



Oregon Department of Environmental Quality

June 18-19, 2014

Oregon Environmental Quality Commission meeting Rulemaking Action Item: L

Amendments to Oregon Smoke Management Plan and the Oregon State Implementation Plan for Air Quality

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

1. Approve the Oregon Smoke Management Plan under ORS 477.013 as part of chapter 340 of the Oregon Administrative Rules;
2. Adopt the proposed amendment to OAR 340-200-0040 seen in Attachment A to incorporate the proposed rules into the Oregon Clean Air Act State Implementation Plan; and
3. Direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Overview

Short summary

DEQ proposes approval of amendments to the Oregon Smoke Management Plan, operated by the Oregon Department of Forestry, under the authority provided to DEQ under ORS 477.013. If approved by the Environmental Quality Commission, these amendments would be submitted to EPA as a revision to DEQ's State Implementation Plan.

ODF and DEQ recently reviewed the Oregon Smoke Management Plan to evaluate the effectiveness of the smoke management program. As a result, ODF and DEQ are proposing changes to the plan under their respective authorities:

- ODF is proposing amendments to its smoke management rules under OAR 629-048 and Operational Guidance for the Oregon Smoke Management Program, directive 1-4-1-601, which together comprise the plan.
- To incorporate ODF's amendments into the federally-approved Oregon Clean Air Act State Implementation Plan, DEQ proposes amending OAR 340-200-0040.

ODF and DEQ review the Oregon Smoke Management Plan about every five years. For the most recent review, ODF convened the Smoke Management Review Committee that met eight times during 2012 and 2013. Committee recommendations are the basis for ODF's proposed amendments to the Oregon Smoke Management Plan:

1. Adopt additional voluntary provisions to provide greater visibility protection when burning near Crater Lake National Park and the Kalmiopsis Wilderness, both Oregon Class I areas. These provisions would help meet the federal Regional Haze Rule implemented under DEQ's 2010 Oregon Regional Haze Plan.
2. Adopt additional voluntary provisions to encourage greater use of alternatives to burning and emission reduction techniques.
3. For Special Protection Zone requirements adopted in 1992 to provide extra smoke management protection during the winter months for communities that exceeded federal air quality health standards:
 - a. Eliminate the La Grande Special Protection Zone. DEQ determined there is no longer a need for the La Grande Special Protection Zone, and more detail is below.
 - b. Reduce the size of the Special Protection Zone boundary for the Medford area, based on local topography and meteorology, to reflect the Medford airshed. Inside the boundary, prescribed burning would continue to follow the daily green, yellow, and red woodstove restrictions. Outside the boundary, prescribed burning would be prioritized to reduce burning on "red" woodstove days by only allowing smaller burn units that are farther away from Medford.

Both communities receive year-round smoke management protection under the plan. The Special Protection Zones ensure that any wintertime prescribed burning within 10 to 20 miles complies with local residential woodstove curtailment programs. In both communities, air quality levels have improved significantly and the communities now meet air standards. Around La Grande there is very little wintertime prescribed burning. In the Medford area, there is considerably more burning in the winter, which justifies keeping the Special Protection Zone but changing to the boundary size, given the air quality improvements and burning prioritization noted above.

4. Allow ODF, rather than DEQ, to regulate a very small amount of prescribed burning on forestlands currently outside forest protection districts. The proposed ODF rule amendment would manage this burning under an interagency agreement between ODF and DEQ subject to the same requirements for all prescribed burning under the plan.
5. Require smoke monitoring for prescribed burns over 2000 tons in size following existing language in ODF guidance. This will allow the landowner the ability to cease lighting or burn a smaller amount if air quality conditions change.
6. Other miscellaneous revisions to ODF rules including clarification to Special Protection Zone language, and flexibility to the five-year time period for plan review to allow an earlier or later time, but not to exceed 10 years if ODF and DEQ mutually agree.

Brief history

ODF conducts prescribed forest burning in Oregon to eliminate unwanted forest debris, restore forest health and reduce the potential for major wildfires. Each year ODF burns approximately 150,000 acres of Oregon forests through the practice of prescribed burning. Smoke from this burning can occasionally pose a risk to public health and result in air quality levels exceeding the federal air quality standard for fine particulate matter, also called PM2.5. Even brief exposures to smoke can cause health problems for persons with asthma, emphysema, congestive heart disease and other existing medical conditions. The elderly, pregnant women and young children are especially high-risk groups. Smoke from forest burning also affects visibility in national parks and wilderness areas, as well as general outdoor recreation activities.

State law ORS 477.013 directs ODF to develop a smoke management plan for prescribed forestry burning in Oregon and to promulgate rules to carry out this plan. Consistent with the law, ODF developed the Oregon Smoke Management Plan, which consists of rules under OAR 629-048 and the Operational Guidance for the Oregon Smoke Management Program in directive 1-4-1-601. ODF implements the plan through a smoke management program for prescribed burning on federal, state and private forestland.

