Oregon Department of Environmental Quality

 October 14-15, 2015

 Oregon Environmental Quality Commission Meeting

Rulemaking Action Item: ???

**Update to Oregon State Implementation Plan for Annual Fine Particulate Matter (PM 2.5) standard; Amend Definition of National Ambient Air Quality Standards to include PM 2.5; and Address the Interstate Transport of Nitrogen Dioxide (NO2), Sulfur Dioxide (SO2), Lead (Pb) and Fine Particulate Matter (PM 2.5)**

|  |
| --- |
| DEQ recommendation to the EQC  |

## Oregon must update its Clean Air Act State Implementation Plan to ensure that DEQ has the authority to implement the current National Ambient Air Quality Standards for PM 2.5. These proposed rule amendments update infrastructure elements of Oregon’s State Implementation Plan and allow DEQ to request that the U.S. Environmental Protection Agency approve the revised Oregon State Implementation Plan.

|  |
| --- |
| Overview |

Short summary

## Enter a short high-level summary about what we propose. It needs to be factual and impartial. Use bullets to help your readers pick up the gist of our proposal at a glance. Do not include supporting evidence or justification for why we are proposing the rules though you may refer to the Statement of need section from more details.

*EXAMPLE:*

*DEQ proposes rules to increase water quality fees by 2.9 percent for individuals, businesses and government agencies that hold the following permits effective Nov. 1 2014:*

* *National Pollutant Discharge Elimination System permits*
* *Water Pollution Control Facility permits*
* *Water Pollution Control Facility permits specific to onsite septic systems*

DEQ proposes the Oregon Environmental Quality Commission approve the proposed rules for incorporation into the Oregon Clean Air Act State Implementation Plan and submittal to the U.S. Environmental Protection Agency for its approval under the federal Clean Air Act. After the public notice period, DEQ will submit the proposed rules to EQC for approval. Following the commission’s approval, DEQ will submit the proposed rules to EPA for its approval.

The proposed rule amendments incorporate a revised annual National Ambient Air Quality Standard for PM 2.5 and amend the definition of NAAQS to include PM 2.5 in Oregon’s administrative rule. These changes will allow Oregon to meet Clean Air Act requirements and request that EPA approve Oregon’s revised State Implementation Plan.

The proposal includes the following actions:

* Amend Oregon Administrative Rule 340-200-0040 to update the Oregon Clean Air Act State Implementation plan. If EQC adopts the amendments, the actions proposed in this rulemaking will be incorporated into and made part of the Oregon SIP.
* Amend OAR 340-202-0060(3) to incorporate the annual national primary ambient air quality standard for PM 2.5, adopted by the EPA, Dec.14, 2012, and effective on March 18, 2013.
* Amend OAR 340-250-0030(22) to include PM 2.5 as part of the definition of NAAQS.

In addition to the rule amendments outlined above, a “crosswalk” titled “Infrastructure SIP Submittal for Purposes of Clean Air Act Sections 110(a)(1) and (2) for the 2012 PM 2.5 NAAQS” is included with this proposal. The crosswalk is attached to this notice as Attachment B. The crosswalk identifies existing Oregon Administrative Rules and corresponding Oregon Revised Statutes that demonstrate DEQ has the necessary authorities in place to implement requirements of Sections 110(a)(1) and (a)(2) of the CAA with respect to the current NAAQS for PM 2.5. They are included for EQC approval and submittal to EPA as documentation that the infrastructure elements of the Oregon SIP meet the requirements of the CAA as they relate to the PM 2.5 NAAQS.

Section 110 of the clean Air Act, 40 USC §7410, requires state and local air pollution control agencies to adopt federally approved control strategies to minimize air pollution. The resulting body of regulations is known as the State Implementation Plan, or more commonly called a “SIP”

State Implementation Plans serve two main purposes:

To demonstrate that the state has the basic air quality management program components in place to implement new or revised NAAQS; and

To identify the emissions control requirements that state will rely upon to attain and/or maintain the primary and secondary NAAQS

All states are required to submit SIPs with general infrastructure elements showing the state has the capacity to implement new or revised NAAQS. Infrastructure SIP submittals must include the basic program requirements for managing air quality required in Section 110(a)(2) of the Clean Air Act (CAA), as listed in Figure 1 below.

