

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

Department of Environmental Quality
Agency and Division

340
Administrative Rules Chapter Number

Updating Oregon's air quality rules to address federal regulations

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Updating Oregon's air quality rules to address federal regulations

Statutory Authority:

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 & 468A.310

Other Authority:

Statutes Implemented:

ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 & 468A.310

Need for the Rule(s):

What need is DEQ trying to address?

Oregon does not have rules to implement the following federal standards and emission guidelines:

- a. Toxics of concern. EPA identified boilers and process heaters and stationary internal combustion engines as emitters of one or more hazardous air pollutants, including polycyclic aromatic hydrocarbon, a toxic of concern in Oregon that can cause red blood cell damage, leading to anemia, suppressed immune system and developmental and reproductive effects. EPA developed standards to regulate the amount of hazardous air pollutants these activities can produce to better protect public health.
- b. Sources that may endanger public health and welfare. EPA also identified stationary internal combustion engines, commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution as sources that cause or significantly contribute to air pollution and may endanger public health or welfare. EPA developed standards to regulate the amount of emissions these activities can produce to better protect public health.
- c. Federal emission guidelines. EPA established emission guidelines for commercial and industrial solid waste incineration units. States are required to develop rules and state plans to implement federal emission guidelines.
- d. Revised federal standards. EPA revised several standards since EQC's previous adoption of federal standards. Not adopting the most recent version of federal standards impacts Oregon businesses, because they may be subject to two different standards, the revised federal standards and the outdated state standards. Not adopting the most recent version of the federal standards also impacts the public and the environment, because DEQ cannot enforce federal standards not yet adopted by EQC.
- e. Implement recordkeeping requirements. In a previous rulemaking, EQC repealed rules that implement the federal emission guidelines for hospital, medical and infectious waste incinerators because analysis indicated there were no affected facilities in Oregon. Recent analysis indicates one facility in Oregon is required to keep records to avoid being an affected source under the federal emission guidelines. EPA informed DEQ it must adopt rules and submit a state plan to implement these recordkeeping requirements or take delegation of the federal plan.

How would the proposed rule address the need?

The proposed rules would update Oregon rules to reflect new and amended federal standards, adopt standards to implement the federal emission guidelines for commercial and industrial solid waste incineration units and adopt the federal plan for hospital, medical and infectious waste incinerators. This would advance DEQ's work to protect Oregonians from toxic pollutants by updating state rules to be consistent with federal rules.

- a. Toxics of concern. DEQ proposes adopting the new federal standards for boilers and process heaters and stationary internal combustion engines into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. For those source not required to have a DEQ permit, EPA would retain responsibility for enforcement, but DEQ would still assist with implementation by providing technical assistance through our small business assistance program.

b. Sources that may endanger public health and welfare. DEQ proposes adopting the new federal standards for commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution, by reference. This would give DEQ the authority to include the new federal requirements into Air Contaminant Discharge Permits.

DEQ also proposes adopting the new federal standards for stationary internal combustion engines into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. For those source not required to have a DEQ permit, EPA would retain responsibility for enforcement, but DEQ would still assist with implementation by providing technical assistance through our small business assistance program.

c. Federal emission guidelines. DEQ proposes adopting rules to implement the emission guidelines for commercial and industrial solid waste incineration units.

d. Revised federal standards. DEQ proposes adopting revised federal standards by reference.

e. Implement recordkeeping requirements. DEQ proposes adopting the federal plan for hospital, medical and infectious waste incineration units by reference.

How will DEQ know the need has been addressed?

Upon EQC adoption, DEQ would submit the rules to EPA to update Oregon's New Source Performance Standard and NESHAP delegation and request delegation of the federal plan for hospital, medical and infectious waste incinerators. DEQ would also submit a plan to EPA to implement the federal emission guidelines for commercial and industrial solid waste incineration units.

DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the delegation request and plan to implement the emission guidelines for commercial and industrial solid waste incineration units.

Documents Relied Upon, and where they are available:

Code of Federal Regulations

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Federal Register

<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

Oregon Administrative Rules

<http://www.deq.state.or.us/regulations/rules.htm>

Oregon Revised Statutes

<http://www.deq.state.or.us/regulations/statutes.htm>

Fiscal and Economic Impact:

EPA evaluates the impacts of new federal standards when promulgated and lists them in the regulation's preamble. The fiscal and economic impacts of the new federal standards included in this rulemaking have already occurred; however, DEQ anticipates there would be fiscal and economic impacts resulting from Oregon adopting new federal standards, because the adoption would trigger a requirement that affected businesses obtain a permit and pay permit fees.

To mitigate the impact of permitting on businesses affected by this rulemaking, some of which could be small businesses, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a lower cost simple or general permit instead of a standard permit.