Adopted as a regulatory program in 1972, the objective of the smoke management program is to maximize burning opportunities, reduce the risk of wildfire and minimize smoke impacts on the public. Most of the larger cities and heavily populated areas in Oregon are designated as Smoke Sensitive Receptor Areas by ODF, and have greater restrictions on prescribed burning to prevent smoke intrusions. ODF's smoke management office in Salem conducts daily weather forecasts to determine areas in the state suitable for forestry burning, then issues daily burning instructions for those areas, that include size limits in tons, how far apart to space the burning and distance from Smoke Sensitive Receptor Areas. The forest district staff make the actual decision on which units to burn based on the burning instructions. Each burn unit has a burn plan and pays burn fees. After burning, the district reports back to State Forestry in Salem on the burning accomplished.

As directed under state law, ODF adopts all rules associated with the plan through its Board of Forestry. State law ORS 477.013 does provide DEQ with joint approval authority of the plan and cites the need to "meet the air quality objectives of the federal Clean Air Act." To ensure prescribed burning meets the federal Clean Air Act, DEQ previously adopted the plan into the Oregon Clean Air Act State Implementation Plan as provided in DEQ rule OAR 340-200-0040, and any changes to the Oregon Smoke Management Plan require DEQ approval as a State of Oregon Clean Air Act Implementation Plan revision.

ORS 477.552 states the need to "improve the management of prescribed burning as a forest management and protection practice" and to "minimize emissions from prescribed burning consistent with the air quality objectives of the federal Clean Air Act and the State of Oregon State Implementation Plan." In order to improve the management of prescribed burning, every five years DEQ and ODF conduct a review of the plan to evaluate the effectiveness of the smoke management program. The last plan review was in 2007. Improvements included increasing the number of Smoke Sensitive Receptor Areas in the state. There are currently 23 Smoke Sensitive Receptor Areas that include both individual communities and larger urbanized areas, such as the entire Willamette Valley and Columbia River Gorge National Scenic Area.

In addition to Smoke Sensitive Receptor Areas protection, there is also additional wintertime smoke management protection called Special Protection Zones. There is typically limited prescribed burning during the winter months. Winter is also when many communities experience high smoke levels typically from woodstoves. Currently, Special Protection Zone requirements apply to five communities: Klamath Falls, Lakeview, Oakridge, Medford and La Grande, which have a history of exceeding the federal health standard for particulate matter and rely heavily on wintertime residential woodstove curtailment programs to improve air quality. The Special Protection Zone requirements restrict prescribed burning within 10 to 20 miles on the “green”, “yellow” and “red” woodstove curtailment days. A red day means there can be no woodstove burning and no prescribed burning within the Special Protection Zone.

As noted above, the proposed plan amendments would eliminate the La Grande Special Protection Zone and reduce the size of the Medford Special Protection Zone. DEQ supports these changes.

Regulated parties

ODF’s proposed rulemaking primarily affects private forest landowners, and state and federal land managers who conduct prescribed burning under the Oregon Smoke Management Plan. DEQ’s proposed amendment to OAR 340-200-0040 incorporates ODF changes into State of Oregon Clean Air Act Implementation Plan, and does not change the regulated parties.

Statement of need

What need is DEQ trying to address?

The Oregon Smoke Management Plan consists of both ODF-developed rules under OAR 629-048, and guidance under directive 1-4-1-601, Operational Guidance for the Oregon Smoke Management Program. State law ORS 477.013 requires the plan and any changes to the plan be approved by both the State Forester and DEQ. In order to ensure prescribed burning meets the federal Clean Air Act, EQC previously adopted the plan into the Oregon Clean Air Act State Implementation Plan, or SIP, under OAR 340-200-0040, and EPA incorporated the plan into the federally-approved SIP. When the plan is amended, EQC must adopt the changes into the SIP by amending OAR 340-200-0040. DEQ then would submit this SIP revision to EPA for approval and incorporation into the federally-approved SIP.

How would the proposed rule address the need?

The proposed rulemaking would adopt changes to the Oregon Smoke Management Plan into the Oregon Clean Air Act State Implementation Plan, and thereby meet DEQ’s responsibility to maintain compliance with the Clean Air Act.

How will DEQ know the need has been addressed?

If EQC approves this rulemaking, DEQ will submit the amended plan to EPA as a revision to the federally approved State Implementation Plan and OAR 340-200-0040.

DEQ will know the need has been addressed when EPA reviews and approves the changes to the Oregon Clean Air Act State Implementation 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. See DEQ summary of comments and DEQ responses.

Oregon State Legislature	http://www.deq.state.or.us/regulations/statutes.htm
DEQ SIP Rule	
OAR 340-340-200-0040	http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_200.html

Fee Analysis

DEQ's rulemaking does not involve fees. ODF's rulemaking makes a clarification to burn fees for different types of burn treatments. See ODF proposed rule amendments at the end of this document.

