

Oregon Department of Environmental Quality

**July 15, 2013**

Notice of Proposed Rulemaking

Update Oregon’s air quality rules to address federal regulations

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| **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 reciprocating internal combustion engines, commercial and industrial solid waste incineration units, nitric acid plants, and crude oil and natural gas production, transmission and distribution; adopting newly amended federal standards; and adopting rules to implement new federal emission guidelines for commercial and industrial solid waste incineration units.

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 they may adopt additional NESHAPs in the future for new source categories or source categories they may have missed.

DEQ is proposing the area source standards for adoption by the EQC in five phases. The first three phases concluded in December 2008, December 2009, February 2011, and March 2013. This rulemaking is phase five of five.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources which cause or significantly contribute to air pollution which 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 are required to develop rules and a state plan to implement Emission Guidelines. These plans are called Section 111(d) plans and 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 making the standards more stringent.

EPA may also revise NESHAPs to address errors, implementation issues, and lawsuits. The adoption of new and amended NESHAPs is an ongoing process.

Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New 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
2. New federal major and area source NESHAP for stationary reciprocating internal combustion engines
3. New federal major source NESHAP for commercial, industrial and institutional boilers and process heaters
4. New federal New Source Performance Standards for stationary reciprocating internal combustion engines, excluding the requirements for engine manufacturers
5. New federal New Source Performance Standards for commercial and industrial solid waste incineration units
6. New federal New Source Performance Standards for nitric acid plants
7. New federal New Source Performance Standards for crude oil and natural gas production, transmission and distribution
   * + 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

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| **Statement of need** |

What problem is DEQ trying to solve?

EPA has identified boilers and process heaters and stationary reciprocating 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 by reference.

EPA has also identified stationary reciprocating 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 reciprocating internal combustion engines, DEQ is proposing that the EQC not adopt the requirements for equipment manufacturers, which are better implemented by EPA on the federal level.

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. 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 a state plans to implement Emission Guidelines. The proposal addresses this by adopting standards that are equivalent to and implement the federal Emission Guidelines.

How would the proposed rule solve the problem?

The proposed rule changes would update DEQ’s rules to reflect new and amended federal standards and adopt standards to implement the federal Emission Guidelines for commercial and industrial solid waste incineration units. This will further DEQ’s strategic direction to protect Oregonian’s from toxic pollutants by updating our rules so they are consistent with federal rules.

How will DEQ know the problem has been solved?

Upon adoption by the EQC, DEQ will submit the rules to EPA to update our New Source Performance Standard and NESHAP delegation. DEQ will 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 requested public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Air Quality Program Operations section

Chapter 340 action

Recommendation Division Rule Title SIP/Land use\*

amend 230 0010 Purpose Choose an item.

amend 230 0020 Applicability Choose an item.

amend 230 0030 Definitions Choose an item.

amend 238 0040 Definitions Choose an item.

amend 238 0060 Federal Regulations Adopted by

Reference Choose an item.

amend 244 0030 Definitions Choose an item.

amend 244 0220 Federal Regulations Adopted by

Reference Choose an item.

adopt 230 0415 Adoption of Federal Plan by Reference Choose an item.

adopt 230 0500 Purpose Choose an item.

adopt 230 0502 Compliance Schedule Choose an item.

adopt 230 0504 Affected CISWI Units Choose an item.

adopt 230 0506 Increments of Progress and Achieving

Final Compliance Choose an item.

adopt 230 0506 Table 5 Choose an item.

adopt 230 0508 Closing a CISWI Unit Choose an item.

adopt 230 0510 Waste Management Plan Choose an item.

adopt 230 0512 Operator Training and Qualification

Requirements Choose an item.

adopt 230 0514 Site-Specific Documentation Choose an item.

adopt 230 0516 Requirements if Qualified Operators

Temporarily Not Accessible Choose an item.

adopt 230 0518 Emission Limitations Choose an item.

adopt 230 0518 Table 6 Choose an item.

adopt 230 0518 Table 10 Choose an item.

adopt 230 0518 Table 11 Choose an item.

adopt 230 0518 Table 12 Choose an item.

adopt 230 0518 Table 13 Choose an item.

adopt 230 0520 Operating Limits Choose an item.

adopt 230 0520 Table 7 Choose an item.

adopt 230 0522 Affirmative Defense for Violation of

Emission Standards During Malfunction Choose an item.

adopt 230 0524 Initial and Annual Performance Testing Choose an item.

adopt 230 0524 Table 8 Choose an item.

