 Oregon Department of Environmental Quality

September 1, 2018

## Notice of Proposed Rulemaking

**CFP 2018 Rulemaking**

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| Table Title (Arial 16) Additional Title (Arial 14) Even More Info, Date (Arial 11) | | | |
| **Subheading 1 (Arial 14)** | | **Subheading 2 (Arial 14)** | |
| **Subheading 3 (Arial 12)** | | | |
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| Introduction |

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

## Background

### DEQ proposal

DEQ proposes the following changes to OAR 340, division number 253 that will:

DEQ proposes the following changes to OAR 340, division number 12 that will:

### More information

Information about this rulemaking is on this rulemaking’s web page: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rCFP2018.aspx>

### Public Hearings

DEQ will hold a public hearing on this rulemaking as detailed below.

Date: September 20, 2018

Time: 1:30 pm

Location: DEQ Headquarters Office, 700 NE Multnomah Street, Conference Room 601, Portland, OR 97232

## How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments through an online web page, by regular mail or at the public hearing.

### Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on September 21, 2018.

#### Submit comment online

<http://www.oregon.gov/deq/Regulations/rulemaking/Pages/cCFP2018.aspx>

#### Note for public university students:

ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

#### By mail

Oregon DEQ

Attn: Cory-Ann Wind

700 NE Multnomah St., Room 600

Portland, OR 97232-4100

#### At hearing

September 20, 2018

1:30 pm

Oregon DEQ Headquarters Office

700 NE Multnomah Street

Conference Room 601

### You can also participate in the hearing through a teleconference or webinar.

Teleconference call-in number: 888-278-0296

Participant ID: 8040259

Webinar link (webinar has no audio, you must listen on the teleconference):

How to join the teleconference or webinar: [Teleconference and Webinar instructions](http://www.deq.state.or.us/regulations/docs/participantlinklog.pdf)

### Sign up for rulemaking notices

Get email or text updates about this rulemaking by signing up through this link:

[CFP 2018 Rulemaking Email List](https://public.govdelivery.com/accounts/ORDEQ/subscriber/new?topic_id=ORDEQ_509); or on the rulemaking web site: [CFP 2018 Rulemaking Web Page](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rCFP2018.aspx).

Get email or text updates about other, future DEQ rulemaking by signing up through this link: [DEQ Email Notice List](https://public.govdelivery.com/accounts/ORDEQ/subscriber/new?pop=t&topic_id=ORDEQ_548).

### What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

### Present proposal to the EQC

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ plans to present the proposed rules to the commission for a decision at its meeting on November 15-16, 2018.

### Accessibility information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality

700 NE Multnomah St., Room 600

Portland, OR, 97232-4100

To schedule a review of all websites and documents referenced in this announcement, call Cory-Ann Wind, Portland, at 503-229-5388 (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

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| Overview |

## Short summary

DEQ proposes to amend Oregon Clean Fuels Program rules under division 253 of chapter 340 of the Oregon Administrative Rules. The proposed rule changes would:

* update the models used to determine the carbon intensities of fuels and the resulting changes to the lookup table values, clean fuel standards, energy economy ratios, and temporary fuel pathway codes;
* add new categories of fuel used to generate credits including forklifts and truck refrigeration units and add new fuels that could generate credits including alternative jet fuel and renewable propane; and
* make some housekeeping changes.

DEQ also proposes to amend rules under division 12 of chapter 340 of the Oregon Administrative Rules to classify certain violations and establish or clarify enforcement criteria for violations of the Oregon Clean Fuels Program.

## Brief history

The 2009 Oregon Legislature passed House Bill 2186 authorizing the Oregon Environmental Quality Commission to adopt rules to reduce lifecycle emissions of greenhouse gases from Oregon’s transportation fuels by 10 percent over a 10-year period.

The EQC adopted phase 1 rules on Dec. 7, 2012 that required Oregon transportation fuel producers and importers to register, keep records and report the volumes and carbon intensities of the transportation fuels they provide in Oregon.

The EQC adopted phase 2 rules on Jan. 7, 2015 that required Oregon transportation fuel importers to reduce the average carbon intensity of fuels they provide in Oregon by 10 percent over a 10-year period.

The 2015 Oregon Legislature passed Senate Bill 324 that removed the Dec. 31, 2015 sunset date in House Bill 2186 (2009) and further amended the authorizing statute, ORS 468A.275, for the Oregon Clean Fuels Program.