DEQ Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

Fiscal and Economic Impact

This proposed rulemaking does not have a fiscal or economic impact on the public, units of local government or state agencies. This proposal would adopt ODF amendments to the Oregon Smoke Management Plan into the Oregon Clean Air Act State Implementation Plan, as referenced in DEQ rules under OAR 340-200-0040.

This document addresses the fiscal and economic impact of the commission adopting into the SIP the plan amendments approved by ODF. ODF has prepared a similar document that addresses the fiscal and economic impact of the plan amendments they are proposing to adopt, as part of this joint rulemaking effort. The ODF fiscal impact statement is attached below.

Statement of Cost of Compliance

This proposed rulemaking does not have any significant economic effect on businesses nor will small businesses incur any costs of compliance because it is an administrative action whereby the EQC would adopt ODF plan amendments into the SIP. For a description of the economic effects and costs of compliance of ODF's rulemaking, see the ODF fiscal impact statement attached.

Impacts on public

There is no significant fiscal or economic impact on the general public.

Impact on other government entities other than DEQ

- a. Local governments No significant impact
- b. State agencies No significant impact

Impact on DEQ [ORS 183.335](#)

There is no significant fiscal or economic impact on DEQ.

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

This proposal would have no significant fiscal or economic impact on large businesses.

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

This proposal would have no significant fiscal or economic impact on small businesses.

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

This proposal does not affect small businesses.

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

This proposal does not affect small businesses; therefore, no additional activities apply to small businesses.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

This proposal does not affect small businesses; therefore, small businesses do not need additional resources to comply.

d) Describe how DEQ involved small businesses in developing this proposed rule.

This proposal does not affect small businesses; therefore, small businesses were not involved in developing this proposal.

Documents relied on for fiscal and economic impact

DEQ did not rely on any documents to develop this statement of fiscal and economic impact.

Advisory committee

DEQ did not appoint an advisory committee. ODF did convene the Smoke Management Review Committee. ODF relied on this committee for evaluating economic impacts of its separate rulemaking. The amendments being proposed to the plan are based on recommendations developed by this committee.

Housing cost

To comply with [ORS 183.534](#), DEQ determined the proposed rulemaking 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. The proposed plan amendments and adoption into the SIP does not affect housing or related costs.

ODF Statement of fiscal and economic impact

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Forestry – Forest Protection Division

Chapter 629

Agency and Division

Administrative Rules Chapter Number

Oregon Smoke Management Plan Revision and Update

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

In the Matter of: Revision of the Oregon Smoke Management Plan

Statutory Authority: ORS 477.013 and 477.562

Other Authority: ORS 526.016 and 526.041

Stats. Implemented: ORS 477.013, 477.515 and 477.552 to 477.562

Need for the Rule(s): The federal Clean Air Act requires states to periodically update their state implementation plans to demonstrate continued progress toward meeting federal air quality standards. One part of the state's implementation plan is the management of forestry prescribed burning through the Oregon Smoke Management Plan administered by the State Forester. The plan was recently reviewed and determined to need updating to ensure continued maintenance of air quality and public health while providing opportunities to conduct prescribed burning essential to restore and maintain forest health, reduce hazardous fuels buildup, reduce the opportunities for catastrophic air quality events from wildfire, and to promote reforestation after harvest. Changes to the rule include housekeeping measures, compliance with the Environmental Protection Agency's Regional Haze Rule, and fixing inadvertent changes made during the last Smoke Management Review.

Documents Relied Upon, and where they are available: The rule changes are based on recommendations found in a report entitled, "Smoke Management Review Committee Report," and through discussion at Board of Forestry meetings. Copies of the report and Board minutes can be viewed or made available by contacting Sabrina Perez, Rules Coordinator, 2600 State St. Salem, Oregon 97310; telephone (503) 945-7210; or email at sabrina.perez@state.or.us.

Fiscal and Economic Impact: While most rule changes are relatively minor housekeeping measures, four areas are likely to cause minor fiscal impact on landowners and federal land managers. These changes include:

- 1) Monitoring of burning units near Class I Areas to avoid main smoke plume impact.
- 2) Monitoring of burn units greater than 2000 tons.
- 3) A fee change to account for each additional type of burn treatment as opposed to lumping together treatments. This will result in a fiscal benefit to some landowners.
- 4) A regulatory boundary change to include forestland burning outside of forest protection districts.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Minor additional workload on forest districts who have forestlands adjacent to their boundaries and are not within another district boundary. Additional workload would be absorbed by the affected district with little likelihood of fiscal impact.

