/meeting depends on how far staff must travel. If the physical location is 2 hours away, the cost could be approximately $2000. At least $800 of that cost is due to transportation.

The proposed rule could decrease travel and associated staff expenses for state agencies. DEQ workload may increase or decrease depending on implementation.

Units of local governments: The proposed rule could decrease travel and associated staff expenses for local governments.

Public: DEQ does not anticipate the proposed rules would have any direct fiscal or economic impacts on the public because it has more flexibility in holding public hearings and meetings. The public may experience positive indirect fiscal or economic impacts due to efficient use of resources and the ease of attending meetings anywhere in the state. DEQ expects costs to be small per individual but lacks available information to estimate potential decreases accurately.

1. **Update Heat Smart Program**

State agencies: DEQ workload would not change because these rules reestablish a pathway for small-scale industrial, commercial and institutional boilers to be sold in Oregon again. Other state agencies would not have a fiscal and economic impact under this category.

Units of local governments: Units of local governments would not have a fiscal and economic impact under this category.

Public: DEQ does not anticipate any direct, negative fiscal or economic impacts from the proposed rules on the public.

1. **Implement 2013 SB 249A - Clean diesel grant and loan rules**

State agencies: The proposed rules would not create a fiscal or economic impact for DEQ or other state agencies because the direct and indirect costs of administering the grant are recovered from the grant itself.

Units of local governments: The proposed rules would not create a fiscal or economic impact for units of local governments.

Public: DEQ anticipates the proposed rules could have a small positive fiscal and economic impact on the public if more equipment upgrades occur in Oregon and grant recipients pass savings to the public or customers.

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

DEQ anticipates a positive fiscal and economic impact from proposed rules that remove the annual reporting requirement for gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline. The estimated number of gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline is 540. Removing the annual reporting requirement for small gasoline dispensing facilities would reduce the impact of reporting, recordkeeping and other administrative activities on these small businesses.

State agencies: DEQ anticipates the 26 state (6 federal government) agencies currently subject to air permitting regulations could experience the impacts described above. The proposed rules would decrease DEQ workload because there would be fewer reports to process and review.

Units of local governments: DEQ anticipates the 55 county and local governments currently subject to air permitting regulations could experience the impacts described above.

Public: DEQ anticipates that there could be a small positive fiscal and economic impact on the public as a result of EQC removing the annual reporting requirement for gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline if such facilities pass savings on to the public or customers.

Impact on businesses – general (see specific impacts on small businesses below)

DEQ anticipates the following fiscal and economic impact on approximately 1130 large businesses and 1550 small businesses.

1. **Clarify and update rules**

The proposed rules under this category would not have fiscal or economic impacts on businesses.

1. **Update particulate matter standards**

DEQ identified 8 businesses (1 small business) that may not be able to comply with proposed lower particulate standard without process changes, installation of control equipment or replacement of process equipment. These businesses are wood products facilities with wood-fired boilers. Of the 8 business identified, there are two small asphalt plants that may be unable to comply with lower visual and particulate matter standards.

Wood-fired Boilers: Some businesses may need to optimize their boiler operations to comply with the particulate matter standards. Close monitoring of fuel quality may help some boilers comply while others may need tune-ups. One vendor estimated a typical boiler tune-up that requires no replacement parts would cost between $5,500 and $11,000. A tune-up may include:

* A visual inspection of the system while operating, looking for obvious things that need repair
* Review of past performance checks & expected performance data
* Gathering performance data (O2 & CO2 readings, stack temperature, feed water temperature, fuel moisture, steam flow)
* Making adjustments to furnace air delivery settings

A more comprehensive boiler tune-up costs from $33,000 to $65,000. A boiler tune-up may or may not allow sources to comply with the new standards over time but could provide other benefits such as reduced fuel costs.

If optimizing operations does not achieve compliance with the lower grain loading and opacity standards, businesses may need to install pollution control equipment such as multiclones or electrostatic precipitators (“ESP”). Based on vendor information, multiclones cost approximately $65,000 to $86,000 and would remove some particulate matter but may not be successful in removing enough to comply with the new standard. Information from vendors indicates a new ESP costs approximately $1.8 to $2.2 million. One vendor stated that the cost could vary by plus or minus 40 percent, and another vendor indicated a smaller electrostatic precipitator could be used if the goal were simply to comply with the 0.10 gr/dscf standard. Although not anticipated, boiler replacement to achieve compliance would have the greatest fiscal impact on a business. A business that recently installed a new wood-fired boiler capable of 100,000 pounds of steam per hour paid approximately $8 million.