The EQC adopted updated rules on Dec. 9, 2015 to implement SB 324 (2015).

The EQC adopted temporary rules on April 21, 2016 to correct a miscalculation in the clean fuel standards and certain carbon intensity values. Permanent rules for the correction were adopted on August 18, 2016.

The 2017 Oregon Legislature passed House Bill 2017 that added provisions for a Credit Clearance Market (CCM) as an additional cost containment mechanism. The EQC adopted updated rules on Nov. 2, 2017 adding the CCM mechanism, updating several provisions relating to electricity’s use as a transportation fuel and adding market monitoring provisions.

## Regulated parties (who these rules apply to)

The Clean Fuels Program currently has 154 businesses that are registered to participate, representing:

* *Importers of Blendstocks -* These are businesses that import fuel components which can be blended with another fuel component or used alone. There are currently 58 businesses registered as importers of blendstocks.
* *Importers of Finished Fuels -* These are businesses which only import fuels that can be used directly in a motor vehicle, such as clear gasoline, gasoline blended with 10 percent ethanol, clear diesel and diesel blended with 5 percent biodiesel. There are currently 50 businesses registered as importers of finished fuels, 35 businesses are large (500,000 gallons per year and greater) and 15 are small (less than 500,000 gallons per year). Small importers of finished fuels are largely exempted from the program, except for the requirement to register and annually file a report through the agency’s greenhouse gas reporting program. To note, the program’s definition of a “small importer” does not align with the statutory definition of “small business” that is used to analyze the fiscal and economic impact to small businesses.
* *Oregon Producers of Transportation Fuels -* There are currently three registered Oregon producers of biofuels. One produces ethanol from corn, one produced ethanol from waste food products and one produces biodiesel from used cooking oil.
* *Credit Generators* – These are businesses that provide or produce clean fuels (natural gas, renewable natural gas, propane, electricity and hydrogen). These businesses are not required to participate with the program, but must register in order to generate credits if they choose to. Importers of blendstocks and Oregon producers may also generate credits due to the nature of fuels they provide, but an entity registered as a credit generator is doing so solely because it provides clean fuels. There are currently 43 businesses registered as credit generators.

## Request for other options (THIS LANGUAGE REQUIRED BY STATUTE)

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

|  |
| --- |
| Optional Additional Topic  This section is optional. If not used, it should be deleted. This section is to include information you think is important but that is not covered in another section of the notice. |

### Enter freeform title here

TEXT

### Enter freeform title here

|  |
| --- |
| Statement of need  **ORS 183.335(b)(C)** |

These three questions are required by statute.

Select the method below that best fits your information. Delete unused examples.

**METHOD 1**: for simple proposals

#### What need would the proposed rule address?

TEXT

#### How would the proposed rule address the need?

TEXT

#### How will DEQ know the rule addressed the need?

TEXT

**METHOD 2:** For proposals with multiple issues

| Proposed Rule or Topic | Discussion |
| --- | --- |
| Enter rule or topic subtitle | |
| What need would the proposed rule address? |  |
| How would the proposed rule address the need? |  |
| How will DEQ know the rule addressed the need? |  |
| Enter rule or topic subtitle | |
| What need would the proposed rule address? |  |
| How would the proposed rule address the need? |  |
| How will DEQ know the rule addressed the need? |  |
| Enter rule or topic subtitle | |
| What need would the proposed rule address? |  |
| How would the proposed rule address the need? |  |
| How will DEQ know the rule addressed the need? |  |
| Enter rule or topic title | |
| What need would the proposed rule address? |  |
| How would the proposed rule address the need? |  |
| How will DEQ know the rule addressed the need? |  |

**METHOD 3:**

Enter rule or topic title

#### What need would the proposed rule address?

TEXT

#### How would the proposed rule address the need?

TEXT

#### How will DEQ know the rule addressed the need?

TEXT

Enter rule or topic title

#### What need would the proposed rule address?

TEXT

#### How would the proposed rule address the need?

TEXT

#### How will DEQ know the rule addressed the need?

TEXT

Enter rule or topic title

#### What need would the proposed rule address?

TEXT

#### How would the proposed rule address the need?

TEXT

#### How will DEQ know the rule addressed the need?

TEXT

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

**ORS 183.335(2)(b)**

#### Lead division

TEXT

#### Program or activity

TEXT

#### Chapter 340 action

Hide table borders after filling in data.