Brief history

Section 110 of the CAA, 42 U.S.C. §7410, requires state and local air pollution control agencies to adopt federally approved control strategies to minimize air pollution. The resulting body of regulations is known as the State Implementation Plan, or more commonly called a “SIP.”

SIPs serve two main purposes:

1. To demonstrate that the state has the basic air quality management program components in place to implement new or revised NAAQS; and
2. To identify the emissions control requirements the state will rely upon to attain and/or maintain the primary and secondary NAAQS.

All states are required to submit SIPs with general infrastructure elements showing the state has the capacity to implement new or revised NAAQS. Infrastructure SIP submittals must include the basic program requirements for managing air quality required in Section 110(a)(2) of the CAA as listed in Table 1 below.

**Table 1: Required Infrastructure Elements Tracked for Each State**

|  |  |
| --- | --- |
| Section 110(a)(2)(A) | Emission limits and other control measures  |
| Section 110(a)(2)(B) | Ambient air quality monitoring/data system  |
| Section 110(a)(2)(C) | Program for enforcement of control measures  |
| Section 110(a)(2)(D)(i) | I Prong 1: Interstate transport - significant contribution  |
| Section 110(a)(2)(D)(i) | I Prong 2: Interstate transport - interfere with maintenance  |
| Section 110(a)(2)(D)(i) | II Prong 3: Interstate transport - prevention of significant deterioration  |
| Section 110(a)(2)(D)(i) | II Prong 4: Interstate transport - protect visibility |
| Section 110(a)(2)(D)(ii) | Interstate and international pollution abatement  |
| Section 110(a)(2)(E) | Adequate authority and resources  |
| Section 110(a)(2)(F) | Stationary source monitoring system  |
| Section 110(a)(2)(G) | Emergency power  |
| Section 110(a)(2)(H) | Future SIP revisions Section 110(a)(2)(J) Consultation with government officials; Public notification; PSD and visibility protection  |
| Section 110(a)(2)(K) | Air quality modeling/data Section 110(a)(2)(L) Permitting fees  |
| Section 110(a)(2)(M) | Consultation/participation by affected local entities  |

The Clean Air Act requires the EPA to set National Ambient Air Quality Standards for widespread pollutants from numerous and diverse sources considered harmful to public health and the environment. The Act established two types of standards. Primary standards set limits to protect public health, including the health of "sensitive" populations such as asthmatics, children and the elderly. Secondary standards set limits to protect public welfare, including protection against visibility impairment, damage to animals, crops, vegetation and buildings. The Act requires periodic review of the science on which the standards are based and the standards themselves.

SIPs generally establish emission limits or work practice standards to minimize emissions of air pollutants (and their precursors) for which EPA has issued air quality criteria (the “criteria pollutants”). The six current criteria pollutants are sulfur oxides (sulfur dioxide as indicator), particulate matter, oxides of nitrogen (nitrogen dioxide as indicator), lead, carbon monoxide and ozone. EPA has established NAAQS for these pollutants and updated these standards over time. As the standards change, states must submit revisions to the infrastructure elements of their SIPs to reflect these changes.

On Dec. 14, 2012, EPA revised the annual national primary ambient air quality standard for PM 2.5 to protect the public from adverse health effects, as appropriate under CAA Section 109. EPA revised the annual NAAQS for fine particle to 12.0 micrograms per cubic meter (µ/m3) and retained the 24-hour fine particle standard of 35 µ/m3 and secondary annual fine particulate standard of 15 µg/m3.

Main Functions of a State Clean Air Act Implementation Plan

Three overarching activities occur when a NAAQS is added or revised, as summarized below:

* Within two years of revising the NAAQS for a criteria pollutant, EPA is required to identify or “designate” areas as meeting (attainment areas) or not meeting (nonattainment areas) the standard. Designations are based on the most recent set of air monitoring data. (*See* CAA Section 107(d)(1)(B); 42 U.S.C. § 7407(d)(1)(B).)
* Within three years of EPA designations, all states must submit revisions to their state implementation plans to show they have the basic air quality management program components in place to implement a new or revised NAAQS, as specified in CAA section 110. These plans are often called "infrastructure SIPs.” (*See* CAA Section 110(a)(1); 42 U.S.C. § 7410(a)(1)).
* Within three years of area designations, states are required to submit nonattainment area SIPs to EPA for any criteria pollutant for which the standard is not met. Each nonattainment area SIP must outline the strategies and emissions control measures that show how the area will improve air quality and meet the national ambient air quality standards. (*See* CAA Section 172; 42 U.S.C. § 7502.)

