

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

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| **Clarify and update existing rules**DEQ is proposing to move procedural requirements to the correct division, clarify rules where necessary, repeal rules that are no longer needed, update rules that are outdated, and synchronize definitions throughout all the divisions.  |
| **Update particulate matter standards**DEQ is proposing to lower statewide particulate matter standards for units that were built before 1970 in order to help prevent exceedance of the fine particulate matter ambient air quality standard. DEQ is also proposing to change the visible emission standards to apply on a six-minute average.  |
| **Change permitting requirements for small sources**DEQ is proposing to permit larger emergency generators and small boilers if their aggregate emissions are above permitting thresholds. These types of units are currently exempt from permitting requirements. Emergency generators are subject to new EPA rules.  |
| **Change the pre-construction permitting program (New Source Review)**DEQ is proposing the following change to the New Source Review program:* align definition of major source with EPA’s definition
* establish different requirements for small and large sources,
* define two new area designations, sustainment and reattainment, to prevent areas from exceeding the ambient air quality standards and to transition back to less stringent requirements if the air quality has improved
* provide more flexibility for smaller sources to encourage development while still protecting air quality
* provide incentives for reducing emissions from the sources that are causing the local air quality problem
* redefine how a business that builds or expands can show that they are providing a net air quality benefit in the area
* clarify how a business can get an extension for a New Source Review permit if construction is delayed for good cause.
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| **Designate Lakeview as sustainment area**DEQ is proposing to designate Lakeview as a sustainment area in order to help improve air quality in the area and help prevent Lakeview from becoming a nonattainment area.  |
| **Provide DEQ more flexibility for public hearings and meetings**DEQ is proposing to change the rules for how public hearings and meetings are held. The rules for holding public hearings and meetings are very prescriptive. Recent technology provides DEQ many options on how public hearings and meetings are held.  |
| **HeatSmart**DEQ is proposing to modify its rules to allow all small solid fuel boilers to be sold in Oregon for commercial, industrial, and institutional use. These boilers were previously allowed in Oregon if they were also regulated under the National Emission Standards for Hazardous Air Pollutants rules for biomass boilers, but because of new EPA rules that currently exempt these boilers from the NESHAP requirements, they are no longer able to be sold in Oregon again.  |
| **Clean diesel grant and loan rules**SB 249A was adopted unanimously by the 2013 Oregon Legislature and signed into law on April 18, 2013. SB 249A authorizes DEQ to administer federal grants received for clean diesel projects to be completed in accordance with federal grant guidelines rather than more limited state guidelines. While the law was enacted with an emergency clause making it effective upon signing, the Attorney General has determined that adoption of a rule implementing the statutory provisions is also necessary.  |
| **Annual reporting requirement for small gasoline dispensing facilities**The proposed rules would remove the annual reporting requirement for small gasoline dispensing facilities. |

Brief history – the following history covers the main topics for the proposed rulemaking. Details are found in the Statement of Need.

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| **Clarify and update existing rules**Air quality rules:* are not well organized
* are missing important details
* are outdated
* are not aligned with EPA rules and
* contain multiple definitions for the same term.

