

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 particulate (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 HeatSmart 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 (New Source Review)

5. Designate Lakeview as sustainment area

6. Provide DEQ more flexibility for public hearings and meetings

7. Update HeatSmart

8. Implement SB 249A - Clean diesel grant and loan

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 and the Statement of Need section of this notice includes more details.

1. Clarify and update rules

Air quality rules have lost organization over the years. Multiple definitions for the same term, missing details, obsolete or outdated rules and rules that don’t align with EPA rules cause confusion and create an ongoing need to clarify and make corrections.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 adopted National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The adoption added requirements for emergency generators that DEQ thought had insignificant emissions. DEQ also thought small gas and oil-fired equipment emissions were insignificant but found in aggregate could be significant.

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

DEQ proposes changes to the New Source Review program to improve air quality in all areas of the state, especially those that are close to or exceed ambient air quality standards. 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 sustainment area

Air quality in Lakeview currently exceeds the PM2.5 ambient air quality standard even though EPA has not designated Lakeview a nonattainment area. This makes it nearly impossible for any business to build or expand in the Lakeview area. 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 keeps up 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 HeatSmart - Oregon Administrative Rules 340-262

DEQ proposes rules to allow small biomass boilers to be sold in Oregon. DEQ’s HeatSmart 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 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 the NESHAP rules. These proposed rules create another pathway for small biomass boilers to be sold in Oregon.
* State limits require all commercial, industrial and institutional boilers to meet particulate emissions and opacity limits.
1. Implement SB 249A - Clean diesel grant and loan rules

The 2013 Oregon Legislature adopted SB 249 (now 2013 Or. Laws Ch. 44) . 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. Even though the Governor signed the bill into law with an emergency clause making it effective upon filing, the Attorney General determined it necessary to adopt implementing rules. Failure to adopt the proposed rule would delay implementation of projects that would reduce harmful emission 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 with 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 need to be updated to add clarity. In some cases there are important details missing from rules create 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 are included in definitions rather than specific rules which causes confusion. Examples of procedures included in definitions are those for determining a *major modification*, *actual emissions* and *netting basis*.
3. This proposal combines definitions into one division rather than having definitions throughout the divisions regulating air quality. Currently there are multiple and sometimes different definitions of the same term.
4. Unfortunately, many businesses have shut down in Oregon so DEQ is proposing to repeal those industry specific rules.
5. DEQ is also proposing to repeal rules for which EPA has adopted more stringent standards.
6. DEQ’s Source Sampling Manual and Continuous Monitoring Manual have not been updated since 1992.
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| How would the proposed rule solve the problem?  | 1. The proposed rules would clarify and update the air quality rules.
2. This proposal addresses missing details by including compliance methods with all standards to make sure businesses know what to do to comply with the standards
3. This proposal removes procedures from definitions and proposes a procedural rule instead. For example, how actual emission are determined.
4. This proposal adds definitions for undefined terms such as control efficiency, internal combustion source, and removal efficiency
5. This proposal normalizes the definitions throughout all the divisions of air quality rules and moves them to division 200, General Air Pollution Procedures and Definitions
6. This proposal moves the tables containing numbers into the text whenever possible to make them easier to find, such as: significant emission rates, de minimis levels, generic Plant Site Emission Limits, significant impact levels and PSD increments

The following types of businesses no longer exist in Oregon; therefore, there is no need for rules specific to these businesses. If that type of business wanted to build in Oregon, they would be permitted under more recent federal rules that are more stringent than the rules proposed for repeal:* Neutral Sulfite Semi-Chemical Pulp Mills
* Sulfite Pulp Mills
* Primary Aluminum Standards
* Laterite Ore Production of Ferronickel
* Charcoal Producing Plants

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 so DEQ is proposing 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 SO2 trading program to address regional haze. There are now specific rules such as Best Available Retrofit Technology (BART) requirements for haze causing sources like the PGE Boardman plant.
* EPA’s rules for Commercial/Industrial Solid Waste Incineration require forced-air pit or air curtain incinerators to have Title V permits. Therefore, forced-air pit or air curtain incinerators can no longer be allowed under the open burning rules.