**Table 2: EPA Area Designations for Revised PM 2.5 NAAQS in Oregon**

|  |  |
| --- | --- |
| 2014 PM 2.5(Annual) | EPA designated all of Oregon as unclassifiable/attainment in a final rule published on 1/15/15 (80 Federal Register 2206), effective 4/15/2015 |
| 2009 PM 2.5(24 hour) | EPA designated Klamath Falls and Oakridge as nonattainment in a final rule published on 11/13/09 (74 Federal Register 58688), effective 12/14/2009 |

Air Quality Monitoring

DEQ conducts ambient air quality monitoring as Title 40, Code of Federal Regulations section 58.10 specifies. This rule requires state and local air quality agencies to develop and submit an annual ambient air quality monitoring network plan to EPA by July 1 of each year. The DEQ ambient air quality monitoring network is designed in response to EPA’s National Monitoring Strategy to meet the five basic monitoring objectives federal regulations specify:

(1) To determine highest concentrations expected to occur in the area covered by the network;

(2) To determine representative concentrations in areas of high population density;

(3) To determine the impact of significant sources or source categories on ambient pollution levels;

(4) To determine general background concentration levels; and

(5) To determine transport characteristics into and out of airsheds.

DEQ monitors ambient air concentrations of PM 2.5 throughout Oregon. The state meets the annual PM 2.5 standard all across the state and all areas are in attainment. Federal reference monitors are located in:

* Medford
* Grants Pass
* Portland Metro Area (Portland and Hillsboro)
* Eugene/Springfield
* Oakridge
* Cottage Grove
* Klamath Falls
* Lakeview
* Burns
* Prineville

|  |
| --- |
| **Figure 1: Annual PM2.5 Standard Comparison in Oregon** |
|  |

Infrastructure SIP submittals

This proposal addresses the CAA requirement that states must submit infrastructure SIPs within three years of a NAAQS revision to demonstrate they have the basic air quality program components in place to implement the revised NAAQS. The proposed rule amendments are needed to ensure DEQ has the necessary authority to enforce and implement the latest national standards for PM 2.5.

The proposed rule amendments would revise the existing ambient air quality standards for PM 2.5 under Oregon Administrative Rule chapter 340, division 202 to reflect the annual NAAQS for fine particles (PM2.5) EPA adopted.

Regulated parties

The proposed amendment of Oregon Administrative Rule 340-200-0040 to incorporate the latest NAAQS for PM 2.5 into the State of Oregon Clean Air Act Implementation Plan does not add or remove any parties regulated by DEQ. However, it does reflect meeting a more restrictive test.

Request for other options

DEQ must adopt the proposed rule amendments to allow DEQ’s implementation of the NAAQS for this pollutant and to enable DEQ to request that EPA approve the proposed amendments as revisions to the Oregon SIP. The proposed rule amendments are necessary to update infrastructure elements of the Oregon SIP by incorporating the revised national standards for PM 2.5 in order to comply with the requirements of the Clean Air Act. Therefore, DEQ has not requested input for other options.

DEQ welcomes public comments on any aspect of this proposed rulemaking during the public comment period.

|  |
| --- |
| Crosswalk Submittal and Interstate TransportCrosswalk Submittal, Interstate Transport |