There is an ongoing need to clarify and make corrections to existing rules when confusing language or errors are discovered. DEQ also wants to repeal rules that are no longer needed.  |
| **Update particulate matter standards**There are areas in the state where air quality is close to or over the PM2.5 ambient air quality standard. Work on the Klamath Falls attainment plan showed that impacts from a single business could be up to 70% of the standard. That work indicates that other areas with similar sources along with background concentrations could be 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 is proposing to revise the current statewide visible emission standards to apply on a six-minute average, which will put DEQ’s standards on the same basis as EPA’s visible emissions standards. DEQ is also proposing to repeal the 30 second in 60 minute visible emission standard in the 4-county area around Portland. DEQ has never developed a reference method for determining compliance with the 3-minute aggregate in a 60-minute period or the 30 second aggregate in a 60-minute period standards.  DEQ is also trying to solve the problem of trying to read opacity from fugitive emission sources. The compliance for opacity limits is EPA Method 9, which is designed to read opacity from a well-defined stack. It is very difficult to use EPA Method 9 on fugitive emissions, which are usually dispersed over a larger area.  |
| **Change permitting requirements for small sources**EPA has adopted National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. These rules also include requirements for emergency generators, which DEQ previously thought to have insignificant emissions. DEQ also thought that emissions from small gas and oil boilers were insignificant. If a business has many of these small boilers, their emissions in aggregate can be significant.  |
| **Change the pre-construction permitting program (New Source Review)**DEQ wants to change 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 changes will also clarify permitting requirements, provide more opportunities for businesses to reduce pollution and make it possible for construction projects to demonstrate that air quality will be improved as a result of their project. |
| **Designate Lakeview as sustainment area**The air quality in Lakeview currently exceeds the PM2.5 ambient air quality standard even though Lakeview is not designated a nonattainment area by EPA. This situation makes it nearly impossible for any business to build or modify in the Lakeview area.  |
| **Provide DEQ more flexibility for public hearings and meetings**Current rules require DEQ to hold informational meetings on the most complex permit actions and public hearings whenever one is requested. The requirements are very prescriptive, requiring the hearing be at “a reasonable place and time.” This language does not allow DEQ to use technology such as the internet to hold “virtual” meetings. This proposal will make it easier and cheaper for people to participate.  |
| **HeatSmart**All commercial, industrial and institutional boilers are required to meet state limits on particulate emissions and opacity, as well as federal limits on hazardous air pollutants. A subset of small commercial, industrial and institutional boilers (those with a heat output of less than 1 million Btu per hour that burn solid fuel such as biomass) are also regulated through DEQ’s Heat Smart program (found in Oregon Administrative Rules 340-262). Under current Heat Smart rules, these small biomass boilers cannot be sold in Oregon but are exempt if they are already subject to federal National Emission Standards for Hazardous Air Pollutants. However, in 2012, EPA revised its rules to exempt these small biomass boilers from the NESHAP rules, thereby not allowing these boilers to be sold in Oregon again.  |
| **Clean diesel grant and loan rules**DEQ has determined that failure to amend the proposed rule would delay implementation of projects to reduce the harmful emission from diesel engines through vehicle and equipment replacement projects both proposed and in hand. |
| **Annual reporting requirement for small gasoline dispensing facilities**DEQ has determined that the annual reporting requirement for small gasoline dispensing facilities is unnecessary.  |

Regulated parties

All businesses with air quality permits

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|  **Statement of need** |

| **Proposed Rule or Topic** | **Discussion** |
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| 1. Rule Cleanup and Update
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| What problem is DEQ trying to solve? | DEQ is trying to clarify and update the air quality rules. * Some rules are missing important details, such as compliance methods, which have created problems in the air quality program.
* There are procedures in definitions like major modification, actual emissions and netting basis that need to be written as procedural rules instead of definitions.
* Many of the divisions regulating air quality have a rule containing definitions applicable to that division. Throughout the divisions there are multiple definitions of the same term.
* Unfortunately many businesses have shut down in Oregon so DEQ is proposing to repeal those industry specific rules.
* DEQ is also proposing to repeal rules for which EPA has adopted standards.
* 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?  | The proposal addresses missing details by:* including compliance methods with all standards to make sure businesses know what to do to comply with the standards
* specifying how emissions are divided when a business splits into two or more businesses
* adding definitions for undefined terms such as control efficiency, internal combustion source, and removal efficiency
* synchronizing the definitions throughout all the divisions of air quality rules and moving them to division 200, General Air Pollution Procedures and Definitions
* moving 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 rules are no longer needed because that type of business no longer exists in Oregon. If that type of business wanted to build in Oregon, they would be permitted under more recent federal rules, which are more stringent than the state rules being repealed:* Neutral Sulfite Semi-Chemical Pulp Mills
* Sulfite Pulp Mills
* Primary Aluminum Standards
* Laterite Ore Production of Ferronickel
* Charcoal Producing Plants