DEQ’s Source Sampling Manual and Continuous Monitoring Manual were last adopted in 1992. EPA methods have changed and PM2.5 standards have since been adopted so the manuals need to be updated. |
| 1. Update particulate matter standards
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| What problem is DEQ trying to solve? | 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 the majority of the airshed is taken up already from a single business, new businesses aren’t able to come into the area. 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, which limits the maximum visual density – or opacity – of a 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 the initial State Implementation Plan. At that time, there was only an ambient air quality standard for total particulate, not for PM10 or PM2.5. With the adoption of the PM2.5 ambient air quality standard in 2011, there have been two areas designated in Oregon that exceed the standard. These changes in the statewide particulate matter standards are proactive measures for helping to prevent violations of current PM2.5 standards and potentially more stringent standards in the future. DEQ adopted similar, more stringent rules when areas like Medford and La Grande exceeded the PM10 ambient air quality standard. By adopting more stringent rules now before areas exceed ambient air quality standards and become nonattainment areas, DEQ hopes to avoid the severe restrictions that would be required for businesses that want to build or expand in a nonattainment area. The 0.1 gr/dscf particulate matter standard is inconsistent with current EPA policy for significant figures. EPA considers all standards to have two significant figures when conducting enforcement. When DEQ first adopted the opacity standard, the standard was based on an aggregate of three minutes in a 60 minute period. However, DEQ 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 which is based on a 6-minute block average to read opacity. DEQ’s rules include also include a 20 percent opacity standard which 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. On the face of it, this visible emissions standard for the four-county area is more stringent than the current statewide standard. However, just like the 3-minute aggregate standard, DEQ 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. There is also a problem with trying to read opacity from fugitive emission sources. Fugitive particulate matter emissions are emissions that 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 opacity standard is exceeded, and to then require the emitting source to take action to abate the emissions if the standard is exceeded. However, there may also be situations where opacity readings are difficult to take, or the emissions do not exceed the opacity standard but are nevertheless objectionable.  |
| How would the proposed rule solve the problem?  | The proposed rule changes will solve the problems and will help to improve and maintain air quality and allow for economic development.The proposed rule changes will:* reduce the particulate matter emissions from pre-1970 units
* align the particulate matter standard with EPA policy on enforcement
* will make the opacity standard more practically enforceable by aligning the standard with the reference compliance method and
* require abatement of any visible fugitive emissions that leave a business's property, regardless of the actual opacity level.

The proposed rulemaking changes will 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 the 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. Businesses will have until April 1, 2015 to comply with the lower opacity standard and until April 1, 2019 to comply with the lower particulate matter standard.DEQ is proposing to change all opacity standards (both statewide and industry specific) to a 6-minute block average, which is consistent with other states in the region and EPA opacity standards. DEQ does not believe this changes the overall stringency of the standards.DEQ proposes to solve the problem of limited applicability and unenforceability of the Portland-area four-county 20 percent opacity standard by repealing the standard.DEQ is proposing to solve the problem of trying to read opacity from fugitive emission sources by changing the visible emissions limit for fugitive sources from 20 percent opacity to a limit on any visible emissions leaving a source’s property. This is a simpler, more stringent and more effective approach to controlling such emissions. EPA Method 22, Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares, is specific for fugitive sources and will be a much better method for determining compliance than what 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 the Title V permitting program was established in the mid 1990’s, DEQ developed a list of insignificant activities because all emissions had to be accounted for in the 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 activity onsite and these activities were exempted from rigorous monitoring requirements. EPA has since adopted new standards for emergency generators. DEQ also discovered one business that has about 8 small 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 is proposing changes to the 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 levels. Usually these activities will be added to an existing permit. In some cases, a business will need a permit for these activities alone. If the aggregate emissions are less than permitting thresholds, the owner/operator may only need to notify 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? | 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 creating an unnecessary construction ban. 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. 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 is 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 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 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 that changes 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 changes below, which cannot be granted to larger businesses because of EPA requirements.The proposed rules provide incentives for new or modified businesses to help address ambient air quality problems. The incentive provides 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 areas 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 areas from becoming nonattainment areas.
* Reattainment areas to help transition an area back to attainment before the EPA redesignation.