## Infrastructure SIP: Other documentation

Crosswalk: In addition to the rule amendments described above, DEQ is submitting what is referred to as a “crosswalk” for EQC approval and submittal to EPA (Attachment B). A separate crosswalk is provided for PM 2.5 with this rulemaking proposal, addressing the required infrastructure SIP elements of CAA Section 110(a)(2)(A) - 110(a)(2)(M). DEQ developed the crosswalk in collaboration with EPA Region 10. The crosswalk is included with this proposal for EQC approval and submittal to EPA as DEQ’s demonstration that the Oregon SIP meets the infrastructure requirements to implement, maintain and enforce the annual NAAQS for PM 2.5 as specified in Section 110 of the Clean Air Act. The crosswalk addresses the required infrastructure elements of Section 110(a)(1) and 110(a)(2). While the crosswalk is not considered part of the official record of Oregon’s SIP, it is proposed for submittal to EPA as a reference tool to demonstrate how applicable Oregon Administrative Rules and authorizing Oregon Revised Statutes correspond to and satisfy federal CAA Section 110(a)(1) and (a)(2) requirements for Infrastructure SIP submittals. DEQ has made an effort to include the relevant Oregon Administrative Rules and corresponding Oregon Revised Statutes in the crosswalks for ease of reference. However, it should be noted that the official record of Oregon Administrative Rules that constitute the federally-approved Oregon State Implementation Plan is listed in subpart MM of 40 C.F.R, part 52.

Interstate Transport: The interstate transport provision in the CAA, section 110(a)(2)(D)(i), (also called “the good neighbor” provision) requires each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. This section of the SIP is due within three years of the EPA establishing a new or revised NAAQS. DEQ’s State Implementation Plan addresses the interstate transport of PM 2.5. **Note:** The interstate transport submittal also addresses Sulfur Dioxide (SO2), Nitrogen Dioxide (NO2) and Lead (Pb) SIP standards updated in 2013. (Attachment C).

|  |
| --- |
| Statement of Need |

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

## What need would the proposed rule address?

## States have a legal obligation under the Clean Air Act to amend their administrative rules to adopt new or revised NAAQS and incorporate these standards into their State Clean Air Act Implementation Plans. Amendments to Oregon Administrative Rule are needed to incorporate the annual NAAQS for fine particulate matter (PM 2.5) into the DEQ standard and to revise the definition of NAAQS to incorporate PM 2.5 into the Oregon SIP.

How would the proposed rule solve the problem?

The proposed rule amendments will incorporate the annual NAAQS for PM 2.5, as the CAA requires, as well as revise the Oregon Administrative Rule definition of NAAQS to incorporate PM 2.5 for clarification. If adopted, these proposed rule amendments will allow DEQ to submit the revised infrastructure SIP requirements to the U.S. Environmental Protection Agency for approval as revisions to the Oregon SIP.

How will DEQ know the problem has been solved?

Once EQC adopts them, DEQ will file the proposed rule amendments with the Secretary of State and submit them to EPA for approval as documentation of the updates made to the Oregon SIP. DEQ will know the problem has been solved when EPA approves the updated infrastructure elements of Oregon’s SIP and those elements are published in the Federal Register.

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

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

## **Lead division Program or activity**

Environmental Solutions Air Planning

## **Chapter 340 action**

## Amend OAR 340-200-0020; OAR 340-202-0060(3); OAR 340-250-0030(22)

## **Statutory authority**

ORS 468 and 468A

## **Statute implemented**

ORS 468A

**Documents relied on for rulemaking**

List principal documents, reports or studies relied on to develop this proposal. Include the location where the documents are available for public inspection. If the list is extensive, you may identify where the complete list is located.

|  |  |
| --- | --- |
| Document title | Document location |
|  |  |
| Infrastructure and Interstate Transport SIPS (EPA) | <http://www.epa.gov/airquality/urbanair/sipstatus/reports/or_infrabypoll.html> |
| Interstate Transport Technical Support Documents (EPA) | [http://www.regulations.gov/#!documentDetail;D=EPA-R10-OAR-2011-0446-0012](http://www.regulations.gov/%23%21documentDetail;D=EPA-R10-OAR-2011-0446-0012) |
| 2011 Oregon Title V Emissions Inventory (DEQ) | Document available upon request from DEQ Headquarters, 811 SW 6th Ave. Portland, OR 97024 |
| TRAACS database query for large businesses (DEQ)  | Document available upon request from DEQ Headquarters, 811 SW 6th Ave. Portland, OR 97024Document available upon request from DEQ Headquarters 811 SW 6th Ave. Portland, OR 97204 |
| 2013 Oregon Annual Ambient Air Monitoring Network Plan (DEQ) | <http://www.deq.state.or.us/aq/forms/2013AQMonNetPlan.pdf> |

|  |
| --- |
| Fee Analysis |

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

This rulemaking does not involve fees.

|  |
| --- |
| Statement of fiscal and economic impact |

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

For proposals that address numerous issues, the core team may use one of the methods under the Statement of Need section to clarify how this section applies to the disparate elements of this rulemaking.