DEQ is also proposing to repeal rules for which EPA has adopted standards. * EPA adopted national rules that apply to manufacturers of consumer spray paint rules so DEQ is proposing to repeal the state rules. These rules were part of plan 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 the Best Available Retrofit Technology (BART) requirements for 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, these emissions units 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% of standard. That puts similar areas with similar sources 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. These proposed changes would allow economic expansion in the airshed. Therefore, DEQ is proposing to reduce both the particulate matter standard and the visual standard to help keep areas from exceeding the PM2.5 ambient air quality standard. DEQ relies on several types of standards when issuing air quality permits. One standard for particulate matter – dust, dirt, chemicals, etc. – involves more quantifiable emission limits. A second standard is referred to as a visual standard, which relies on the density – or opacity – of a plume. The rules include different standards for pre and post 1970 units:* Pre-1970 unit: 0.2 grain/dry standard cubic foot (gr/dscf) and 40% opacity
* Post 1970 unit: 0.1 gr/dscf and 20% opacity

The proposed rulemaking changes will affect both the statewide particulate matter and visual standards for units built before June 1970 by requiring these industries to meet the same standards as the post 1970 units.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. In addition to lowering the particulate matter standard to 0.1 gr/dscf, the standard is inconsistent with current EPA policy for significant figures. EPA considers all standards to have two significant figures when conducting enforcement. Therefore, DEQ is proposing to add a zero to the standards: 0.10 gr/dscf. Businesses will have until January 1, 2019 to comply with the lower particulate matter standard and until January 1, 2015 to comply with the lower opacity standard. When DEQ first adopted the opacity standard, the standard was based on an aggregate of three minutes in a 60 minute period. DEQ never developed a reference method for the 3-minute aggregate limit. In order to show compliance with this standard, people use a modified EPA Method 9 to read opacity. EPA Method 9 requires readings based on a 6-minute block average. DEQ uses the individual observations of EPA method 9 to determine aggregate time. DEQ is proposing to change all opacity standards (both the statewide and industry specific) to 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 also proposes to repeal the Portland four-county 20% opacity standard which is an aggregate of 30 seconds in a 60-minute period for non-fuel burning equipment for the same reason. On the face of it, the visible emissions standard for the four-county area is more stringent than the current statewide standard. 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 has limited applicability in the four-county area. As stated above, emissions standards are only enforceable if there is a defined method for determining compliance with the standard. DEQ is also trying to solve the problem of 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. The more direct approach of requiring abatement of any visible fugitive emissions that leave the source's property, regardless of the actual opacity level, is a simpler, more stringent and more effective approach to controlling such emissions. Therefore, DEQ is proposing to exempt fugitive sources from meeting the 20% opacity limit. 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 EPA Method 9.  |
| How would the proposed rule solve the problem?  | The proposed rule changes will solve the problems by reducing the particulate matter emissions from pre-1970 units. This proposal will help to improve and maintain air quality and allow for economic development.The proposed rule changes will also:* align the particulate matter standard with EPA policy on enforcement
* will make the visual standard more practically enforceable by aligning the standard with the reference compliance method and
* require abatement of any visible fugitive emissions that leave the business's property, regardless of the actual opacity level
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| 1. Permitting small sources
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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 including
* Emergency generators