Adopt

Only list newly adopted rules here; rules that have brand new numbers that have not been used before.

This only applies when we use a new rule number, such as 340-041-0033. It does not apply if we change or add a sub-part of a rule, such as 340-041-0033(a). That type of change is an amendment, not adoption of a new rule.

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Amend - OAR

List here all rules that are being changed in any way, except renumbering, which is described below

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Repeal - OAR

List here all rules that are being repealed, meaning they are being deleted and removed from DEQ’s rules, and that will no longer be in effect. This does not include rules that have had one part or section deleted. Deleting a part, paragraph or section of a rule is an amendment, not a repeal.

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Renumber - OAR

List here only rules that are having their ten digit number changed: 340-041-0001 changed to 340-041-0002; do not list rules that are only having subsections moved or renumbered or re-lettered, but are not having their text changed in any way: 340-041-0001(a) changed to 340-041-0001(b)

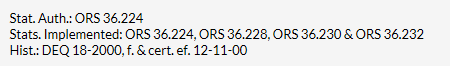
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Amend and Renumber - OAR

Only list here rules that are both being renumbered, as described above, and that are also having their text changed in some way

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## The notice must list the authorizing statutes, and the statutes implemented. These statutes are listed at the end of each rule in this format:



## The authorizing statute is the statute that gives EQC the authority to make a rule on a general topic. The statute being implemented is the specific statute that a rule is explaining or expanding on.

### Statutory authority - ORS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 468.020 | 468.065 |  |  |  |
|  |  |  |  |  |

Enter additional statutory authorities here if needed.

### Statute implemented - ORS

|  |  |  |  |  |
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### Legislation

## Enter House Bill or Senate Bill ####, (yyyy), if any. TEXT

### Other authority

ORS###.### < Enter other authorities here, if any.

### Documents relied on for rulemaking ORS 183.335(2)(b)(D)

These are reports, maps, studies, and similar documents that were used in completing this rulemaking. Do not list other statutes or rules here (OAR, ORS, CFR, USC, Federal Register) unless the rule writers relied on or referred to documents contained in those statutes or rules, such as reports, maps or studies.

|  |  |
| --- | --- |
| Document title | Document location |
| Title  TEXT | Provide link to web address, or DEQ office address if documents only exist in hard copy.  TEXT |
|  |  |
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| Fee Analysis  ORS 291.055(1)(d); [Fee Approval](http://deqsps/programs/rulemaking/SitePages/Fee%20approval.aspx)  This is a discussion of why DEQ needs to add, impose, or raise fees |

Include this language if these rules do not involve fees:

This rulemaking does not involve fees.

Under ORS 291.055(1)(d), DAS must approve all fee increases except for:

* The fees created or authorized by statute have no established rate or amount but are calculated for each separate instance for each fee payer and are based on actual cost of services provided.
* New or increased fees that are anticipated in the legislative budgeting process for an agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted budget for the agency.

The Oregon Environmental Quality Commission approval of this rule proposal would [OPTION 1] establish new fees. [OPTION 2] increase existing fees. [OPTION 3] decrease existing fees. [OPTION 4 – any combination of options 1-3] EQC authority to act on the proposed fees is ORS [list the statute that authorizes DEQ to impose or raise these fees].

Brief description of proposed fees

[LIMIT DESCRIPTION TO THE EFFECT OF THE FEE PROPOSAL. ADDRESS RATIONALE UNDER *REASONS.*]

Enter text here

Reasons

The proposed fees would address [INCOPORATE THE BULLETED KEY PHRASES BELOW THAT APPLY TO THIS PROPOSAL.

[KEY PHRASES - PROVIDE A BRIEF EXPLANATION ABOUT EACH KEY PHRASE USED AND ADDRESS THE QUESTION, “WHY NOW?”]

* regulatory streamlining
* policy change
* new fee created by statue
* change in federal revenue
* change in Other Funds revenue

[IDENTIFY CONCERN AND LEGISLATIVE SESSION]

* response to legislative concerns

[PROVIDE OVERVIEW OF THE COSTS FOR KEY PHRASES]

* increased program costs
* costs exceed estimates

[PROVIDE TREND INFORMATION & FTE WORKLOAD STATISTICS FOR KEY PHRASES]

* change in transaction costs
* changed number of base fee payers
* change in fee-payer mix

Fee proposal alternatives considered

Enter text here [INCLUDE THE STATUS QUO ALTERNATIVE]

Fee payer

Enter text here

Affected party involvement in fee-setting process

Enter text here

Summary of impacts

Enter text here

Fee payer agreement with fee proposal

Enter text here

Links to supporting documents for proposed fees

Enter document name and link

How long will the current fee sustain the program?

