

Oregon Department of Environmental Quality

**September 13, 2013**

Notice of Proposed Rulemaking

Update Oregon’s air quality rules to address federal regulations

|  |
| --- |
|  **Overview** |

Short summary

The proposed rules would adopt new and amended federal air quality regulations. This includes adopting:

* new federal standards for boilers and process heaters, stationary internal combustion engines, commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution
* newly amended federal standards
* rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units; and adopting the federal plan for hospital, medical, and infectious waste incinerators

Brief history

The clean air act requires the U.S. Environmental Protection Agency to establish National Emission Standards for Hazardous Air Pollutants for both major and area sources of hazardous air pollutants. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011, but it may adopt additional NESHAPs in the future for new source categories or source categories it may have missed.

This rulemaking is the final phase for the Oregon Environmental Quality Commission adoption of area source standards. The first four phases concluded in December 2008, December 2009, February 2011, and March 2013.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause or significantly contribute to air pollution that may endanger public health or welfare. Such regulations apply to each new source within a category without regard to source location or existing air quality. When EPA establishes New Source Performance Standards for a category of sources, it may also establish emission guidelines for existing sources in the same category. States must develop rules and a state plan to implement Emission Guidelines or request delegation of the federal plan. State plans, called Section 111(d) plans, are subject to EPA review and approval.

EPA is required to perform a residual risk analysis for major source NESHAPs and periodic technology reviews for New Source Performance Standards and NESHAPs. These reviews are ongoing and in some cases result in EPA updating the standards.

EPA may also revise NESHAPs to address errors, implementation issues, and lawsuits.

Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New Source Performance Standards identified in the outline section below.

Outline

* + - 1. Adopt by reference:
1. New federal area source NESHAP for commercial, industrial and institutional boilers, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit
2. New federal major and area source NESHAP for stationary internal combustion engines, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit
3. New federal major source NESHAP for commercial, industrial and institutional boilers and process heaters
4. New federal New Source Performance Standards for stationary internal combustion engines, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit, and excluding the requirements for engine manufacturers
5. New federal New Source Performance Standards for nitric acid plants
6. New federal New Source Performance Standards for crude oil and natural gas production, transmission and distribution
7. Amended federal plan for hospital, medical, and infectious waste incinerators
	* + 1. Adopt rules to implement new federal Emission Guidelines for commercial and industrial solid waste incineration units; and
			2. Update the adoption by reference:
8. Amended federal area source NESHAP for chemical manufacturing
9. Amended federal major and area source NESHAP for chromium electroplating and anodizing
10. Amended federal major and area source NESHAP for portland cement manufacturing
11. Amended federal major and area source NESHAP for oil and natural gas production
12. Amended federal major source NESHAP for the pulp and paper industry
13. Amended federal major source NESHAP for natural gas transmission and storage facilities
14. Amended New Source Performance Standards for commercial and industrial solid waste incineration units
15. Amended New Source Performance Standards for portland cement plants
16. Amended New Source Performance Standards for petroleum refineries
17. Amended New Source Performance Standards for onshore natural gas processing plants

|  |
| --- |
|  **Statement of need** |

What problem is DEQ trying to solve?

EPA has identified boilers and process heaters and stationary internal combustion engines as emitters of one or more hazardous air pollutants, including mercury, a toxic of concern in Oregon that can impair neurological development and cause neurological damage. EPA developed standards to regulate the amount of hazardous air pollutants these activities can produce to better protect public health. The proposal addresses this by adopting the new federal standards into Oregon rules by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit. Unpermitted sources would still have to comply with the federal requirements; the federal requirements would just not be implemented by DEQ, but would be implemented by EPA on the federal level.

EPA has 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 which cause or significantly contribute to air pollution which may endanger public health or welfare. EPA developed standards to regulate the amount of emissions these activities can produce to better protect public health. The proposal addresses this by adopting the new federal standards by reference. In adopting the standards for stationary internal combustion engines, DEQ is proposing that the EQC: adopt the standards only for sources required to have a Title V permit or an Air Contaminant Discharge Permit; and exclude the requirements for engine manufacturers, which are better implemented by EPA on the federal level. Unpermitted sources and engine manufacturers would still have to comply with the federal requirements; the federal requirements would just not be implemented by DEQ, but would be implemented by EPA on the federal level. This would give DEQ the authority to include the new federal requirements into Air Contaminant Discharge Permits.