Businesses would indicate whether they had the activity onsite and there were no other requirements. EPA has since adopted new standards for emergency generators. DEQ also discovered one business that has about 20 small boilers and their aggregate emissions are significant. 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 boilers and emergency generators from the list of insignificant sources 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 of installation of new units.  |
| 1. 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 and also 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 that are 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. They prohibit development in these areas because the rules include modeling requirements that create an unnecessary construction ban. DEQ wants to improve air quality in those regions by providing incentives and also provide smaller businesses more flexibility to encourage development. This flexibility cannot be granted to larger businesses because of EPA requirements so DEQ is proposing to separate the preconstruction programs for smaller and larger businesses.Once an area that was exceeding ambient air quality standards is cleaned up, EPA must redesignate that area before less rigorous permitting requirements apply. That 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. DEQ’s rules define this as a net air quality benefit. Currently this criteria is impossible to meet unless the increasing and offsetting businesses are co-located, thus creating an unnecessary construction ban. DEQ proposes to fix that problem. If construction approved under the New Source Review program is delayed for good cause, the rules are not clear how an extension could be granted. DEQ is proposing to specify all the requirements for requesting an extension along with the timing.  |
| How would the proposed rule solve the problem?  | To solve these problems, DEQ will provide incentives for new or modified businesses that will help address ambient air quality problems by giving them more credit for emission reductions from the priority sources – the sources that are causing the problem in the local area. If the new or modified business does not use emission reductions from priority sources, DEQ is proposing to raise the current offset ratios. DEQ is also proposing to change the definition of a major source to match EPA’s definition. With this change, there will be different requirements for small and large businesses. The program for smaller businesses will be called State New Source Review. DEQ is establishing two new transitional areas: sustainment and reattainment areas. These areas will be designated by the Environmental Quality Commission, not EPA. Sustainment areas are designed to prevent areas from becoming nonattainment areas. Reattainment areas help transition an area back to attainment more quickly before the EPA redesignation. This change, along with the change to the definition of major source, will allow more flexibility in permitting smaller businesses while still protecting air quality. Another aspect of the New Source Review program that DEQ is proposing to change is Net Air Quality Benefit. When a business requests a significant increase in emissions over permitted levels, one thing they have to do is show that the change will have a net air quality benefit in the area they are building or expanding. Right now, the computer modeling requirements for showing that benefit are impossible to meet unless the increasing and reducing businesses are co-located. The lower PM2.5 standard has revealed this problem. The proposed changes to this requirement, called Net Air Quality Benefit, will make sure that air quality is protected but the near impossibility of meeting the modeling criteria will be eliminated. All of these changes will allow construction that was previously prohibited but will still be protective of air quality.DEQ is proposing rule changes that clarify how a business can get an extension for their New Source Review permit if construction is delayed for good cause. Current rules allow extensions provided there is a “demonstrated need” but do not specify the criteria for approving the extension and how many extensions are possible. If projects are delayed without additional review, there is the potential for proposed projects to tie up their portion of the airshed indefinitely, cause significant impacts on air quality, and not install the most current control technology. DEQ’s proposal adds provisions for two 18-month extensions, criteria for approving extensions, procedures for requesting extensions and procedures for approving extensions. |
| 1. Provide DEQ more flexibility for public hearings and meetings
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| What problem is DEQ trying to solve? |  |
| How would the proposed rule solve the problem?  |  |
| 1. 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/hr 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. Clean diesel grant and loan rules
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| What problem is DEQ trying to solve? | In 2007 the Oregon Legislature outlined the elements of a grant, loan and tax credit supported program to reduce environmental and public health risks from diesel engine pollution. There are a wide variety of strategies to reduce the pollution impact from diesel engines, including installing advanced exhaust controls, repowering engines to more stringent emission standards, increasing efficiency in operations involving diesel engines, reducing unnecessary idling, switching to lower emitting alternative fuels, among other actions. Some of these actions have an inherent economic advantage and represents an ineffective use of public financial resources to subsidize. Other actions, e.g., alternative fuels, have levels of public financial support from other programs. The original limited authorization for clean diesel grants, loans and tax credits managed by DEQ reflected a strategic decision to support a limited number of cost effective strategies not otherwise financed through private returns on investment or other public assistance. 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. This has led to a constrained grant program that is not in alignment with the range of allowable activities under available funding. The primary remaining funding stream is managed by EPA through the federal Diesel Emission Reduction Act. The Act includes a more expansive list of allowable project activities than were authorized under Oregon statutory authority. However, DEQ is still constrained in applying for and managing federal grants by the statutory authority. As an example, there was no interest in pursuing projects within the original statutory scope for the FY 2012 cycle despite broad outreach and project recruitment efforts. Consequently no federal funds were awarded for Oregon projects in that year. Aligning DEQ’s clean diesel project authority with federal grant guidelines allows for ongoing and developing interest in clean diesel activities to be supported, e.g., vehicle and equipment replacement as compared to exhaust retrofitting. |
| How would the proposed rule solve the problem?  | DEQ determined that failure to amend the proposed rule would delay implementation of projects to reduce the harmful emission from diesel engines through vehicle and equipment replacement projects both proposed and in hand. Timely movement on grant administration reinforces DEQ’s reputation as effective in taking meaningful action towards protection of public health and the environment. Failure to adopt the rule:* dissipates momentum generated by the unilateral support by the Oregon Legislature as well as a diverse group of industry, public health, public interest and environmental advocacy groups that worked for the passage of SB 249.
* delays timely implementation of a project intended to showcase climate change and public health benefits that can arise from vehicle replacement and exhaust retrofitting in highway maintenance vehicles that in turn, will be used to recruit other interested parties to take comparable actions. Delays in project implementation contribute to issues in completing projects in a timely manner, which reflects unfavorably upon the DEQ’s ability to secure future grant awards from EPA.
* undermines the Oregon Clean Diesel Initiative’s effort to support program goals to reduce the adverse impacts from toxic air pollutants and mitigate climate change
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| 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 an unnecessary burden.  |
| 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. 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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| How will DEQ know the problem has been solved? | For all of the sections 1 through 8 above, upon adoption by the EQC, DEQ will 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 requested 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. The public recommended \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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|  Rules affected, authorities, supporting documents |