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

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: There are more than 2500 small landowners who have forestland and occasionally pay registration and burn fees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: Most small businesses do not have land near Class I Areas or burn units exceeding 2000 tons; thus, the cost of monitoring these types of units would be minor. On the other hand some businesses would gain by paying reduced fees due to fee changes noted in (3) under the Fiscal and Economic Impact section above. This benefit would be relatively minor as most would not be able to take advantage of the rule change; however, overall cost savings could be up to \$2,000 annually.

c. Equipment, supplies, labor and increased administration required for compliance: As noted in (2b) above, most landowners would not be subject to monitoring rules thus costs would be minor.

How were small businesses involved in the development of this rule? Rule development was discussed routinely with the Smoke Management Review Committee as well as receiving a final review by the Smoke Management Advisory Committee (required under ORS 477.556). Both the Review Committee and Advisory Committee included representatives from industrial forest landowners and non-industrial forest landowners. In addition, all meetings of both committees were open to the public with public comment periods available.

Administrative Rule Advisory Committee consulted? Yes. The Smoke Management Review Committee was established for the purpose of recommending changes and improvements to the Oregon Smoke Management Plan. Rule development was reviewed by the Smoke Management Advisory Committee.

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

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..." [ORS 183.332](#)

Relationship to federal requirements

This section complies with OAR 340-011-0029 and ORS 468A.327 to clearly identify the relationship between the proposed rule and applicable federal requirements.

By adopting ODF's plan amendments into the SIP, this rule proposal does not impose requirements different from or in addition to federal requirements. This action would ensure the Oregon Smoke Management Plan continues to comply with federal requirements in the Clean Air Act and is federally enforceable.

What alternatives did DEQ consider if any?

Since this action is necessary to comply with the requirements of the Clean Air Act, DEQ did not consider other options for this proposal.

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.” [OAR 340-018-0010](#)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

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

- [OAR 340-018-0030](#) 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](#).
- 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 determined that this rulemaking and the proposed revisions to the SIP under OAR 340-200-0040 **does not affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

DEQ did not convene an advisory committee. However, ODF convened the Smoke Management Review Committee. The committee met eight times in 2012 and 2013. Both ODF and DEQ relied on this committee for evaluating the smoke management program. Committee recommendations are the basis for the proposed plan amendments.

EQC prior involvement

EQC was made aware of this rulemaking through Agenda Item H, at the Dec. 11, 2013, EQC meeting in Portland. In this informational item, DEQ summarized the proposed rulemaking and the Oregon Smoke Management Plan amendments.

Public notice

The February 2014 *Oregon Bulletin* published the Notice of Proposed Rulemaking with Hearing DEQ also:

- Sent notice to EPA Jan. 6, 2014
- Provided notice on Jan. 24, 2014 by:
 - Posted notice on DEQ's webpage at <http://www.oregon.gov/deq/RulesandRegulations/Pages/proposedrule.aspx>
 - E-mailed notice to:
 - Approximately 7,800 interested parties through GovDelivery, including the subscription groups Rulemaking, Air Quality maintenance plans, Klamath Falls Air Pollution, and Medford-Ashland Air Quality.
 - League of Oregon Cities
 - Association of Oregon Counties
 - The following key legislators required under ORS 183.335:
 - Jules Bailey, Chair, House Energy and Environment Committee
 - Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
 - Published legal notice in the following newspapers:
 - *The Oregonian*
 - *East Oregon (Pendleton)*
 - *Register Guard (Eugene)*
 - *Mail Tribune (Medford)*
 - *Klamath Herald & News (Klamath Falls)*
 - *La Grande Observer (La Grande)*
 - *Bend Bulletin (Bend)*

Public hearings and comment

DEQ held five public hearings on this rulemaking proposal. Four of the five hearings were held jointly with the Oregon Department of Forestry, including the hearings in La Grande, Veneta, White City and Klamath Falls. DEQ received eight public comments. The comment period opened Jan. 24, 2014, and closed March 12, 2014, at 5 p.m. The summary of comments and DEQ responses section below addresses each public comment. The commenter section below lists all people who provided comments on this proposal.

Presiding Officers' Record

Presiding Officer Report Date: April 16, 2014

The following table lists the five public hearings, locations, and dates.

Hearing 1	
Date	February 25, 2014
Time convened	6 p.m.
Time adjourned	7:05 p.m.
Address	The La Grande Library 2006 4th Street
City	La Grande, Oregon

Hearing 2	
Date	February 26, 2014
Time convened	6 p.m.
Time adjourned	7:05 p.m.
Address	DEQ Eastern Region Office 473 NE Bellevue, Suite 110
City	Bend, Oregon

Hearing 3	
Date	March 4, 2014
Time convened	6 p.m.
Time adjourned	6:48 p.m.
Address	Lane Fire Authority 88050 Territorial Hwy
City	Veneta, Oregon

Hearing 4	
Date	March 5, 2014
Time convened	6 p.m.
Time adjourned	7:35 p.m.
Address	Jackson County Roads & Parks
	200 Antelope Road
City	White City, Oregon

Hearing 5	
Date	March 6, 2014
Time convened	6 p.m.
Time adjourned	7:13 p.m.
Address	CU Auditorium, OIT
	3201 Campus Drive
City	Klamath Falls, Oregon

The presiding officer for all five public hearings was Brian Finneran of DEQ’s Air Program. Finneran summarized the procedures at each hearing, including notification that DEQ was recording the hearing. He asked those in attendance who wanted to present verbal comments to complete, sign and submit a registration form to indicate their intent to present comments.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#). He also responded to questions about the rulemaking.