[LINK](file://deqhq1/Rule_Resources/i/4-Fiscal.pdf) to review the Statement of Fiscal Impact Q-Card for this section.

Fiscal and Economic Impact

At a very high level, summarize proposed rules that would or could create an impact.

This proposal would have a fiscal impact on DEQ to the extent that resources are necessary to implement the new PM 2.5 NAAQS. DEQ’s current budget includes resources to implement the NAAQS monitoring program as well as conduct planning, technical analysis and monitoring, rulemaking, and community outreach activities as needed if compliance problems with federal NAAQS occur in the future. States are routinely required to incorporate federal revisions to the NAAQS into their rules and subsequently revise their State Implementation Plans to address related infrastructure elements. The CAA requires EPA to revise the national standards for a criteria pollutant when new information is available to suggest a more protective standard is necessary to protect public health and welfare.

There may be a fiscal impact on new and modified industrial sources or other emissions source categories in Oregon if controls or strategies are needed to meet the more stringent standard. If such controls are needed DEQ will do an analysis of the fiscal and economic impacts at that time.

Statement of Cost of Compliance

For each entity below, consider both positive and negative impact in the description of the estimated fiscal and economic impacts and costs to comply with the proposed rules. If there is no impact, describe why there is no impact – it is not enough to say, “There is no fiscal impact.” If unable to estimate or quantify the impact, say something like, “DEQ is unable to quantify the impact at this time because …” then explain why. It is OK to say we do not have available data to make this estimate. Rather than repeat identical impacts, its OK to reference the impact on other entities such as, “For large businesses, the cost to comply with the proposed rules is identical to costs described under small businesses. Do not change the order of the entities in the list below because it aligns with our electronic filing with Secretary of State.

**State and Federal Agencies; Local Governments; Public; Large Businesses**

Because the NAAQS are federal requirements under the CAA, DEQ is required to adopt and implement these standards in Oregon. In adopting its amended requirements, the federal government evaluated the potential fiscal impact and that impact has already been imposed when the federal government adopted these rule changes.

**Small Businesses**

Because the NAAQS are federal requirements under the CAA, DEQ is required to adopt and implement these standards in Oregon. In adopting its amended requirements, the federal government evaluated the potential fiscal impact and that impact has already been imposed when the federal government adopted these rule changes.

|  |  |
| --- | --- |
| a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.  | DEQ is unable to determine this based on available information. |
| b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | DEQ is unable to determine this based on available information.EXAMPLE: No additional activities are required to comply with the proposed rules. All manufacturers already pay registration fees |
| c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | EXAMPLE: No additional resources are required for compliance with the proposed rules. All manufacturers already pay registration fees. DEQ is unable to determine this based on available information.DEQ is unable to determine this based on available information. |
| d. Describe how DEQ involved small businesses in developing this proposed rule. | EXAMPLE: DEQ included small business representatives on the Oregon E-Cycles Registration Fee Advisory Committee that advised DEQ on the cost of compliance for small businesses. DEQ also provided rulemaking notice to all manufacturers registered with Oregon E-Cycles and fee-payers. These groups included small businesses. DEQ is unable to determine this based on available information. |

Documents relied on for fiscal and economic impact

None were necessary.

## Advisory committee

## To meet Administrative Procedures Act requirements, DEQ describers stakeholder and public involvement at this location even though it may duplicate advisory committee information described under the *Stakeholder and public involvement* section below.

OPTION 1

OPTION 2

DEQ did not appoint an advisory committee for the proposed permanent rule amendments. This rulemaking proposal is necessary to align Oregon Administrative Rules with federally revised NAAQS under the CAA. The proposed changes are required to demonstrate that Oregon DEQ has the appropriate rules, programs and agreements in place to implement the CAA. As such, there was no policy choice to be made which an advisory committee’s input could help inform. Enter statement describing why DEQ did not convene and advisory committee – be brief.