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| **Clarify and update existing rules**

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| Lead division: Air QualityProgram or activity: Air Quality PermittingChapter 340 action |
| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310 |
| 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** |
| NA | NA |
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| **Update particulate matter standards**

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| Chapter 340 action

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| Adopt | ORS 340-###-####, 340-###-#### or blank |
| Amend | ORS 340-###-####, 340-###-#### or blank |
| Amend and Renumber | ORS 340-###-####, 340-###-#### or blank  |

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| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310 |
| 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> |

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| **Change permitting requirements for small sources**

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| Chapter 340 action

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| Amend | ORS 340-###-####, 340-###-#### or blank |

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| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310 |
| 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** |
| 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 CombustionEngines; 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> |

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

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| Chapter 340 action

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| Adopt | ORS 340-###-####, 340-###-#### or blank |
| Amend | ORS 340-###-####, 340-###-#### or blank |
| Renumber | ORS 340-###-####, 340-###-#### or blank  |
| Amend and Renumber | ORS 340-###-####, 340-###-#### or blank  |

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| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310 |
| 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** |
| NA | NA |

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| **Designate Lakeview as sustainment area**

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| Chapter 340 action

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| Adopt | ORS 340-###-####, 340-###-#### or blank |

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| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310 |
| 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** |
| 2011 Oregon Air Quality Data Summaries | http://www.deq.state.or.us/aq/forms/2011AirQualityAnnualReport.pdf |

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| **Provide DEQ more flexibility for public hearings and meetings**

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| Chapter 340 action

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| --- | --- |
| Repeal | ORS 340-###-####, 340-###-#### or blank |

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| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented Legislation [IF RELATIVE] ORS Enter here - ###.### Enter here- House Bill or Senate Bill ####, yyyy  |
| 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** |
| 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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 |
| **HeatSmart**

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| Chapter 340 action

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| Amend | ORS 340-###-####, 340-###-#### or blank |

 |
| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented Legislation [IF RELATIVE] ORS Enter here - ###.### Enter here- House Bill or Senate Bill ####, yyyy  |
| 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** |
| 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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| **Clean diesel grant and loan rules**Program or activity - Clean Diesel Initiative

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| Chapter 340 action

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| Amend | OAR 340-259-0010 |

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| Statutory authority ORS 468.020, 468A.803 |
| Statute implemented Legislation YearORS 468A.803 (1) SB 249 2013 |
| 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** |
| SB 249A | http://www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf |

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| **Annual reporting requirement for small gasoline dispensing facilities**