A total of 40 persons attended the five hearings. Two persons provided oral testimony – one in Bend, and one in White City. No other oral or written testimony was provided at the hearings. DEQ added all names, addresses and affiliations provided on the registration form and attendee list to DEQ’s 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.

Close of public comment period

The comment period closed March 12, 2014, at 5 p.m.

Summary of comments and DEQ responses

The following is a summary of comments DEQ received during the public comment period with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

DEQ is proposing no changes in response to the comments received.

- 1 Comment** The proposed changes to the Oregon Smoke Management Plan that remove the summer visibility protection and replace it with year-round protection for the Eagle Cap Wilderness and Hells Canyon Wilderness as Class 1 areas will hamper the current prescribed burning program in Eastern Oregon. Prescribed burning is important in this part of the state to restore and maintain forest ecosystems, create fire adapted communities, and improve wildfire response. (Commenter 4).

Response EPA's adoption of the Regional Haze Rule in 1999 required States to protect Class I area visibility on a year-round basis, rather than a seasonal (summer) basis like in Oregon. This current rulemaking is not proposing to add year-round protection - this change occurred in the last periodic review of the Oregon Smoke Management Plan and rulemaking in 2007. At that time, new year-round provisions were added to manage burning "to avoid the main plume entering a Class I area at ground level". These provisions were voluntary. The current rulemaking is not proposing to change these provisions. Rather, this rulemaking is proposing to eliminate the reference to the "July 1 to September 15 visibility protection period" and increase visibility protection for two Class I areas - Crater Lake National Park and the Kalmiopsis Wilderness – during the months of October and November. DEQ recently studied all Oregon Class I areas and found these two were impacted more frequently by prescribed burning smoke than other Class I areas, specifically during these months, typically the heaviest burning months. As a result, special visibility protection was proposed that encourages the use of test fires or pilot balloons to assess transport wind direction. This additional protection is voluntary. None of the current changes being proposed should hamper the prescribed burning program in Eastern Oregon.
- 2 Comment** Greater effort is needed to reduce smoke impacts from prescribed burning in central Oregon (Deschutes County) due to adverse health effects, especially given the population growth in the area. We support the proposed rules to adopt additional provisions to encourage greater use of alternatives, and the proposal to require monitoring for prescribed burns over 2,000 tons. Additionally, there should be consideration for adding a Special Protection Zone in Deschutes Country. (Commenter 7)

Response DEQ agrees with the comment that increasing population growth in Deschutes County requires greater effort to reduce smoke impacts. Over the years, DEQ has been working with ODF to improve the smoke management program. Two of the

proposed provisions – encouraging greater use of alternatives and requiring monitoring of burns over 2,000 tons – should provide some improvement in reducing smoke impacts. One of the challenges of the smoke management program is to continue to reduce these impacts, while at the same time increasing the use of prescribed fire in some areas of the state to reduce smoke from wildfires such as the Pole Creek Fire in Deschutes County in 2012. Regarding the suggestion for adding a Special Protection Zone, these zones provide seasonal (wintertime) smoke protection, and only apply to “non-attainment areas” that violate the federal air quality standard for particulate matter. There are currently no non-attainment areas in Deschutes County. The cities of Bend and Redmond are designated as Smoke Sensitive Receptor Areas (SSRAs) which apply year-round, and represent a higher level of smoke protection than SPZs. Currently no other communities in Deschutes County are being considered as SSRAs, however provisions do exist in ODF rules (OAR 629-048-0150) to establish new SSRAs for cities with a history of prescribed burning smoke impacts. Communities can also request to become an SSRA.