EPA has adopted amendments to several federal standards that are adopted by reference in Oregon's rules. DEQ cannot enforce standards that haven’t been adopted by the EQC. In order to maintain federal delegation, the EQC is required to adopt the most recent version of the federal standards. Affected businesses benefit by having DEQ implement federal standards locally. These benefits include technical assistance and quicker approval of requests for applicability determinations and alternative testing, monitoring, recordkeeping and reporting. The proposal addresses this by updating the adoption of existing federal standards by reference (i.e., by providing that the applicable federal regulations being adopted by reference are those approved as of July 1, 2013). In addition, adopting these standards benefits the public and the environment by allowing DEQ to ensure that the required emission reductions are achieved in Oregon.

EPA established emission guidelines for commercial and industrial solid waste incineration units. States are required to develop rules and state plans to implement Emission Guidelines or take delegation of the federal plan in lieu of developing rules and state plans. The proposal addresses this by adopting standards that are equivalent to and implement the federal Emission Guidelines.

In a previous rulemaking, the EQC repealed rules that implement the federal emission guidelines for hospital, medical and infectious waste incinerators, because it was thought there were no affected facilities in Oregon. It was recently discovered that a facility in Oregon is required to keep records to avoid being an affected source under the federal emission guidelines. Furthermore, EPA has informed DEQ that it must adopt rules and submit a state plan to implement these recordkeeping requirements or take delegation of the federal plan. The proposal addresses this by adopting the federal plan for hospital, medical and infectious waste incinerators by reference.

How would the proposed rule solve the problem?

The proposed rule changes would update DEQ’s 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 further DEQ’s strategic direction to protect Oregonians from toxic pollutants by updating state rules to be consistent with federal rules.

How will DEQ know the problem has been solved?

Upon EQC adoption, DEQ would submit the rules to EPA to update our 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.

Request for other options

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

|  |
| --- |
|  Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

 Air Quality Program Operations section

 Chapter 340 action

 Recommendation Division Rule Title

 amend 230 0010 Purpose

 amend 230 0020 Applicability

 amend 230 0030 Definitions

 amend 238 0040 Definitions

 amend 238 0060 Federal Regulations Adopted by Reference

 amend 244 0030 Definitions

 amend 244 0220 Federal Regulations Adopted by Reference

 adopt 230 0415 Adoption of Federal Plan by Reference

adopt 230 0500 Emission Standards for Commercial and Industrial Solid Waste Incineration Units

Statutory authority

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

Other authority

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)

|  |  |
| --- | --- |
| **Document title** | **Document location** |
| 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> |

Also see list of new and amended NESHAPs and NSPSs proposed for EQC adoption, which includes links to the Federal Register

|  |
| --- |
|  Fees  |

This rule proposal does not involve fees.

|  |
| --- |
|  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

New federal standards typically apply to affected businesses upon their promulgation by EPA. In other words, the fiscal and economic impacts of the new federal standards included in this rulemaking have already occurred. EPA evaluates the impacts of the standards and lists them in the preambles to the regulations.

DEQ anticipates that there would be fiscal and economic impacts as a result of the EQC adopting the new federal standards into Oregon law, because adopting them would trigger a requirement that affected businesses obtain a permit. However, in a separate but concurrent rulemaking, DEQ will propose rule changes that would, with the exception of stationary internal combustion engines, maintain the current permitting thresholds for businesses subject to the new federal standards included in this rulemaking. In other words, only owners or operators of larger stationary internal combustion engines would have to obtain a permit and pay permitting fees for the first time as a result of the EQC adopting the new federal standards. To mitigate the fiscal and economic impact on affected businesses, some of which may be small businesses, the separate but concurrent rulemaking will propose to add stationary internal combustion engines to the list of business categories eligible to obtain a simple or general permit instead of a standard permit. Simple and general permit fees are significantly less than standard permit fees.