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| Chapter 340 action

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| Amend | ORS 340-###-####, 340-###-#### or blank |

 |
| Statutory authority ORS 468.020, 468.065, Enter here - ###.### |
| Other authority  ORS Enter here - ###.### |
| Statute implemented Legislation [IF RELATIVE] ORS Enter here - ###.### Enter here- House Bill or Senate Bill ####, yyyy  |
| 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** |
| **STATIONARY SOURCE REPORTING REQUIREMENTS -** OAR 340-214-0110 | http://arcweb.sos.state.or.us/pages/rules/oars\_300/oar\_340/340\_214.html |

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\* SIP – this rule is part of the State Implementation Plan.

\* Land use – DEQ State Agency Coordination Program considers this rule, program or activity is a land use program.

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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

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| **Clarify and update existing rules**There are no fiscal or economic impacts as a result of the proposed rule changes.  |
| **Update particulate matter standards** DEQ has identified 6 large businesses 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 large businesses may need to optimize their boiler operations in order to comply with the particulate matter standards. Close monitoring of fuel quality may help some boilers comply while others may need tune-ups. According to one vendor contacted by DEQ, a typical boiler controls tune-up, if no parts need to be replaced, is estimated to cost in the range of $5,000-$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. However, 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 that the cost of a new ESP ranges from $450,000 to $1,500,000. A business that recently installed a new wood-fired boiler capable of 100,000 pounds of steam/hour paid approximately $8 million. Asphalt Plants: One asphalt plant that did not meet the existing 0.1 grain/dscf limit and has been referred to DEQ’s enforcement division for enforcement action and civil penalties. It is anticipated that improvements to the existing baghouse to meet the current grain loading limit will also ensure that the business will be able to meet the proposed lower standard. The two 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 water 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 a new baghouse is approximately $100,000 to $250,000 and the cost of a new asphalt plant is approximately $\_\_\_\_\_\_\_\_\_\_\_. |
| **Change permitting requirements for small sources**The proposed rules may have a negative fiscal and economic impact on businesses that own emergency generators or multiple small boilers if these units are required to get permits. The cost of that permit is approximately $1,300. DEQ has not identified any business that will be required to get a permit as a result of the proposed rule changes. Most of the units that fall into these categories will be added to existing permits at the time of renewal. There may be costs associated with additional recordkeeping but will be dependent on current environmental managements systems in place. DEQ lacks available information to accurately estimate those costs.  |
| **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. DEQ is raising the amount of offsets a business may be required to get but allowing for reduced offsets if the business chooses to get the offsets from the sources that are causing the problem in areas where air quality is close to the PM2.5 ambient air quality standard. The cost of industrial offsets varies from $2,500/ton to $100,000/ton, depending on the pollutant and how badly the offset is needed.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 $3,000, which would reduce emissions by 0.03 tons/woodstove. The cost of a ton of offsets from woodstoves is approximately $100,000/ton. In areas that DEQ wants to transition back to attainment more quickly than EPA could redesignate the area, the proposed rules will have a positive fiscal and economic impact on businesses because they will be allowed to meet the attainment area requirements rather than the more stringent nonattainment area requirements. The control technology may be less expensive but there may be higher emission offset costs if the less expensive control technology allows higher emissions. For businesses that were not allowed to build or modify under the existing rules, there will 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 accurately estimate those costs.  |
| **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.  |
| **Provide DEQ more flexibility for public hearings and meetings**The proposed rules will 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 is $\_\_\_/hour. The cost of the hearing/meeting depends on the location and how far staff have to travel. If the physical location of the hearing/meeting is 2 hours away, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The proposed rules will 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 accurately estimate those costs since the travel distance for hearing/meeting attendees is unknown.  |
| **HeatSmart**DEQ anticipates that there would be a no change in the fiscal and economic impact. These proposed rules are to re-establish a pathway for small biomass boilers to be sold for commercial, industrial, and institutional uses in Oregon. |
| **Clean diesel grant and loan rules**There is no fiscal or economic impact from this proposed rule change because it is a voluntary program.  |
| **Annual reporting requirement for small gasoline dispensing facilities**DEQ anticipates that there would be 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