The proposed rules would change the Net Air Quality Benefit, 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 will allow construction that was previously prohibited but will still be protective of air quality.DEQ proposes rules to clarify how a business may get an extension for 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 the airshed indefinitely, cause significant impacts on air quality and result in the installation of less effective control technology. The proposed rules provide for two 18-month extensions, as well as procedures for requesting extensions 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 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?  | DEQ is proposing changes to the rules that would improve air quality in Lakeview and also provide incentives for businesses to address emissions from uncertified residential wood fuel-fired devices. 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?  | This proposal will make it easier and cheaper for people to participate in public hearings and meetings by removing the prescriptive language from the rules. DEQ is committed to public engagement and is looking for new and innovative ways to reach people and hold hearings. |
| 1. Update HeatSmart
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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. Being subject to federal requirements allowed the small scale commercial, industrial and institutional biomass boilers to be exempted from DEQ’s Heat Smart rules, which had prevented the boilers from being sold in Oregon. With EPA’s rule changes, these devices are subject to the Heat Smart rules, and can no longer be sold in Oregon.  |
| 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 change 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 while federal program guidelines currently allow for ten other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement. State funds for clean diesel work have not been appropriated since the 2007-09 biennium and the tax credit program was shut down 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 the original statutory authority. This is hampering DEQ’s ability to be successful in recruiting projects and securing federal awards. As a consequence, despite widespread outreach, there was no interest by diesel owners to retrofit 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?  | DEQ determined that failure to amend the proposed rule would limit the scope of projects to reduce harmful emissions from diesel engines. Older diesel engines emit particulate matter and other pollutants that are harmful to human health and the environment. Federal clean diesel grants provide funding to improve the emission profile of diesel engines by decreasing the amount of such harmful emissions using a variety of effective methods including vehicle replacement and idle reduction technologies. Adopting the rule will allow DEQ to administer grants that meet federal funding criteria as authorized by Senate Bill 249 that will include a broader variety of methods than currently authorized under state rules. Limiting the scope of allowable activities will narrow the range of fundable projects in Oregon, which will undermine 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 and
* submit annual reports of throughput

They are not required to have an air quality permit. DEQ has determined that the annual reporting requirement for these small gasoline dispensing facilities is unnecessary because DEQ has collected one time data on these facilities throughput and has the ability to request additional information if needed. |
| How would the proposed rule solve the problem?  | The proposal addresses this by removing 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 the sections 1 through 9 above, upon adoption by the EQC, DEQ would submit the rules to EPA to update Oregon’s State Implementation Plan. DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the State Implementation Plan revision. |

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, 340-204-0320, 340-222-0046, 340-222-0048, 340-222-005, 340-224-0025, 340-224-0045, 340-224-0055, 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, 340-224-0520, 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, 0100, 340-208-0110, 340-208-0200, 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, 340-210-0010, 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, 340-212-0120, 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, 0056, 0060, 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, 340-218-0020, 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, 340-218-0140, 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, 340-222-0020, 340-222-0030, 340-222-0040, 340-222-0041, 340-222-0042, v0060, 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, 340-232-0100, 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, 340-236-0500, 340-240-0030, 0110, 0120, 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, 340-240-0350, 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 OAR 340-222-0070, 340-224-0034, 340-224-0034, 340-224-0080

Amend and renumber OAR 340-216-0020, 340-216-8005, 340-216-8010, 340-222-0035, 340-222-0055, 340-224-0038, 340-224-0100, 340-225-0090, 340-226-8005

Repeal OAR 340-208-0600, 340-214-0140, 340-214-0400, 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, 340-240-0170, 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 201, 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

Statute implemented

ORS 468, 468A, 468.020, 468A.025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070, 468A.310, 468A.460, 468A.480, -468A.515, 468A.803, OL 2007, Ch. 855 (HB 2172 (2007))

 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> |
| 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>. |

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| 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 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 Impact

1. **Clarify and update rules**

Proposed rules in this category do not have fiscal or economic impacts.

1. **Update particulate matter standards**

DEQ identified 8 businesses (1 small business) that may not be able to comply with the 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. There are also two small asphalt plants that may not be able to comply with the 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 $5,000 and $10,000. 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 ranges in cost from $30,000 to $60,000. A boiler tune-up may or may not allow sources to comply with the new standards over the long run 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. Based on vendor information, multiclones range in cost from $60,000 to $80,000 and will remove some particulate matter but may not be successful in removing enough to comply with the new standard. Information from vendors and a business that recently installed an electrostatic precipitator indicates the cost of a new ESP ranges from $450,000 to $1,500,000. 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 be able to 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 will repair/patch together equipment. Making these repairs is usually done 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 deemed too expensive to meet the new particulate matter standards. The cost of installing a used baghouse is approximately $150,000 to $250,000 and the cost of a new asphalt plant is approximately $1.5 to $2 million.

By proactively updating the particulate matter standards, DEQ hope 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, 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. While DEQ recognizes that these restrictions may prevent some industries from expanding or moving to the nonattainment area, 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 a higher offset ratio requirement for industry, and the area could even risk losing federal highway funds, both of which could have negative economic impacts.

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 the units that fall into these categories 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 accurately estimate those costs.