- 3 **Comment** Fuels treatments that do not include prescribed burning are very ineffective. Alternatives to prescribed burning do not reduce fire hazard adequately, and should not be promoted. The benefits of prescribed burning outweigh the risks. Increased prescribed burning is needed to maintain healthy forests and should be promoted, with fewer restrictions. (Commenters 1, 3, 4, 6)
- Response The need to minimize emissions and consider alternatives to prescribed burning are mandated by state law (ORS 477.552 and 477.554) and in the Oregon Smoke Management Plan (OAR 629-048-0010 and 629-048-0200). At the same time, the need for and importance of conducting prescribed burning is also cited in state law and ODF rules, as is the need to protect air quality and public health. Not all prescribed burning is conducted to reduce fire hazard. Some is conducted to eliminate wood waste and debris after timber harvest. The balance of meeting prescribed burning objectives while minimizing smoke impacts must include fuel treatments that encourage the use of non-burning alternatives.
- 4 **Comment** Please explain how landowners, land managers, and the public would be alerted to the changes in OAR 629-048-0001, which allow ODF to manage prescribed burning through a joint agreement with DEQ in areas outside of a forest protection district. (Commenter 8)
- Response Both DEQ and ODF cited this proposed change in their respective public notice documents and at the public hearings held around the state. When adopted, this rule change will be implemented in the same manner as all other rule changes adopted by ODF, however, no special outreach is planned. Only a very few landowners and land managers are affected by this particular change, since the vast majority of forest lands fall inside forest protection districts, and are covered under the Oregon Smoke Management Plan. Those who are affected and have an interest in burning will be informed of the joint agreement between ODF and DEQ when they contact either agency. Included in the joint agreement will be provisions for ODF to notify DEQ and any local authorities (such as fire

departments) when such burning is authorized, in case there are inquiries from the public.

5 **Comment** The Lakeview Special Protection Zone is old and not realistic with smoke patterns and trends. Please change the boundary to better reflect terrain and the "airshed" that considers wind and weather patterns around Lakeview and the Goose Lake valley. (Commenters 5 and 6)

Response SPZs were adopted in 1992 for several communities, including Lakeview in 1995, which violated the federal air quality standard for particulate matter. Each SPZ boundary was based on 20 mile distance around the community, where additional smoke management measures were needed to ensure any prescribed burning within the zone did not contribute to poor air quality during the winter months. The SPZ boundaries were based mostly on the location of forested lands. Since adoption, DEQ believes the Lakeview SPZ has been effective. During the recent periodic review of the Oregon Smoke Management Plan, a change was proposed to the Medford SPZ boundary to better reflect the local terrain and "airshed". Medford lies in a valley floor or basin, and given the local meteorology, has a fairly defined airshed. There is no indication that such a change is necessary for Lakeview, nor was it raised during the recent periodic review. Making such boundary change would require an evaluation by DEQ, ODF and the smoke management advisory committee to determine if changes are needed, and the extent to which a new boundary would benefit Lakeview. DEQ has noted this as a topic for the next periodic smoke management plan review.

6 **Comment** Please confirm that DEQ has the authority to implement and enforce the smoke management rules if ODF does not. (Commenter 8)

Response Adoption of the Oregon Smoke Management Plan amendments into the Oregon Clean Air Act State Implementation Plan (under OAR 340-200-0040) and approval by EPA as a SIP revision, makes the smoke management plan (and rules) federally enforceable. This gives DEQ the authority to implement and enforce the smoke management plan.

7 **Comment** Medford is located on the valley floor in an area of complex terrain that often has long periods of air stagnation. As a consequence the Medford area has a history of exceeding the PM health standard. To bring the area into attainment, stringent rules and regulations had to be adopted for large industrial sources. There is also a stringent mandatory woodstove curtailment program. At a time when EPA has lowered the annual PM health standard from 15ug/3 to 12ug/m³, it makes no sense to reduce the size of the Medford SPZ boundary. In addition, just as other outdoor open burning is prohibited when the SPZ is in effect, so too should prescribed burning be prohibited. No forestry burning of any kind should be allowed whenever an Air Stagnation Advisory is in effect. (Commenter 2)

Response DEQ does not expect reducing the size of the Medford SPZ boundary will have any adverse impacts on air quality in the Medford area. The new, smaller

boundary was determined by studying the local terrain and meteorology, to identify what represents the air basin or “airshed” around Medford. Prescribed burning outside the new boundary is over higher ridges and hilltops, and as such the smoke is constrained by the terrain from impacting Medford, using basic smoke management techniques. Additionally, burning outside the boundary will be prioritized to reduce burning on “red” woodstove days, by only allowing smaller burn units farther away from Medford. Inside the new boundary, prescribed burning will continue to follow the daily green, yellow, and red woodstove restrictions during the winter months. Regarding the comment on the change to the annual PM health standard, reducing the size of SPZ boundary only affects burning during winter months, and is very unlikely to affect the annual standard, which is more about year-round smoke protection. Medford is already protected on a year-round basis as a designated SSRA. This applies to burning both inside and outside the SPZ boundary. The objective of SSRA protection is to avoid any smoke impacts in the designated community.