The list of proposed new and amended National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards includes links to the federal rules and EPA's evaluation of fiscal and economic impacts in their preambles. The list is available at the bottom of this document or online at <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqfedregs.aspx>.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Impacts on public

Indirect impact: The proposed rules could affect the public indirectly if large and small businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit and paying permit fees.

Direct impact: The proposed rules would not affect the public directly.

Impact on other government entities other than DEQ

Direct impact: DEQ expects direct fiscal and economic impacts on local governments that operate facilities subject to federal emission standards would be the same as those estimated for small businesses.

Indirect impact: The proposed rules could have an indirect impact on local governments if large and small businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit or paying permit fees.

There would be an indirect impact on Oregon cities and counties when affected businesses that are required to have a permit request a Land Use Compatibility Statement. Local governments process those Land Use Compatibility Statements. Some cities and counties charge a fee to complete the Land Use Compatibility Statement and may have sufficient revenue to cover the added workload. Cities that do not charge a fee, or do not charge sufficient fees to cover their costs, may have new workload without adequate revenue. DEQ does not have available information to estimate these fiscal impacts.

Impact on DEQ ORS 183.335

Direct impact: Implementing the federal rules requires DEQ to provide technical assistance, amend permits, perform inspections and issue formal enforcement actions against violators. Revenue from permit fees would fund this work using existing staff.

Indirect impact: DEQ expects the indirect cost impacts on DEQ to be the same as those estimated for small businesses as discussed below.

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

DEQ expects any fiscal and economic impacts on large businesses to be the same as those estimated for small businesses as discussed below.

Impact on small businesses (those with 50 or fewer employees) ORS 183.336

Indirect impact: The proposed rules could have an indirect impact on small businesses if other businesses change the price of goods and services to offset any increased or decreased costs from obtaining a permit or paying a permit fee.

Direct impact: Small businesses might see increased or decreased costs due to the following proposed rules:

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Estimated number of small business subject to new federal standards and emission guidelines: boilers and process heaters (80), stationary internal combustion engines (70), commercial and industrial solid waste incineration units (5), nitric acid plants (0), and crude oil and natural gas production (0) and transmission and distribution (0)

Estimated number of small business subject to the amended federal standards: chemical manufacturing (2), electric utility steam generating units (0), chromium electroplating and anodizing (13), portland cement manufacturing (0), oil and natural gas production (0), pulp and paper industry (0), natural gas transmission and storage facilities (0), commercial and industrial solid waste incineration units (0), hospital, medical, and infectious waste incinerators (1), nitric acid plants (0), petroleum refineries (0), and onshore natural gas processing plants (0)

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Adoption of new and amended federal standards and rules to implement emission guidelines do not add any new reporting, recordkeeping and other administrative activities other than those already required by the federal standards and emission guidelines.

The requirement that businesses affected by the new federal standards for stationary internal combustion engines obtain a permit may increase the administrative activities or costs of professional services on small businesses. These activities include permit application preparation and any additional recordkeeping and reporting required in the permit to comply with other Oregon rules and regulations.

To mitigate administrative costs, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a lower cost simple or general permit instead of a standard permit.

c. Equipment, supplies, labor and increased administration required for compliance:

Adoption of new and amended federal standards and rules to implement emission guidelines would not require small businesses to add any equipment, supplies, labor or administration because Oregon rules would adopt the federal standards by reference. Rules to implement emissions guidelines would be identical to implementing federal guidelines.

The requirement that businesses affected by the new federal standards stationary internal combustion engines obtain a permit may require small businesses to add equipment, supplies, labor or administration to comply with other Oregon related rules and regulations. These rules and regulations include requirements to minimize visible emissions, fugitive emissions, particulate matter fallout, nuisances, and odors. To comply with these requirements, affected businesses may be required to install equipment and receive training to control and monitor emissions.

To mitigate the burden on small businesses, a separate rulemaking will propose to exempt some businesses from permitting and add other businesses to the list of business categories eligible to obtain a simple or general permit instead of a standard permit.

How were small businesses involved in the development of this rule?

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules identical to the federal emission guidelines. DEQ previously met with various groups representing small businesses to discuss DEQ's implementation strategy for the new area source NESHAPs.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

DEQ did not appoint an advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference and rules that are identical to the federal emission guidelines for commercial and industrial solid waste incineration units. However, DEQ did discuss outreach and implementation strategies for the boiler and stationary internal combustion engine requirements with Oregon's small business compliance advisory panel.

12-23-2013 5:00 p.m.	Maggie Vandehey	maggie.vandehey@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

FILED
11-15-13 10:06 AM
ARCHIVES DIVISION SECRETARY OF STATE