Statement of Cost of Compliance

 Impacts on general public

Indirect impact: The general public could be indirectly impacted by the proposed rule changes as large and small businesses pass along increased or decreased costs resulting from obtaining a permit and paying permit fees in the form of price changes for goods and services.

Direct impact: The general public would not be directly affected by the proposed rule changes.

Impact on other government entities other than DEQ

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

Indirect impact: Local governments could be indirectly impacted by the proposed rule changes as large and small businesses pass along increased or decreased costs in the form of price changes for goods and services

All Oregon cities and counties could be indirectly impacted by the requirement that businesses affected by new federal requirements that own or operate a stationary internal combustion engines obtain a permit. This is because businesses throughout the state are required to submit a Land Use Compatibility Statement with their permit application, and local governments process those Land Use Compatibility Statements. Some cities and counties charge a fee to complete the Land Use Compatibility Statement and therefore may have sufficient revenue to cover the added workload. Those cities that don’t charge a fee, or that don’t charge sufficient fees to cover their costs, may have new workload without additional revenue. DEQ does not have adequate information to estimate these fiscal impacts at this time.

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

Direct impact: Implementing the federal rules require DEQ to provide technical assistance, amend permits, perform inspections and issue formal enforcement actions against violators. Existing staff funded by revenue from permit fees would implement this work.

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

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.

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

Indirect impact: Small businesses could be indirectly impacted by the proposed rule changes as other businesses pass along increased or decreased costs in the form of price changes for goods and services.

Direct impact: Small businesses might see increased or decreased costs due to the proposed rule changes and as follows:

1. Adopt by reference new federal New Source Performance Standards and NESHAPs.

DEQ anticipates that there would be no fiscal and economic impacts from adopting the new federal standards because the fiscal and economic impacts occurred when EPA adopted the rules. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

1. Adopt rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units.

DEQ anticipates that there would be no fiscal and economic impacts from adopting the standards to adopt the emission guidelines for commercial and industrial solid waste incineration units because DEQ proposes standards that are equivalent to the federal guidelines and the fiscal and economic impacts occurred when EPA adopted the guidelines. EPA has evaluated the fiscal and economic effects of their guidelines and lists those effects in the preambles to their regulations.

1. Adopt by reference the federal plan for hospital, medical and infectious waste incinerators.

DEQ anticipates that there would be no fiscal and economic impacts from adopting the federal plan for hospital, medical and infectious waste incinerators because the fiscal and economic impacts occurred when EPA adopted the plan. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

1. Update the adoption by reference of previously adopted NESHAPs and NSPSs.

DEQ anticipates that there would be no fiscal and economic impacts from updating previously adopted federal standards because the fiscal and economic impacts occurred when EPA adopted the rule amendments. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

In a separate rulemaking, DEQ will propose rule changes that would, with the exception of stationary internal combustion engines, maintain the current permitting thresholds for sources subject to the new federal standards proposed for adoption in this rulemaking. In other words, only owners or operators of stationary internal combustion engines would have to obtain a permit as a result of the EQC adopting the new federal standards. Specifically, owners or operators of engines rated between 373 and 500 kW used to generate electricity and engines rated at 373 kW or more used to run pumps and compressors would need to obtain a permit and pay permitting fees for the first time as a result of this rulemaking.

DEQ anticipates that permitting fees would have fiscal and economic impact on affected businesses. To mitigate the fiscal and economic impact on affected businesses, some of which may be small businesses, the separate rulemaking will propose to add stationary internal combustion engines to the list of business categories eligible to obtain a simple or general permit. Simple and general permit fees are significantly less than standard permit fees.

|  |  |
| --- | --- |
| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed 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), 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), petroleum refineries (0), and onshore natural gas processing plants (0). |

|  |  |
| --- | --- |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | 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 the impact, a separate rulemaking will allow businesses that own or operate a stationary internal combustion engines obtain lower costs simple or general permits. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | 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 the federal standards would be adopted by reference and the rules to implement the emissions guidelines will be identical to those emission 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 proposes to allow businesses that own or operate a stationary internal combustion engines to obtain lower cost simple or general permits. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | DEQ did not hold an official 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. DEQ previously met with various groups representing small businesses to discuss DEQ’s implementation strategy for the new area source NESHAPs. |

Documents relied on for fiscal and economic impact

|  |  |
| --- | --- |
| **Document title** | **Document location** |
| 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> |

Advisory committee

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.