8 **Comment** Under 629-048-0130 (3) it says burn bosses and field administrators are encouraged to avoid the main smoke plume entering a Class I Area at ground level. This should be a requirement. And this requirement should apply year round, not just for two months of the year. (Commenter 2)

Response The rule language added to this section (3) of the rules was moved from section (5), and is unchanged. On the comment to make this a mandatory requirement rather than voluntary, DEQ believes a voluntary approach is appropriate at the current time. Should it be found that this is ineffective at minimizing visibility impacts, a mandatory approach will be considered at the next periodic plan review. On the suggestion that this should apply year-round rather than for two months, it should be noted this provision does apply year-round. The commenter may have been confused by proposed changes to ODF’s guidance in directive 1-4-1-601 “Operational Guidance for the Oregon Smoke Management Program”, which adds extra visibility protection to two Class I areas – Crater Lake National Park and the Kalmiopsis Wilderness – during two months, October and November. DEQ recently studied all Oregon Class I areas and found these two were impacted more frequently by prescribed burning smoke than other Class I areas, specifically during these months, typically the heaviest burning months. As a result, special visibility protection was proposed that encourages the use of test fires or pilot balloons to assess transport wind direction. This is in addition to the year-round protection that applies to all Class I areas, as noted above.

9 **Comment** The current method of defining and determining whether or not there is a smoke intrusion is deceptive and leads to misleading conclusions about the success of a smoke management program. We don’t believe that the intrusions reported using the current definitions and methodology accurately reflects their frequency and duration. We recommend coming up with a better way of defining intrusions. (Commenter 2)

Response The question of how accurately smoke intrusions are defined under the current smoke management program was not evaluated during the recent periodic

review, and would require an evaluation by DEQ, ODF and an advisory committee, to determine if changes are needed. The issue raised by the commenter is very important to consider and DEQ has noted this as a topic for the next periodic plan review.

10 Comment The SPZ contingency plan requirements are very problematic and are not acceptable as written. DEQ should have sole authority to determine what is needed to bring an area into compliance. ODF can provide advice and should be consulted, but in no way should both agencies have to come to agreement for the various contingency measures. (Commenter 2)

Response The SPZ contingency requirements are backup measures which impose greater restrictions on prescribed burning during the winter months if the community violates the federal air quality standard for particulate matter. No changes are proposed to these requirements at this time. The comment that both agencies have to be in agreement only applies to the existing language which states that prescribed burning must be determined to be a “significant contributor” to the violation. This determination is to be made by both agencies. If determined to be significant, the contingency requirements as currently written are automatically triggered.

11 Comment The location for the White City public hearing was a poor choice, and should have been held in Medford. Also, the hearing room was in a less convenient location several blocks away. (Commenter 2)

Response DEQ understands the commenter’s concerns. This location had been used previously by ODF for public hearings, and was selected as a location familiar to the public. DEQ appreciates the comment and has made note regarding any future decisions on hearing locations.

Commenters

Comments received by close of public comment period

The following is a list of the 8 people who submitted public comments on the proposed rulemaking by the deadline. Original comments are on file with DEQ.

- 1 **Commenter** Todd Taylor
Affiliation Taylor NW

This commenter provided testimony at the Bend public hearing.

- 2 **Commenter** Bob Palzer
Affiliation Sierra Club

This commenter provided testimony at the White City public hearing, and submitted written comments by email.

- 3 **Commenter** John Giller
Affiliation USDA Forest Service

This commenter submitted written comments via email.

- 4 **Commenter** Mark Jacques
Affiliation Blue Mountain Cohesive Strategy

This commenter submitted written comments via email.

- 5 **Commenter** Barry Shullanberger
Affiliation Fremont-Winema National Forest/Lakeview District BLM

This commenter submitted written comments via email.

- 6 **Commenter** Barry Hansen
Affiliation Fremont-Winema National Forest

This commenter submitted written comments via email.

- 7 **Commenter** James and Peyton Griffin
Affiliation Public

This commenter provided written comments by letter.

- 8 **Commenter** Keith Rose
Affiliation EPA Region 10

This commenter submitted written comments via email and by letter.

ODF proposed changes in response to comments received by ODF

ODF received six public comments, and in response to one of the comments on the need to clarify the application of burn fees, is proposing additional rule changes to OAR 629-048-0310, in section (3)(a), (b), and (c). These changes are noted below. DEQ defers to ODF on the need for making these changes, as mostly for administrative and clarification purposes, and supports this action.

The redline/strikeout below reflects ODF's changes to their smoke management rules made in response to comment.