Asphalt Plants: The two small asphalt plants that may not meet the lower standards are older plants that utilize wet scrubber controls. In general, for asphalt plants that cannot meet particulate matter standards, the equipment is simply worn out, and often too expensive to repair. In other instances, the control equipment, usually the wet scrubber, is rusted and leaking air, compromising the pressure drop across the nozzles, thus reducing efficiency. Most of the time, companies with stationary asphalt plants repair or patch together their equipment. Plants usually make these repairs in-house. Portable plants have to be more durable due to set-up and break-down cycles. As a result, they are generally replaced with new or better used equipment.

An asphalt plant that may not be able to meet the lower standards may elect to retire the plant if it is too expensive to meet the new particulate matter standards. The cost of installing a used baghouse is approximately $175,000 and the cost of a new asphalt plant is approximately $1.5 to $2 million.DEQ has source test data from old asphalt plants with inefficient scrubbers that comply with the lower particulate matter standard so new equipment or additional control equipment may not be necessary.

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

The proposed rules may have a negative fiscal and economic impact on businesses that own emergency generators or multiple small natural gas or oil-fired equipment if these units are required to get permits. The cost of that permit is approximately $1,300. DEQ has not identified any business that would be required to get a permit under the proposed rule. Most of these units would be added to existing permits at the time of renewal. There may be costs associated with additional recordkeeping depending on current environmental managements systems in place. DEQ lacks available information to estimate those costs accurately.

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

The proposed rules may have a negative or positive fiscal and economic impact on businesses that trigger the New Source Review program, depending on the situation. The proposed rules could raise the amount of offsets that some businesses may be required to get. If a business chooses to get the offsets from the sources that DEQ has identified as the primary cause of the problem in areas where air quality is close to an ambient air quality standard, the proposed rules allow reduced offsets. The cost of industrial offsets varies from $2,500 per ton to $100,000 per ton, depending on the pollutant and the demand for offsets.

Currently, in areas where New Source Review would be triggered, the pollutant of concern is PM2.5. If a business chooses to obtain offsets from the primary sources causing the problem, based on current information, the proposed rules would offer the opportunity to obtain offsets from woodstoves. The cost to replace an uncertified woodstove is approximately $3,000. A certified woodstove would reduce emissions about 0.03 tons per woodstove. The cost of a ton of offsets from woodstoves is approximately $100,000 per ton.

In areas where DEQ wants to transition back to attainment in advance of, and to avoid, a formal EPA nonattainment redesignation, the proposed rules would allow businesses more flexibility than is allowed by the more stringent nonattainment area requirements. This would have a positive fiscal and economic impact on businesses. The control technology in such areas may be less expensive but if it results in lower emission reductions than could be achieved with more expensive technology required in a nonattainment area, more offsets would be required. As a result, there may be higher emission offset costs if the less expensive control technology allows higher emissions.

For businesses not allowed to build or modify under the existing rules, there would be a positive fiscal and economic impact since that construction would probably be allowed as long as air quality is protected.

New Source Review permitting requires a case-by-case analysis, and the type of pollution controls and computer modeling varies for each case; therefore, DEQ is unable to estimate costs in this category accurately.

1. **Designate Lakeview as sustainment area**

New Source Review permitting is a case-by-case analysis and the type of pollution controls and computer modeling varies for each case; therefore, DEQ lacks available information to estimate costs to business accurately.

1. **Provide DEQ more flexibility for public hearings and meetings**

The proposed rules would also have a positive fiscal and economic impact on hearing/meeting attendees because they would be able to call in from around the state rather than travel. Cost savings depend on the physical location of the hearing/meeting.

1. **Update Heat Smart Program**

DEQ anticipates there would be a positive economic benefit for businesses that wish to manufacture or use small biomass heating systems in commercial, industrial and institutional applications. The proposed rules would re-establish a pathway for small biomass boilers to be sold for commercial, industrial and institutional uses in Oregon.