Enter text here

|  |  |  |
| --- | --- | --- |
| **Current Fees** | | |
| Program costs covered by fees | $0 | 0% |
| Program costs covered by General Fund | $0 | 0% |
| Fee Last Changed |  | |

How long will the proposed fee sustain the program?

Enter text here

|  |  |  |
| --- | --- | --- |
| **Proposed Fees** | | |
| Expected change in revenue (+/-) | $0 | 0% |
| Main GF required by statute/rule to fund program | $0 | 0% |
| Proposed fee allows General Fund replacement | $0 | 0% |
| Expected effective date |  | |

Transactions and revenue

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Transactions and Revenue** | | | | |
| **Biennium** | **Number of transactions** | **Number of fee**  **payers** | **Impact on revenue**  **(+/-)** | **Total revenue**  **(+/-)** |
| **Current biennium** | 0 | 0 | $0 | $0 |
| **Next biennium** | 0 | 0 | $0 | $0 |

Fee schedule

Enter text or table here.

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| **Table Title** | | | |
| **Subheading 1 (Arial 14)** | | **Subheading 2 (Arial 14)** | |
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| Data (Times New Roman 11) | Data | Data | Data |

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| Statement of fiscal and economic impact  183.335 (2)(b)(E); 183.540 [Fiscal Impact Analysis](http://deqsps/programs/rulemaking/SitePages/Fiscal%20and%20economic%20impact.aspx)  This is a discussion of the financial impact of the rule change on various parties. |

The sections and questions in this section are all specifically required by statute.

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.

## Fiscal and Economic Impact

Briefly summarize what fiscal impact the proposed rules would or could create.

TEXT

## Statement of Cost of Compliance

State agencies Discuss impacts to DEQ in this section if different from other agencies.

### Separately describe the impact on:

### Local governments

### Public

### Large businesses - businesses with more than 50 employees

### Small businesses – businesses with 50 or fewer employees

#### a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

EXAMPLE: Assuming all manufacturers in the lowest fee tier are small businesses, these proposed rules could affect 109 small businesses.

EXAMPLE: Using recent employment data, DEQ compared the 64 businesses registered with the Clean Fuels Program to current employment data to determine how many people the business employs. Thirty-eight are small businesses. Of those 38, two are Oregon producers of fuels, nine are small importers of finished fuels and 24 are large importers.

#### **b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule**.

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.

#### 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.

## If DEQ did not involve small businesses, explain why not.

## Documents relied on for fiscal and economic impact

The requirement to list the documents relied on to determine fiscal impact is separate from and in addition to the similar list in the *Rules affected, authorities, supporting documents* section above.

|  |  |
| --- | --- |
| Document title | Document location |
| Enter title here  TEXT | Enter link or office address listed at bottom of this notice template  TEXT |
| WHEN USING EMPLOYMENT DATA – DO NOT PUBLISH ANY EMPLOYMENT LISTINGS.  Oregon Department of Employment  # quarter 20yy data  TEXT | Employment Department  875 Union Street NE  Salem OR 97311  TEXT |

## Advisory committee

The requirement to discuss an advisory committee in this section is separate from and in addition to discussing the advisory committee in the *Stakeholder Involvement* section. The question to be addressed here is whether an advisory committee reviewed the fiscal impact statement.

OPTION 1

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement and

Choose one:

-documented its recommendations in the (enter title and date of document)

or

- its findings are stated in the approved minutes dated DATE.

The committee Enter specifics about the committee’s fiscal impact review. The committee determined the proposed rules would/would not have a significant adverse impact on small businesses in Oregon.

Only if the fiscal impact statement or the advisory committee determined there would be a significant adverse impact on small business, include the following:

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules’ fiscal impact on small business by:

* Establishing differing compliance or reporting requirements or time tables for small business;
* Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
* Utilizing objective criteria for standards;
* Exempting small businesses from any or all requirements of the rule; or
* Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Explain the outcome of the above review.