adopt 230 0526 Demonstrating Initial Compliance Choose an item.

adopt 230 0528 Demonstrating Continuous Compliance Choose an item.

adopt 230 0530 Monitoring Equipment and Parameters Choose an item.

adopt 230 0532 Monitoring Data Choose an item.

adopt 230 0053 Recordkeeping Choose an item.

adopt 230 0536 Reports Choose an item.

adopt 230 0536 Table 9 Choose an item.

adopt 230 0538 Title V Operating Permit Choose an item.

adopt 230 0540 Air Curtain Incinerator Choose an item.

adopt 230 0542 Increments of Progress and Achieving

Final Compliance Choose an item.

adopt 230 0544 Closing an Air Curtain Incinerator Choose an item.

adopt 230 0546 Emission Limitations for Air Curtain

Incinerators Choose an item.

adopt 230 0548 Monitoring Opacity for Air Curtain

Incinerators Choose an item.

adopt 230 0550 Recordkeeping and Reporting for Air

Curtain Incinerators Choose an item.

\* 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.

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)

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| **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> |

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| Fees |

This rule proposal 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

DEQ anticipates that there will be no fiscal and economic impacts as a result of 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. However, adopting the new federal would trigger a requirement that affected sources obtain a permit. In a separate rulemaking, DEQ is proposing rule changes that would, with the exception of stationary reciprocating 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 reciprocating internal combustion engines would have to obtain a permit as a result of adopting the new federal standards.

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 reciprocating internal combustion engines to the list of business categories eligible to obtain a simple or general permit. 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 complying with the new federal standards, 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 reciprocating 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 will require DEQ to provide technical assistance, amend permits, perform inspections, and issue formal enforcement actions against violators. This work will be implemented by existing staff, funded by revenue from permit fees.

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

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

Any fiscal and economic impacts on large businesses are expected 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 will be no fiscal and economic impacts as a result of 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 will be no fiscal and economic impacts as a result of adopting the standards to adopt the Emission Guidelines for commercial and industrial solid waste incineration units because DEQ is proposing to adopt 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. Update the adoption by reference of previously adopted NESHAPs and NSPSs.

DEQ anticipates that there will be no fiscal and economic impacts as a result of 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 is proposing rule changes that would, with the exception of stationary reciprocating 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 reciprocating internal combustion engines would have to obtain a permit as a result of 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 reciprocating internal combustion engines to the list of business categories eligible to obtain a simple or general permit. General permit fees are significantly less than standard permit fees.

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| 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 reciprocating internal combustion engines (), 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. | The 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 reciprocating 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 reciprocating 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. | The 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 reciprocating 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 reciprocating 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

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| **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.

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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

The proposed rule adopts the federal New Source Performance Standards and NESHAPs by reference and adopts standards that are equivalent to the federal Emission Guidelines for commercial and industrial solid waste incineration units. However, in adopting the federal New Source Performance Standards for stationary reciprocating internal combustion engines, DEQ is proposing that the EQC not adopt the requirements for engine manufacturers. 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 is proposing that the EQC not adopt the requirements for engine manufacturers, because DEQ is not in a position to implement those requirements and they are better implemented by EPA on the federal level.

What alternatives did DEQ consider, if any?

DEQ considered not taking delegation for some federal standards and not adopting standards that are equivalent to the federal Emission Guidelines for commercial and industrial solid waste incineration units. However, DEQ rejected this alternative because it would reduce compliance and assistance to Oregon sources. DEQ also considered implementing the federal requirements for manufacturers of stationary reciprocating 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. DEQ considered 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.

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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[🞂](http://deq05/intranet/working/guidance/stateAgencyCoordinationProgram10-MSD-009.pdf) 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 ACDP 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 will implement these rules through the ACDP 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.

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

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on July 15, 2013.
* E-mailed notice to:
* Approximately #### interested parties through GovDelivery on July 15, 2013.
* #### stakeholders on the [LIST OTHER MAILING LIST].
* 3 key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on Jul. 15, 2013. Key legislators included:
  + Jules Bailey, Co-Chair, House Energy, Environment and Water Committee, Committee
  + Jackie Dingfelder, Chair, Senate Environment and Natural Resources Committee
  + Vic Gilliam, Co-Chair, House Energy, Environment and Water Committee
* Mailed the notice by U.S. Postal Service to ## interested parties on July 15, 2013.
* Sent notice to EPA on Jul. 12, 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.

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Close of public comment period

The comment period will close on Aug. 29, 2013 at 05:00 p.m.