## Housing cost

 **OPTION 2** – no impact

To comply with [ORS 183.534](http://www.oregonlaws.org/ors/183.534), 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. Enter reason why these parcels are not involved here – be brief. EXAMPLE: The proposed rules only affect manufacturers of electronic devices sold in or into Oregon.

|  |
| --- |
| Federal relationship |

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

"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 ...." [ORS 183.332](http://www.oregonlaws.org/ors/183.332)

For proposals that address numerous issues, use one of the methods under the Statement of Need section above if needed to clarify numerous and disparate elements of this rulemaking

## Relationship to federal requirements

This section complies with [OAR 340-011-0029](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html) and [ORS 468A.327](http://www.oregonlaws.org/ors/468A.327) to clearly identify the relationship between the proposed rules and applicable federal requirements.

Select the option below that applies to this rulemaking. Some proposals may need multiple options. Delete text under options not used for this rulemaking.

The purpose of the Federal Relationship form is to highlight the substantive differences between DEQ's rules and federal rules, not to explain every minor difference and trivial details such as DEQ using a different word than EPA.

**OPTION 1** – verbatim or by reference

The proposed rules would incorporate the federal regulation 40 C.F.R., Section 50.18, national primary ambient air quality standards for PM2.5 (particles with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers). select item from list >

Enter description that includes the name and citation here – be brief.OPTION 2– substantively equivalent to federal requirements

## What alternatives did DEQ consider if any?

Enter description about why DEQ did not pursue these alternatives. If other parts of this document describes alternatives considered, DOJ advises us to duplicate the information here. DEQ must adopt the proposed rule amendments to allow it to implement national ambient air quality standards for PM 2.5 and to allow the agency to ask EPA to approve the proposed amendments as revisions to the Oregon State Implementation Plan. Because the proposed rule amendments are necessary to update infrastructure elements of the Oregon SIP to comply with CAA requirements, DEQ has not considered other options for this proposal.

|  |
| --- |
| Land Use |

**REVIEWERS do not edit or modify this section**

 Management reviewed and edited this section. It was then published with the Public Notice. Do not modify it except to correct typographical errors.

“It is the Environmental Quality Commission's policy to coordinate the DEQ’s programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.” [OAR 340-018-0010](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html)

[OAR 340-018-0030](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) states EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use.

For proposals that address numerous issues, you may use one of the methods under the *Statement of Need* section if it clarifies how this section applies to the disparate elements of this rulemaking.

## 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 goals 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

 9 Ocean Resources

## Determination

## **OPTION 1**

DEQ determined that the proposed rules listed under the Chapter 340 Action section above **do not affect** existing rules, programs or activities considered land-use programs or actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

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

##  Advisory committee

## The discussion of advisory committee activities in this location is to present a complete picture of public involvement in this rulemaking. Please make sure this section does not cause ambiguity with advisory committee information in the Statement of need section.

DEQ did not convene an advisory committee. This rulemaking proposal makes necessary amendments to Oregon Administrative Rules which are part of the Oregon Clean Air Act State Implementation Plan. The proposed changes correspond with revisions to the NAAQS for PM 2.5 and are required by the Clean Air Act to provide DEQ the authority to implement the current NAAQS for these pollutants.

**OPTION 1**

## OPTION 2

## 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 monthly rulemaking report.

## Public notice

DEQ provided the Notice of Proposed Rulemaking with Hearing for this rulemaking. DEQ submitted the notice:

* To Secretary of State for publication in the *Oregon Bulletin* on August 1, 2015
* By email to EPA on June 15, 2015
* On June 15, 2015 by posting notice on DEQ’s webpage:

[SIP PM 2.5 Standard Update Rulemaking Page](http://www.oregon.gov/deq/RulesandRegulations/Pages/2015/Rpm25standardupdate.aspx)

* ####By mailing approximately 6778 interested parties on the Agency Rulemaking List through GovDelivery on June 15, 2015**OPTION** on mmm dd, yyyy , and June 17, 2015.
* **OPTION** ####On June 15, 2015 by email to the following key legislators required under [ORS 183.33](http://www.leg.state.or.us/ors/183.html):
* State Sen. Chris Edwards, Chair, Senate Committee on Environment and Natural Resources
* State Rep. Jessica Vega Pederson, Chair, House Committee on Energy and Environment Enter name, title, committee here. Enter name, title, committee here.