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| **Clarify and update existing rules**DEQ does not anticipate any direct fiscal or economic impacts from the proposed rules on the general public because these changes will not affect the stringency of DEQ’s rules.  |
| **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 can 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.  |
| **Change permitting requirements for small sources**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 boilers. 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. |
| **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. |
| **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. |
| **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. |
| **HeatSmart**DEQ does not anticipate any direct, negative fiscal or economic impacts from the proposed rules on the general public.  |
| **Clean diesel grant and loan rules**There is no fiscal or economic impact on the general public from this proposed rule change because it is a voluntary program. |
| **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 44 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 24 state and 4 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)

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| **Clarify and update existing 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.  |
| **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.  |
| **Change permitting requirements for small sources**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.  |
| **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.  |
| **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.  |
| **Provide DEQ more flexibility for public hearings and meetings**Initial workload for DEQ will increase as a result of the proposed rule changes but will eventually decrease as staff learns about the different options available and has more flexibility in holding public hearings and meetings.  |
| **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.  |
| **Clean diesel grant and loan rules**There is no fiscal or economic impact on the general public from this proposed rule change because the cost of administering the grant are recovered from the grant itself, including indirect costs.  |
| **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 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 to comply with lower grain loading and opacity standards. 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 boilers.  |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | No additional costs for equipment, supplies, labor or administration are expected 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

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| **Clarify and update existing rules**NA |
| **Update particulate matter standards**NA |
| **Change permitting requirements for small sources**

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| **Document title** | **Document location** |
| Air Contaminant Discharge Permits – Table 1 OAR 340-216-0020 | http://arcweb.sos.state.or.us/pages/rules/oars\_300/oar\_340/\_340\_tables/340-216-0020\_3-27.pdf |

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| **Change the pre-construction permitting program (New Source Review)**NA |
| **Designate Lakeview as sustainment area**NA |
| **Provide DEQ more flexibility for public hearings and meetings**

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| **NA** |  |

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| **HeatSmart**

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| NA |  |

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| **Clean diesel grant and loan rules**NA |
| **Annual reporting requirement for small gasoline dispensing facilities**NA |

Advisory committee

DEQ did not appoint an advisory committee. 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. EPA was involved throughout the rule development process.

Housing cost

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| **Clarify and update existing 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.  |
| **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. |
| **Change permitting requirements for small sources**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. |
| **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. |
| **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.  |
| **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.  |
| **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. |
| **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.  |
| **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**  |

*"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

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| **Clarify and update existing 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. |
| **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% opacity using Method 9 for compliance. Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, contains a limit of 7% 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.  |
| **Change permitting requirements for small sources**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.  |
| **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.  |
| **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 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.  |
| **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. |
| **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. |
| **Clean diesel grant and loan rules** |
| **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?

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| **Clarify and update existing 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.  |
| **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% opacity.  |
| **Change permitting requirements for small sources**DEQ considered leaving the permitting requirements for small sources as is but that would cause potential violations for not complying with internal combustion engine standards and DEQ rules for operating without a permit. DEQ did not pursue this alternative because DEQ believes that sources with emissions above de minimis levels should be addressed by the permitting program, including construction approval provisions.  |
| **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.  |
| **Designate Lakeview as sustainment area**DEQ considered not designating Lakeview as a sustainment area. DEQ did not pursue this alternative because construction should be allowed as long as air quality is protected.  |
| **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 for the general public.  |
| **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.  |
| **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.  |
| **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 source provide a Land Use Compatibility Statement (LUCS) from local government when applying for a permit. This assures that the source 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. DEQ provided two weeks to comment on the fiscal and economic impact statement.

DEQ did not use an Advisory Committee but held several meetings throughout the state (Portland, Pendleton, Eugene and Medford) with stakeholders to discuss topics of interest to them.

 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.
* Members of the advisory committee.
* 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), 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 on 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 19, 2013 at 5:00 p.m.