1. **Implement SB 249A - Clean diesel grant and loan rules**

This is a voluntary program; therefore, there would be no fiscal or economic impact from proposed rule in this category.

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

DEQ anticipates a positive fiscal and economic impact from proposed rules that remove the annual reporting requirement for gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline. The estimated number of gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline is 540. Removing the annual reporting requirement for small gasoline dispensing facilities would reduce the impact of reporting, recordkeeping and other administrative activities on small businesses.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](http://www.leg.state.or.us/ors/183.html)

In addition to the fiscal and economic impact described under Impact on business – general above, the proposed rules could have the following impacts on small business.

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | The proposed rules would require approximately 1550 small businesses to comply with lower grain loading and opacity standards, many of which already have the lower standards in their permits. Current compliance information indicates that most small businesses already comply with the proposed standards. Approximately 4 or 5 businesses may have to add controls.  |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | Fewer costs for reporting, recordkeeping or other administrative activities are expected if the amendments are adopted because approximately 540 gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline would not be required to report. There would be more recordkeeping and reporting for emergency generators and small natural gas or oil-fired equipment.  |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | DEQ does not expect additional costs for equipment, supplies, labor or administration if the EQC adopts the proposed rules.  |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | DEQ informed small businesses by announcements on the DEQ website, through direct mailings and email lists, stakeholder meetings, notices in the Secretary of State Bulletin, and ads in local papers. DEQ requests comments during the public comment period and at public hearings held in November. DEQ staff will participate in the December Northwest Environmental Conference in Portland informing people about the rulemaking. Attendees at this conference include representatives from large and small businesses.  |

 Documents relied on for fiscal and economic impact

For 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>

Advisory committee for fiscal and economic impact statement

DEQ did not appoint an advisory committee for this rulemaking. The majority of the proposed rule changes are for the New Source Review program. These rules are very complex and affect very few businesses; one to three businesses apply for a New Source Review permit each year. DEQ held stakeholder meetings around the state in August to get input from affected businesses and the public on the proposed rule changes. DEQ will accept comment on the fiscal and economic impact statement during the public notice period.

Housing cost

1. **Clarify and update rules**

DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. The proposed rule only affects the ease of use of DEQ’s rules.

1. **Update particulate matter standards**

DEQ determined 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 if the costs for additional control or process equipment are passed through by businesses providing products and services for such development and construction. The possible impact 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.

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

DEQ determined 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 if the costs for additional permits are passed through by businesses providing products and services for such development and construction. The possible impact 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.

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

DEQ determined 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 if the costs for additional permits, control or process equipment are passed through by businesses providing products and services for such development and construction. The possible impact 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.

1. **Designate Lakeview as sustainment area**

DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. The proposed rule only affects whether businesses can construct or modify in the Lakeview area.

1. **Provide DEQ more flexibility for public hearings and meetings**

DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. The proposed rule only affects how DEQ can hold public hearings and informational meetings.

1. **Update Heat Smart Program**

DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. These proposed rules re-establish a pathway for small biomass boilers to be sold for commercial, industrial, and institutional uses in Oregon.

1. **Implement SB 249A - Clean diesel grant and loan rules**

DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. The proposed rule only affects administration of grants to reduce emissions from diesel engines.

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

DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. The proposed rule only affects gasoline dispensing facilities with a monthly throughput of less than 10,000 gallons of gasoline.

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|  **Federal relationship** <http://www.leg.state.or.us/ors/468a.html> |

*"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..."*

Relationship to federal requirements

1. **Clarify and update rules**

DEQ determined this rule proposal is “in addition to federal requirements” to address administrative issues. DEQ’s rules are different from EPA rules so clarifying and updating these rules may be considered to be “in addition to federal requirements” because EPA does not have identical rules.

What alternatives did DEQ consider, if any?

DEQ considered leaving the rules as they are but wanted to clarify and update all rules as much as possible. DEQ did not pursue the no action alternative because there would still be confusion, possible misinterpretations and errors in the rules.

1. **Update particulate matter standards**

The proposed rules are “in addition to federal requirements” to protect public health and the environment. DEQ has statewide opacity limits for new and existing sources, including fugitive emission sources. There is no equivalent opacity standard for all businesses in EPA regulations. Some New Source Performance Standard (NSPS) have opacity and particulate matter limits for the specific industry being regulated but nothing that applies across the board.