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 would raise the amount of offsets a business may be required to get but allow for reduced offsets if the business chooses to get the offsets from the sources causing the problem in areas where air quality is close to an ambient air quality standard. 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 the business chooses to obtain offsets from the sources that are causing the problem, based on current information, the offsets would be required from woodstoves. The cost to replace an uncertified woodstove is approximately $3,000, which would reduce emissions by 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 more quickly than EPA could redesignate the area, the proposed rules would have a positive fiscal and economic impact on businesses because they would be allowed to meet the maintenance (attainment) area requirements rather than the more stringent nonattainment area requirements. The control technology may be less expensive but if it results in lower emission reductions than could be achieved with other more expensive technology, 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.

For these situations, since New Source Review permitting is a case-by-case analysis, and because the type of pollution controls and computer modeling varies for each case, DEQ lacks available information to estimate those costs accurately.

1. **Designate Lakeview as sustainment area**

The proposed rules will have a positive fiscal and economic impact in Lakeview by allowing businesses to build or expand in the area as long as air quality is protected. Since New Source Review permitting is a case-by-case analysis, and because the type of pollution controls and computer modeling varies for each case, DEQ lacks available information to accurately estimate those costs.

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

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

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

1. **Update HeatSmart**

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. These proposed rules are to 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**

There is no fiscal or economic impact from this proposed rule change because it is a voluntary program.

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

DEQ anticipates a positive fiscal and economic impact 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. 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.

Statement of Cost of Compliance

 Impacts on general public

1. **Clarify and update rules**

DEQ does not anticipate any direct fiscal or economic impacts from these changes on the general public because these changes will not affect the stringency of DEQ’s rules.

1. **Update particulate matter standards**

DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the general public because of potential changes due to the lower particulate matter standards. However, indirect fiscal or economic impacts to the public may occur through increased prices for services or products as a result of costs associated with additional control or process equipment that may be required to meet lower particulate matter standards. DEQ expects any such price increases to be small and lacks available information upon which it could accurately estimate potential increases.

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**

DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the general public because of the requirement to get a new permit or modify an existing permit to add emergency generators or small natural gas or oil-fired equipment. However, indirect fiscal or economic impacts to the public may occur through increased prices for services or products as a result of costs associated with a new permit. DEQ expects any such price increases to be small and lacks available information upon which it could accurately estimate potential increases.

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

DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the general public because of the requirement to get a New Source Review permit based on the amount of emissions or the location of the new or modified business. However, indirect fiscal or economic impacts to the public may occur through increased prices for services or products as a result of costs associated with a new permit. There may also be positive indirect fiscal or economic impacts by designating areas as sustainment or reattainment since these designations are designed to help prevent an area from becoming a nonattainment area (a major negative fiscal or economic impact) and to transition an area back into attainment more quickly. DEQ expects any such price increases to be small and lacks available information upon which it could accurately estimate potential increases. Some members of the public may benefit from woodstove replacements.

1. **Designate Lakeview as sustainment area**

DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the general public because of the Lakeview sustainment area designation. However, positive indirect fiscal or economic impacts to the public may occur through more businesses being able to locate in Lakeview. In addition, if new businesses locate in Lakeview, some members of the public may benefit from woodstove replacements. DEQ expects any such price decreases to be small and lacks available information upon which it could accurately estimate potential decreases.

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

DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the general public because of more flexibility in holding public hearings and meetings. However, positive indirect fiscal or economic impacts to the public may occur through more efficient use of DEQ resources and ease of attending the meetings by communities around the state. DEQ expects any such price decreases to be small and lacks available information upon which it could accurately estimate potential decreases.

1. **Update HeatSmart**

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

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

DEQ anticipates that there would be a positive fiscal and economic impact on the general public with this change if more equipment upgrades occur in Oregon. DEQ estimates that this impact would be very small and would probably not be passed on to the general public or customers.

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

DEQ anticipates that there would be a positive fiscal and economic impact on the general 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. DEQ estimates that this impact would be very small and would probably not be passed on to the general public or customers.

Impact on other government entities other than DEQ

1. Local governments: Currently 55 county and local government agencies are subject to air permitting regulations. DEQ anticipates that there will be the same fiscal and economic impact on these government entities as listed above.
2. State agencies: Currently there are 26 state and 6 federal government agencies subject to air permitting regulations. DEQ anticipates that there will be a negative fiscal and economic impact on these government entities as listed above.

Impact on DEQ [ORS 183.335](http://www.leg.state.or.us/ors/183.html)

1. **Clarify and update rules**

Initial workload for DEQ will increase as a result of the proposed rule changes but will eventually decrease as staff becomes familiar with the proposed rules.

1. **Update particulate matter standards**

Initial workload for DEQ will increase as a result of the proposed rule changes but will eventually decrease as staff becomes familiar with the proposed rules. Preventing areas from becoming nonattainment will avoid future increases in DEQ workload.