Housing cost

To comply with [ORS 183.534](http://www.leg.state.or.us/ors/183.html), DEQ determined the proposed rules would not 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.

|  |
| --- |
|  **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

The proposed rules adopt the federal New Source Performance Standards and NESHAPs by reference, adopts standards that are equivalent to the federal emission guidelines for commercial and industrial solid waste incineration units, and adopts the federal plan for hospital, medical, and infectious waste incinerators.

DEQ proposes that the EQC: adopt the federal standards for commercial, industrial and institutional boilers and stationary internal combustion engines by reference, but only for sources required to have a Title V permit or an Air Contaminant Discharge Permit: and not adopt the requirements for stationary internal combustion engine manufacturers. Unpermitted sources and engine manufacturers would still have to comply with the federal requirements; the federal requirements would just not be implemented by DEQ, but would be implemented by EPA on the federal level.

DEQ proposes that EQC not adopt the requirements for engine manufacturers because EPA is in a better position to implemented these requirements on the federal level than DEQ.

What alternatives did DEQ consider, if any?

DEQ considered:

* not taking delegation for some federal standards. DEQ accepted this alternative, for sources subject to the federal standards for commercial, industrial and institutional boilers and stationary internal combustion engines and not required to have a Title V permit or an Air Contaminant Discharge Permit, because DEQ does not have the resources to implement these federal standards for sources not required to have a permit and pay permitting fees. DEQ rejected this alternative for sources required to have a permit because of the importance of having all requirements applying to a source in the permit and ensuring that the source is in compliance with those requirements.
* not adopting standards to implement the federal emission guidelines for commercial and industrial solid waste incineration units. However, DEQ rejected this alternative because it would reduce DEQ’s ability to ensure compliance and provide assistance to Oregon sources.
* implementing the federal requirements for manufacturers of stationary internal combustion engines. However, DEQ rejected this idea because engine manufacturers are located out of state, making it difficult for DEQ to implement the requirements.
* making state specific changes to some federal standards, but rejected this alternative because the federal rules address Oregon’s immediate concerns and consistency with the federal rules reduces cost and complexity for affected sources.

|  |
| --- |
|  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 will implement the proposed standards for major source categories through DEQ’s Title V Operating Permit program and the standards for non-major source categories through DEQ’s Air Contaminant Discharge Program, which are existing programs that are considered land-use programs in the DEQ State Agency Coordination Program.

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. DEQ would implement these rules through the Air Contaminant Discharge Program and Title V permitting programs. Currently, pursuant to EQC rules, cities and counties must provide a Land Use Compatibility Statement before DEQ issues these permits or approves a Notice of Construction.

|  |
| --- |
|   Stakeholder and public involvement |

 Advisory committee

 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.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ did not present additional information specific to this proposed rule revision beyond the annual rulemaking plan and the monthly report.

Public notice

The Oct. 1, 2013 *Oregon Bulletin* will publish the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking. DEQ also:

* Will post notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on Sep. 13, 2013.
* E-mail notice to:
* Interested parties through GovDelivery on Sep. 13, 2013.
* Parties affected by the new and amended federal air quality regulations..
* Key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on Sep. 13, 2013, including:
	+ Jules Bailey, Chair, House Energy and Environment Committee
	+ Jackie Dingfelder, Chair, Senate Environment and Natural Resources Committee
* Mail notice to parties affected by the new and amended federal air quality regulations.
* Send notice to EPA on Sep. 3, 2013.

Public hearings

DEQ plans to hold one public hearing in Portland. If unable to attend the hearing in person, you can also participate by conference line at the locations shown in the table below. The table below also includes information about how to participate in the public hearings.

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

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

****

Close of public comment period

The comment period will close on Oct. 31, 2013 at 5:00 p.m.