DEQ identified two NSPS that have opacity limits for fugitive emissions. The New Source Performance Standard (NSPS) for Metallic Mineral Processing Plants (Subpart LL) requires fugitive emissions to meet 10 percent opacity using Method 9 for compliance. Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, 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. EPA Method 9 is used when determining compliance with the fugitive emissions standard. Even though the proposed rule changes for fugitive emission sources are different than the two applicable federal requirements, they are just as, if not more stringent than the two NSPS standards because DEQ is requiring any fugitive emissions that leave the property to be abated.

The proposed changes to the current statewide visible emission standards that apply to non-fugitive sources would put DEQ’s standards on the same basis as EPA’s visible emissions standards. DEQ proposes changing the standards from an aggregate period to a six-minute average in order to use EPA Method 9 for determining compliance. The proposed change to add a significant figure to the particulate matter standard (0.1 gr/dscf to 0.10 gr/dscf) would also align DEQ rules with applicable federal requirements and policies.

What alternatives did DEQ consider, if any?

DEQ considered leaving the particulate matter standards the same but felt that protecting air quality and the potential for economic development is more important. Most businesses that were constructed before 1970 have already updated their facilities and now meet the lower particulate matter standards. This proposed rule change levels the playing field for pre-1970 and post-1970 businesses.

DEQ considered leaving the averaging time for opacity standards at the aggregate 3 minutes in 60 minutes and the 30 seconds in 60 minutes but without a reference test method for compliance, enforceability of the standards is questionable.

DEQ considered leaving the opacity limits for fugitive emission sources as is but determined that this approach would perpetuate difficulty in implementation of the standard. DEQ did not pursue this alternative because abating fugitive emissions leaving the property boundary reduces emissions more than trying to determine compliance with 20 percent opacity.

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

The proposed rules are “in addition to federal requirements” and protect public health and the environment. The proposed rules would require construction approvals or permits for units whose emissions are significant but were previously treated as insignificant activities. EPA requires states to have permitting programs for smaller units but does not specify the details of a minor New Source Review program. Because of the Plant Site Emission Limit rules, DEQ permits regulate smaller units than EPA requires.

What alternatives did DEQ consider, if any?

DEQ did not consider any alternatives because leaving the permitting requirements for small sources as is would cause potential violations of the internal combustion engine standards and DEQ rules for operating without a permit.

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

The proposed rules are “in addition to federal requirements” and protect public health and the environment while addressing economic concerns. The proposed rules modify Oregon’s existing permitting rules which are different than federal rules. Oregon’s permitting program has been structured in a different way than the federal program since it originated in 1982, but is considered equivalent by EPA. The proposed rulemaking also aligns some aspects of Oregon’s program with EPA’s federal program.

DEQ proposes changing the definition of a major source to match EPA’s definition. There would be different requirements for small and large businesses. The program for smaller businesses would be called State New Source Review. This change, along with the new designation of sustainment and reattainment areas discussed below would allow more flexibility in permitting smaller sources under State NSR but still protect ambient air quality.

The proposed rules create new differences between the Oregon and EPA New Source Review preconstruction programs by defining two new area designations, sustainment and reattainment. These two new areas would have an important role in avoiding exceedances of ambient air quality standards and also encouraging economic development when air quality has been improved in a nonattainment area.

DEQ’s program, although structured differently than EPA’s regulations, provides a workable program that is equivalent to EPA’s and accomplishes the same Clean Air Act goal of preventing significant deterioration of air quality.

What alternatives did DEQ consider, if any?

DEQ considered not changing the New Source Review rules but determined the proposed changes would improve air quality and provide flexibility for smaller businesses. DEQ did not pursue the no action alternative because there currently is essentially a construction ban in areas that are over the standard but still designated as attainment. Current rules for demonstrating net air quality benefit in nonattainment areas are overly prescriptive and do not meet the goals of the program.

1. **Designate Lakeview as sustainment area**

The proposed rules are “in addition to federal requirements” and protect public health and the environment while addressing economic concerns. EPA only designates nonattainment areas. The proposed rules would designate two new types of areas, sustainment and reattainment, and would improve Oregon’s New Source Review program by improving air quality in areas where needed and providing permitting flexibility for smaller businesses.

What alternatives did DEQ consider, if any?