Enter name, title, committee here.

* ####### Enter other notices here **OPTION** on mmm dd, yyy**y**
* **OPTION** To *The Oregonian* on June 15, 2015
* By linking to the DEQ web page identified above in Facebook and Twitter postings on June 17, 2015

## Public hearings and comment

DEQ held one ##public hearing. DEQ received five## public comments. The following is a summary of comments DEQ received during the public comment period with cross reference to the commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

## Presiding Officers’ Record

### **Hearing**

Meeting location: DEQ Headquarters, 811 SW Sixth Avenue, Portland, OR

Meeting date and time: Tuesday, August 18, 2015, 5:00 pm

Presiding Officer: Nancy Cardwell

The presiding officer convened the hearing and summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form or, if attending by Web conference to indicate their intent to present comments.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ interested parties list for this rule and to the commenter section of this staff report. The commenter list includes a cross reference to the hearing number. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

|  |
| --- |
|   Summary of comments and DEQ responses |

## Comments received by close of public comment period

The table below lists five people and organizations that submitted public comments about the proposed rules by the deadline. Original comments are on file with DEQ.

1. **Commenter William H. Pokorny**

Affiliation **Citizen**

 Responses to Mr. Pokorny’s letter:

* What is the rational difference of EPA designating Klamath Falls and Oakridge as non attainment for PM 2.5 and showing Klamath Falls and Oakridge (Notice, Figure 1, page 4) as well within the standard? :

Response:  This rulemaking addresses the PM 2.5 annual standard, not the 24 hour PM 2.5 standard. Figure 1 shows that areas in Oregon are in attainment for the PM 2.5 annual standard.

* Why claim there is no fiscal/economic impact? (Notice, Page 9 fiscal/economic impact):

Response: The infrastructure SIP update demonstrates Oregon has the capacity to implement the CAA. Oregon is adopting the standard by itself and it does not impose any new regulations.

* Why is the City of Oakridge not referenced in OAR 340-240 Rules for Areas with Unique Air Quality Needs? (Attachment B, Page 8, Crosswalk):

Response: The City of Oakridge is under the jurisdiction of Lane Regional Air Pollution Authority (LRAPA). For more information, contact LRAPA at 1010 Main Street, Springfield, OR 97477, 541-736-1056.**aA Protection Agency**   |   1010 Main Street   |   Springfield,

* Why is heavy duty vehicles not addressed? (Attachment B, Page 8, Crosswalk):

Response: Considering all sources of fine particulate matter, diesel engines are a relatively small contributor. Until the adoption of the most recent EPA federal emission standards for highway and non-road diesel engines, there was little basis for a regulatory approach and DEQ relied on the federal program for new emission standards.

* Why does the reference to residential wood heating (340-262) have a note stating “All particulate matter references are to PM 10”? (Attachment B, Page 8, Crosswalk):

Response: DEQ acknowledges that curtailing wood burning strategies help reduce both PM 10 and PM 2.5 and will remove the reference.

* What is the nonattainment status of Klamath Falls and Oakridge? (Attachment C, Page 6, Interstate Transport Report):

Response: There are no non-attainment areas in Oregon for the annual PM 2.5 standard. Regarding the 24 hour PM 2.5 standard, both Klamath Falls and Oakridge are nonattainment areas, however Klamath Falls is no longer violating the standard and will begin work to be redesignated to an attainment area.

* Why is there only one monitoring station for NO2 in Oregon? (Attachment C, Page 9, Interstate Transport Report):

Response:  DEQ has two monitors in the Portland area (one in SE Portland and one next to Interstate 5 in Tualatin). Monitored emissions for NO2 have always been low, well below the standard in Oregon.

* The vertical scales on Figures 8-11 (NO2), Figures 12-15 (SO2) and Figure 17-20 (Pb) should be the same (Attachment C, Pages 11-12 and 14-16, Interstate Transport Report):

Response: The charts were developed by each individual state. Each state used a scale appropriate to their measurements.