OPTION 2

DEQ did not appoint an advisory committee. State why DEQ did not convene an advisory committee.

If DEQ did not appoint an advisory committee and DEQ found there would be a significant adverse fiscal impact on small businesses, include the following:

DEQ determined the rules would have a significant adverse impact on small businesses. As ORS 183.540 requires, DEQ considered how to reduce that impact by:

* Establishing differing compliance or reporting requirements or time tables for small business;
* Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
* Utilizing objective criteria for standards;
* Exempting small businesses from any or all requirements of the rule; or
* Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Explain the outcome of DEQ’s review of these questions.

## Housing cost

ORS 183.534 requires DEQ to consider the rules’ impact on the cost of housing. Include the applicable phrases and delete the others:

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

813-025-0015

Preparation of Statement

(3) The Housing Cost Impact Statement shall include:

(a) A clear and concise statement of the need, objectives and legal basis for the rule;

(b) A description and estimate of how the proposed rule will increase the cost or reduce the supply of housing or land for residential development; and,

(c) A description of the impact of the proposed rules on the cost of materials, labor, administration and other factors as may be appropriate.

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would 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. DEQ determined the proposed rules

Choose one, delete the other:

would have no effect on the development costs because explain why.

or

would/could affect the development costs by explain why and how much, if possible, the rules raise these costs.

|  |
| --- |
| Federal relationship  **ORS 183.332; 468A.327; OAR 340-011-0029** |

### Relationship to federal requirements

**183.332 Policy statement; conformity of state rules with equivalent federal laws and rules.** 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 unless:

      (1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

      (2) A federal waiver has been granted that authorizes the adoption of the rule;

      (3) Local or special conditions exist in this state that warrant a different rule;

      (4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

      (5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

      (6) There is no corresponding federal regulation. [1997 c.602 §2]

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

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

**OPTION 1-** adopting federal requirements

The proposed rules would adopt federal requirements. Enter description that includes the name and citation of related federal rules.

**OPTION 2**– substantively equivalent to federal requirements

The proposed rules are not different from or in addition to federal requirements. Enter description that includes the name and citation of related federal rules.

**OPTION 3**– in addition to federal requirements

The proposed rules add requirements additional to those in federal requirements.

Explain the public health, environmental, scientific, economic, technological, administrative (statutory categories) or other reasons DEQ is imposing requirements that differ from or are in addition to, related federal requirements. Enter information about how and why the proposed rules are different from the federal requirements.

**OPTION 4** – where rules apply to facilities that pay fees under ORS 468A.315 and requirements are in addition to federal rules

Explain the public health, environmental, scientific, economic, technological, administrative (statutory categories) or other reasons DEQ is imposing requirements that are in addition to related federal requirements. Enter information about how and why the proposed rules are different from the federal requirements here.

What alternatives did DEQ consider if any?

If the proposed rules differ from or impose additional requirements above the federal requirements, include this section; otherwise delete it:

DEQ considered the following alternatives TEXT and did not adopt them because TEXT.

Enter description about why DEQ did not pursue these alternatives. If other parts of this document describe alternatives considered, DOJ advises us to duplicate the information here.

|  |
| --- |
| Land use  ORS 197.180; OAR 340-018-0070; 660-030-0005, 660-030-0075 [Land Use](http://deqsps/programs/rulemaking/SitePages/Land%20use.aspx) |

There is a link to DEQ’s State Agency Coordination program on the Rule Resources section of the rulemaking SharePoint page and a copy of that document is stored in the Rulemaking Resources folder, under “land use.”

If DEQ determines a new or amended rule does affect land use DEQ must provide notice of the rule to the Department of Land Conservation and Development and anyone on the land use mailing list. DEQ accomplishes this by emailing a copy of this notice to DLCD contact person that includes:

(a) Evidence that the rule or program is a land use program; or

(b) Evidence that the rule or program affects land use and is covered under the Department's certified State Agency Coordination Program; or

(c) Evidence that the rule or program is a land use program including an explanation of how goal compliance and plan compatibility will be assured.

The State of Oregon has adopted statewide land use planning goals that are authorized under ORS 197.180 and listed in OAR 660-015-0000-0010. There are 19 such goals. The other aspect of statewide coordination in planning is that local entities must adopt comprehensive land use and development plans, called “acknowledged comprehensive plans.” State agencies must coordinate their efforts with the statewide goals and local comprehensive plans.

ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether a new or amended rule affects land use as described in ORS 197.180. If so, DEQ must make certain determinations.

DEQ adopted a State Agency Coordination (SAC) plan that describes which of DEQ’s rules and programs affect land use or constitute a land-use program, and how DEQ will comply with state land-use goals and ensure compatibility with local comprehensive plans. Rules that affect land use are termed a “land use program” under the controlling statutes.

A rule or program affects land use if:

* The statewide land use planning goals specifically refer to the rule or program, or
* The rule or program is reasonably expected to have significant effects on:
  + Resources, objectives or areas identified in the statewide planning goals, or
  + Present or future land uses identified in acknowledged comprehensive plans

If a proposed new or amended rule does not specifically fall within the above requirements, it could still be considered to affect land use. If there is any question on this, consult DOJ.

If a proposed new or amended rule does affect land use, DEQ must explain how it will comply with state wide goals and ensure compatibility with local comprehensive plans. One way DEQ can meet this requirement is by showing the procedures in DEQ’s SAC adequately address the land-use aspect of the proposed rules. If the SAC does not address the proposed rules, DEQ must explain how it will otherwise meet this requirement.

Through the SAC and OAR 340-018-0030, DEQ determined its programs directly relate to the following the statewide goals:

* Goal 5 – Open Spaces
* Goal 6 – Air, Water and Land Resources Quality
* Goal 11 – Public Facilities and Services
* Goal 16 – Estuarine Resources
* Goal 19 – Ocean Resources

DEQ also determined three statewide goals specifically reference DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

DEQ adopted findings, through OAR 340-018-0030, that the following programs do have a significant effect on land use:

|  |
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| C:\Users\mgoldst\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\PPRTTL4A\pansm.tiff  Department of Environmental Quality  State Agency Coordination Program  OAR 340-018-0030 |
| Programs Determined to Have Significant Effect on Land Use |
| (1) Air Quality Division |
| (a) Approval of Noise Impact Boundaries for Motor Racing Facilities; |
| (b) Approval of Airport Noise Abatement Program and Noise Impact Boundaries; |
| (c) Approval of Notice of Construction; |
| (d) Issuance of Air Contaminant Discharge Permit; |
| (e) Issuance of Indirect Source Construction Permit; |
| (f) Approval of Parking and Traffic Circulation Plan. |
| (g) Employee Commute Options. |
| (2) Environmental Cleanup Division |
| (a) Issuance of Environmental Hazard Notice |
| (3) Hazardous and Solid Waste Division |
| (a) Issuance of Solid Waste Disposal Permit; |
| (b) Issuance of Waste Tire Storage Permit; and |
| (c) Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permit |
| (4) Water Quality Division |
| (a) Approval of Wastewater System and Facility Plans; |
| (b) Approval of State Revolving Loan Application; |
| (c) Issuance of Onsite Construction-Installation Permits, Alteration Permits, and Authorization Notices; |
| (d) Issuance of NPDES and WPCF Permits; |
| (e) Development of Water Quality Wetland Protection Criteria; |
| (f) Requirement of an Implementation Plan to Meet Restrictions for Waste Load Allocations on Water Quality Limited Waterways (TMDLS); |
| (g) Certification of Water Quality Standards for Federal Permits, Licenses; |
| (h) Development of Action Plan for Declared Ground Water Management Area; |
| (i) Development of Nonpoint Source Management Plan; |
| (j) Development of Estuary Plans; |
| (k) Development of Oil Spill Regulations |

### Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

* The statewide land use planning goals specifically refer to the rule or program, or
* The rule or program is reasonably expected to have significant effects on:
* Resources, objectives or areas identified in the statewide planning goals, or
* Present or future land uses identified in acknowledged comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

|  |  |
| --- | --- |
| Goal | Title |
| 5 | Open Spaces, Scenic and Historic Areas, and Natural Resources |
| 6 | Air, Water and Land Resources Quality |
| 9 | Ocean Resources |
| 11 | Public Facilities and Services |
| 16 | Estuarial Resources |

Statewide goals also specifically reference the following DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

### Determination

## Choose the option that applies and delete the other options.

## OPTION 1

DEQ determined that these proposed rules do not affectland use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.