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

Initial workload for DEQ will increase as a result of the proposed rule changes but may later level off or decrease depending on the number of new sources that require permits.

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

Initial workload for DEQ will increase as a result of the proposed rule changes but will eventually decrease as staff becomes familiar with the proposed rules. Preventing areas from becoming nonattainment will avoid future increases in DEQ workload.

1. **Designate Lakeview as sustainment area**

Initial workload for DEQ will increase as a result of the proposed rule changes but will eventually decrease as staff becomes familiar with the proposed rules. Preventing areas from becoming nonattainment will avoid future increases in DEQ workload.

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

Workload for DEQ may increase or decrease depending on how this rule is implemented.

1. **Update HeatSmart**

The workload for DEQ will not change because these rules reestablish a pathway for small scale industrial, commercial, and institutional boilers to be sold in Oregon again.

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

There is no fiscal or economic impact on DEQ from this proposed rule change because the costs of administering the grant are recovered from the grant itself, including indirect costs.

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

The workload for DEQ will decrease as a result of the proposed rule changes because there will be fewer reports to process and review.

Impact on large businesses (all businesses that are not small businesses below)

DEQ anticipates that there will be the same fiscal and economic impact on large businesses (approximately 1130) as listed above.

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

DEQ anticipates that there will be the same fiscal and economic impact on small businesses as listed above.

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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 all small businesses (approximately 1550) 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 sources 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 will not be required to report. There will 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 amendments are adopted.  |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | Small businesses are being informed 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. Comments are being requested 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

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

Jill, I need to do some work on this to combine it into one statement.

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| 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 HeatSmart**

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.

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 will 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) will also align DEQ rules with applicable federal requirements and policies.

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 will 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.

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 is proposing to change the definition of a major source to match EPA’s definition. There will be different requirements for small and large businesses. The program for smaller businesses will be called State New Source Review. This change, along with the designation of sustainment and reattainment areas will allow more flexibility in permitting smaller sources but still protect the 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. DEQ feels that these two new areas will have an important role in avoiding exceedances of the ambient air quality standard and also encouraging economic development when air quality has been improved in a nonattainment area.

DEQ’s program, although substantially different from EPA’s regulations, provides a workable program which is equivalent to EPA’s and will accomplish the Clean Air Act goal of preventing significant deterioration of air quality.

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. DEQ’s proposal to designate other areas, sustainment and reattainment, will improve Oregon’s New Source Review program by improving air quality in areas where it is needed and providing permitting flexibility for smaller businesses.

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.

1. **Update HeatSmart**

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.

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.

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?

1. **Clarify and update rules**

DEQ considered leaving the rules as they are but wanted to clarify as much as possible and update all rules. DEQ did not pursue this alternative because there would still be confusion, possible misinterpretations and errors in the rules.

1. **Update particulate matter standards**

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**

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)**

DEQ considered not changing the New Source Review rules but believes the proposed changes will improve air quality and provide flexibility for smaller businesses. DEQ did not pursue this alternative because in areas that are over the standard but still designated as attainment, there is essentially a construction ban. DEQ has also found that 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**

DEQ considered not designating Lakeview as a sustainment area because the desire of the local community was unknown at the time. DEQ did not pursue this alternative because the Lakeview community supports the designation and construction should be allowed as long as air quality is protected.

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

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 will only improve, making access to public hearings and meetings easier and cheaper for the general public.

1. **Update HeatSmart**

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**

DEQ did not consider any alternatives because failure to adopt the proposed amendment will 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**

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 will significantly affect land use. If yes, how will DEQ:
	+ Comply with statewide land-use goals, and
	+ Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the 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, and in the Director's Dialogue mmm dd, 2013.

Public notice

The October 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.deq.state.or.us/regulations/proposedrules.htm on October 1](http://www.deq.state.or.us/regulations/proposedrules.htm%20on%20October%201)??, 2013.
* E-mailed notice on October 1??, 2013 to:
* Approximately #### interested parties through GovDelivery on October 1??, 2013.
* #### stakeholders on the Enter other mailing lists here.
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
	+ Enter name, title, committee here.
	+ Enter name, title, committee here.
	+ Enter name, title, committee here.
* Mailed the notice by U.S. Postal Service to ## interested parties 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(s) 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 summarized 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.

Delete the unused hearings tables below. After the team has finalized the information in the table(s), copy them into STAFF.RPT-6.0~. The staff report includes directions on ungrouping hidden rows and deleting rows specific to the notice.

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Close of public comment period

The comment period will close on November 26, 2013 at 5:00 p.m.