 DEQ considered not designating Lakeview a sustainment area because the desire of the local community was unknown at the time. DEQ did not pursue this alternative because it now believes that the Lakeview community supports the designation, which will provide flexibility to allow new construction as long as air quality is protected.

1. **Provide DEQ more flexibility for public hearings and meetings**

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

What alternatives did DEQ consider, if any?

DEQ considered leaving the requirements for public hearings and meetings as is but the economic benefits and improved effectiveness of outreach using recent technology supported the proposed change. DEQ did not pursue this alternative because technology would only improve, making access to public hearings and meetings easier and cheaper for the public.

1. **Update Heat Smart Program**

DEQ’s rules are different from EPA rules so clarifying and updating these rules may be considered to be “in addition to federal requirements” because EPA does not have identical rules.

What alternatives did DEQ consider, if any?

DEQ did not consider any other alternatives because this rulemaking is to fix the rules to return it to its previous state, before EPA amended the NESHAP rules.

1. **Implement SB 249A - Clean diesel grant and loan rules**

The proposed rules are “in addition to federal requirements” and not required by federal requirements.

What alternatives did DEQ consider, if any?

DEQ did not consider any alternatives because failure to adopt the proposed amendment would undermine the Oregon Clean Diesel Initiative’s effort to support program goals to reduce the adverse impacts from toxic air pollutants and mitigate climate change.

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

The proposed rules remove the annual reporting requirement for gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline. This change would be consistent with the federal requirements because the federal gasoline dispensing facility NESHAP 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 keeping the annual reporting requirement for gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline. DEQ rejected this alternative because it determined that the annual reporting requirement for these small gasoline dispensing facilities is unnecessary. DEQ would still have the authority to request throughput information from these facilities, and may do so, for businesses close to the 10,000 gallon permitting threshold.

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|  Land use  |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

 [ORS 197.180](http://www.leg.state.or.us/ors/197.html), [OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.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 Chapter 340 Action section above are existing rules that affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program:

ORS 340-210 Source Notification Requirements

ORS 340-216 Air Contaminant Discharge Permits

ORS 340-218 Oregon Title V Operating Permits

The air quality permit programs require that a new business provide a Land Use Compatibility Statement (LUCS) from local government when applying for a permit. This assures that the business is an approved use for the property where it is located. Existing permittees have provided a LUCS, which are on file with DEQ. No change in the land use procedures in the air quality permitting program is proposed.

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

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

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|   Stakeholder and public involvement |

 Advisory committee

Stakeholder meetings allowed input on the preliminary rules. DEQ sent an announcement of the meetings to all permitted facilities and people who expressed interest in air quality rulemakings. DEQ sent the announcement by postcards, 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. EPA was involved throughout the rule development process.

DEQ did not use an Advisory Committee but held several meetings throughout the state (Portland, Pendleton, Eugene and Medford) with stakeholders to discuss preliminary rules. 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 annual DEQ Rulemaking Plan review and monthly status report. DEQ shared information about this rulemaking with the EQC through an information item on the October 16, 2013 EQC agenda.

Public notice

The November 2013[*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html) will publish the Notice of Proposed Rulemaking with Hearing for this rulemaking. DEQ also:

* Posted notice on DEQ’s webpage <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqperm.aspx> on October 1, 2013.
* E-mailed notice on October 1, 2013 to:
* Approximately 6,500 interested parties through GovDelivery.
* 1,562 stakeholders, including representatives of facilities holding Title V and Air Contaminant Discharge Permits, through GovDelivery.
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
	+ Senator Lee Beyer, Chair, Senate Business and Transportation
	+ Jackie Dingfelder, Chair, Senate Environment and Natural Resources
	+ Jules Bailey, Chair, House Energy and Environment
* Mailed the notice by U.S. Postal Service to 449 stakeholders on October 1, 2013, including representatives of facilities holding Title V and Air Contaminant Discharge Permits.
* Legal ad in the Oregonian and Daily Journal of Commerce on October 1, 2013
* Sent notice to EPA on October 1, 2013.

Public hearings

DEQ plans to hold one statewide public hearing that will be accessible throughout the state from the regional offices. The table below includes information about how to participate in the public hearings.

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

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

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Close of public comment period

The comment period will close on November 20, 2013 at 5:00 p.m.