Burn Fees

629-048-0310

Fees for Prescribed Burning

(3) The first time that fire is applied to a prescribed burn unit, regardless of actual accomplishment, payment of a burn fee is required. Burn fees shall be charged according to the following schedule:

(a) If the registration of planned burning includes only landing or right-of-way piles, the burn fee shall be \$.50 per acre registered. Subsequent attempts to improve accomplishment only in landing or right-of-way piles in the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(b) If the registration of planned burning includes only broadcast or piled acres and does not include landing or right-of-way piles, the burn fee shall be \$3.10 per acre registered. Subsequent attempts to improve accomplishment in any portion of the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(c) If the registration of planned burning includes any combination of burn treatments that include landing or right-of-way piles with broadcast or in-unit pile burning, the burn fee shall be \$2.60 per acre for each in-unit treatment registered upon the first attempt of each individual treatment. Landing or right-of-way piles will be \$.50 per acre registered upon the first attempt of burning any of those piles. Subsequent attempts to improve accomplishment in any portion of the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

Implementation

Notification

The changes to the Oregon Smoke Management Plan, if approved by ODF's Board of Forestry and by the Environmental Quality Commission, will become effective upon filing with the Secretary of State, approximately June 20, 2014. DEQ will work with ODF, who is by law responsible for operating and implementing the Oregon Smoke Management Program, in notifying the affected parties of these smoke management changes.

Compliance and enforcement

- Affected parties – this rulemaking primarily affects private forest landowners, and state and federal land managers who conduct prescribed burning under the Oregon Smoke Management Plan. DEQ's proposed amendment to OAR 340-200-0040 incorporates ODF changes into State of Oregon Clean Air Act Implementation Plan, and does not change the regulated parties.
- DEQ staff – DEQ will submit the rules to the U.S. Environmental Protection Agency as a revision to the Oregon State Implementation Plan.
- While the regulations do not change the regulated parties, some the requirements for regulated parties have been changed. As noted above, ODF is responsible for operating and implementing the Oregon Smoke Management Program. DEQ's role is primarily oversight of the daily operation of the program and participating with ODF in the periodic review of program. DEQ's involvement in the implementation of these changes will be to assist ODF in the following areas:
 1. Changes to the Special Protection Zones for La Grande and Medford. DEQ will implement this rule change as follows. Both DEQ and ODF conducted extensive outreach in these communities prior to proposing this rulemaking. The City of La Grande was notified of the proposed elimination of its SPZ. DEQ will confirm this with city officials if adopted. ODF will inform local forest landowners that the SPZ requirements no longer apply there. For Medford, similar notification was provided to local officials about the proposed SPZ boundary change. DEQ will also confirm this with local officials if adopted. ODF will inform local forest landowners of the boundary change and how prescribed burning is to comply with these changes. Where necessary, DEQ will coordinate with the local woodstove curtailment program in Medford to address any questions about the new SPZ boundary. DEQ will work with ODF to monitor air quality in the Medford area, and will periodically check with ODF to ensure that inside the boundary the burning continues to follow the daily woodstove restrictions, while outside the boundary ensure that burn units are prioritized to reduce burning on "red" woodstove days so that only the smaller units that are farther away from Medford are burned. DEQ will continue to track PM2.5 levels in Medford as it relates to trends and compliance with the primarily the daily PM2.5 federal air quality standard.
 2. Changes to allow ODF to regulate prescribed burning on forestlands currently outside forest protection districts, through an interagency agreement with DEQ. After adoption of the amendments to the Oregon Smoke Management Plan, DEQ will implement this rule

change by completing an interagency agreement to allow ODF to manage a small amount of prescribed burning that currently falls under DEQ Open Burning rules, so that it is regulated under the Oregon Smoke Management Program. Included in this agreement will be ODF responsibilities to notify DEQ when these burns occur, coordinate with local fire officials and handle any public smoke complaints if they occur.

3. Require smoke monitoring for prescribed burns over 2,000 tons in size. As part of DEQ's role in providing program oversight, DEQ will implement this rule change by periodically checking with ODF to ensure this new requirement is being followed, so that landowners have the ability to cease lighting or burn a smaller amount if air quality conditions change.
4. Providing extra visibility protection for Crater Lake National Park and the Kalmiopsis Wilderness. Under the federal Regional Haze rule, DEQ must track visibility and demonstrate progress in reducing haze in Oregon's Class I areas. New provisions to improve visibility were added to the Oregon Smoke Management Plan for two Class I areas – Crater Lake National Park and the Kalmiopsis Wilderness – during the months of October and November when prescribed smoke impacts tend to be the highest. These provisions encourage the use of test fires or pilot balloons to assess transport wind direction to reduce smoke impacts. To implement this rule change, DEQ will periodically check with ODF to assess compliance with these new provisions, to see if any visibility improvements are being made in these two Class I areas, under the Oregon Regional Haze Plan.
5. Additional voluntary provisions to encourage greater use of alternatives to burning and emission reduction techniques. Associated with this change to the Oregon Smoke Management Plan, ODF has added a rule requirement to summarize in its annual report efforts to increase the use of alternatives to burning and emission reduction techniques in the state. To implement this change, DEQ will review these summaries with ODF to assess trends and improvements. DEQ will also participate in a workgroup formed by ODF to collect data from landowners and land managers through surveys and other means to better track the use of alternatives and emission reduction strategies.

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year rule review because the proposed rules would amend an existing rule. ORS 183.405 (4)