* Explain the gap on Figure 8 and Figure 10 (Attachment C, Pages 11-12, Interstate Transport Report):

Response:  Washington State did not monitor for NO2 between 2006 and 2013. Based on the Primary NAAQS for NO2 final rule signed in 2010, monitoring resumed in January 2013 (from Department of Ecology 2011 Ambient Air Monitoring Network report).

* Why is there an overall lack of monitoring stations in Oregon?

Response: DEQ has a five year monitoring plan for the State of Oregon and has as many monitors as resources currently allow. DEQ utilizes monitors where there appears to be the biggest public health risk. Monitors are also located based on specific criteria EPA requires.  DEQ receives funding from EPA and they consider population, pollution levels, and monitoring network coverage. Other states with more population or worse pollution get more funding. DEQ operates about 45 air monitoring sites across the state. It is not possible to monitor everywhere, so DEQ also gathers and analyzes emissions information and use modeling to assess pollution levels and its impact on communities and neighborhoods.

* Inquired about the specific monitoring status of Oakridge with its unique geography and the role of DEQ in Lane County.

Response: Particulate monitoring has been done at the location now known as the Willamette Activity Center (WAC) in Oakridge since 1983 by the Lane Regional Air Protection Agency (LRAPA). The monitoring site meets the federal and state criteria for a neighborhood-scale monitoring site within the area of the highest particulate concentrations in Oakridge, consistent with the geography of the area. The federal and state criteria require monitoring within the area of highest concentration in order to have confidence that the entire Oakridge area will be in compliance with the air quality health standards when air pollution is reduced to meet the air quality health standards at that monitoring location. Validation studies have been done multiple times (specifically in 1991, 1994 and 2003) since 1983 to confirm that the WAC location is in conformance with federal and state monitoring requirements. The LRAPA air monitoring network throughout Lane County is periodically audited by the Oregon Department of Environmental Quality (DEQ) and the U.S. Environmental Protection Agency (EPA).

* Why does LRAPA continue to be the air monitoring agency in only one Oregon county?

Response: LRAPA is a local regional air quality agency formed under Oregon statutes, established in 1968 by intergovernmental agreement between Lane County and some of the cities within Lane County. Like DEQ and EPA, LRAPA is a government agency responsible for protection of air quality, but LRAPA has been doing so since before DEQ or EPA were established in 1969 and 1970, respectively.

1. **Commenter Kathryn VanNatta**

Affiliation **Northwest Pulp & Paper Association**

Commenter supports state adoption of the proposed rule changes and submitting document for EPA approval.

1. **Commenter Paul Ruscher**

Affiliation **Citizen**

Commenter supports DEQ's proposal to adopt the federal PM 2.5 standard, but urges DEQ, Department of  Forestry, Bureau of Land Management and United States Forest Service to work together in coordinating controlled burns.

Response: DEQ appreciates the comment. DEQ does have prescribed burns agreements in places such as Lakeview and Klamath Falls, where PM2.5 levels are of concern.

1. **Commenter John Krallman**

Affiliation **Neighbors for Clean Air and the Northwest Environmental Defense Center**

Commenters believe that  Oregon's proposed Infrastructure SIP fails to meet the minimum requirements  of the Clean Air Act because DEQ relies upon a permit program that uses Plant Site Emission Limits (PSEL) in order to determine compliance with 42 U.S.C. section 110((a)(2)(J).

Response: Commenter’s concerns about the PSEL and Oregon’s Prevention of Significant Deterioration (PSD) program are outside the scope of this rulemaking.

1. **Commenter Michael D. Woods**

 Affiliation **Citizen**

Commenter inquired about time limits for wood burning stoves/furnaces in the city areas.

Response: There are no time limits for wood burning stoves per se. However, many communities who are trying to address PM2.5 pollution levels do have woodstove curtailment programs in place, where they either voluntarily ask or require people not to burn on certain poor air quality days. For more information the commenter may contact their local city or county to see if there are any programs in place.

|  |
| --- |
| Five-year review ORS 183.405 |

Requirement

Oregon law requires DEQ to review newrules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

## Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review because the proposed rules would:

* Amend an existing rule. ORS 183.405(4).