**OPTION 2**

DEQ determined that the following proposed rules (or all of the proposed rules) affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

OAR 340-XXX-XXXX

OAR 340-XXX-XXXX

If Option 2 applies, choose from the following options and delete the ones that don’t apply:

**OPTION 2(a)**

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. Enter rationale for why it is adequate. TEXT

**EXAMPLE 1**: OAR 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans.

**EXAMPLE 2**: OAR 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement.

**OPTION 2(b)**

DEQ’s statewide goal compliance and local plan compatibility procedures do not cover the proposed rules. Enter criteria and rationale used to determine the proposed rules are land-use rules here.

DEQ will ensure these rules comply with statewide goals and are compatible with local plans by TEXT.

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| Stakeholder and public involvement **ORS 183.333; 183.333(3)** |

### Advisory committee

**OPTION 1**

DEQ did not convene an advisory committee because TEXT.

**OPTION 2**

### Background

DEQ convened the COMMITTEE NAME advisory committee. The committee included representatives from (generally describe committee makeup) and met ## times. The committee’s web page is located at: LINK TO COMMITTEE WEB PAGE.

The committee members were:

|  |  |
| --- | --- |
| CodeName Rulemaking Advisory Committee | |
| **Name** | **Representing** |
|  |  |
|  |  |
|  |  |
|  |  |

### Meeting notifications

To notify people about the advisory committee’s activities, DEQ:

* Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
* Rulemaking
* + On DATES DEQ sent a one-time notice to Name of permittee or other group notified subscribers to describe how to sign up for advisory committee meeting notices, and
  + People who signed up for the advisory committee bulletin.
* Added advisory committee announcements to DEQ’s calendar of public meetings at [DEQ Calendar](http://www.oregon.gov/deq/Get-Involved/Pages/Calendar.aspx).
* On DATES DEQ provided notice of meetings and links to committee information through postings on Facebook and Twitter.

### Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee (summarize committee charter, topics, discussions, conclusions, recommendations).

### EQC prior involvement

**OPTION 1** DEQ did not present additional information specific to this proposed rule revision.

**OPTION 2** DEQ shared information about this rulemaking with the EQC

Choose one and delete the other options:

at a facilitated hearing on DATE

through an informational item on the DATE EQC agenda

|  |
| --- |
| Public notice and hearings ORS 183.335(1); 468.020(2) [Public Hearings](http://deqsps/programs/rulemaking/SitePages/Hearings.aspx) |

### Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on DATE by:

* On DATE Filing notice with the Oregon Secretary of State for publication in the DATE Oregon Bulletin;
* Notifying the EPA by mail;
* Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: RULEMAKING WEB PAGE LINK;
* Emailing NUMBER OF PARTIES interested parties on the following DEQ lists through GovDelivery:
* Rulemaking
* TOPIC
* TOPIC
* Emailing NUMBER OF PARTIES stakeholders on the Enter other mailing lists here
* Emailing the following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
* Enter name, title, committee here.
* Enter name, title, committee here.
* Enter name, title, committee here.
* Emailing advisory committee members,
* Postings on Twitter and Facebook
* Posting on the DEQ event calendar: [DEQ Calendar](http://www.oregon.gov/deq/Get-Involved/Pages/Calendar.aspx)
* Enter other notices here
* Publishing notice in the following newspapers (ONLY WHERE RULE AFFECTS ONLY A LIMITED GEOGRAPHICAL AREA):

(choose the appropriate ones and delete the rest)

* *The Oregonian* PUBLICATION DATE
* *East Oregon (Pendleton)* PUBLICATION DATE
* *Register Guard (Eugene)* PUBLICATION DATE
* *Mail Tribune (Medford)* PUBLICATION DATE
* *Klamath Herald & News (Klamath Falls)* PUBLICATION DATE
* *La Grande Observer (La Grande)* PUBLICATION DATE
* *Daily Journal of Commerce* PUBLICATION DATE

### Public hearings

DEQ plans to hold NUMBER public hearing(s). The details are described in the Introduction section of this document. Anyone can attend a hearing in person, or by webinar or teleconference.

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Any person can submit comments on the proposed rules as described in the Introduction section of this document.

## Close of public comment period

The comment period will close 4 p.m. on DATE/MONTH

## Accessibility Information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality

700 NE Multnomah St., Ste. 600

Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call RULE WRITER, LOCATION, PHONE NO.(800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711

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| Draft Rules - With Edits Highlighted |

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| Draft Rules – With Edits Incorporated |

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| Supporting documents |