



Oregon Department of Environmental Quality  
May 16-17, 2019  
Oregon Environmental Quality Commission meeting  
Agency Staff Report  
**Rulemaking, Action Item D**  
**Rule Table Attachments 2019**

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# DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

***Recommended motion language:***

*“I move that the Oregon Environmental Quality Commission adopt the proposed rules, as seen in Attachment A of this report, as part of Chapter 340 of the Oregon Administrative Rules.”*

## Overview

This proposed rulemaking corrects references in Department of Environmental Quality administrative rules to external documents and publishes external documents that the rules refer to but that are currently not published with the rules. This rulemaking also corrects existing typographical or grammatical errors in several rules without making any substantive changes.

The purpose of this rulemaking is to make DEQ rules easier for readers to use. This rulemaking will also help ensure that readers and users of the rules are always relying on the current, correct version of external reference documents.

Many of DEQ’s rules refer to or incorporate external reference documents such as tables, graphs, maps or manuals. Many of these documents are not currently published with the official, online version of the rules that the Oregon Secretary of State publishes. This is an artifact of when rules were originally published in paper and there was not a practical way to attach or include large external documents with the rules.

The Secretary of State, whose office publishes the official Oregon Administrative Rules, is now able to attach most types of documents to the online published rules. It is much easier for people using the rules to find and access reference documents if they are located directly with the published rules and available electronically. DEQ is conducting this rulemaking to correct errors in published rule attachments, to standardize formatting of rule attachments and to include reference documents that are not currently published with the rules.

The only change this rulemaking is making to any rule text is to ensure that references to external documents are accurate. DEQ is not making changes to the meaning or effect of any of the rules included in this rulemaking.

This rulemaking has no fiscal impact on any party. This rulemaking does not require any new actions by, or impose any new requirements on, any party.

## **Statement of Need**

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

Some DEQ administrative rules are difficult to use because they refer to external documents but those documents are not published with the rules in the official online version of the rules. This makes it difficult for people using the rules to find the appropriate reference documents.

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

DEQ is having the Secretary of State publish missing reference documents with the official online version of the rules so that users can easily find those reference documents.

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

The currently missing reference documents will be published with the official online version of the rules.

## Rules Affected, Authorities and Supporting Documents

Rules Amended				
340-012-0068	340-012-0072	340-016-0075	340-016-0290	340-017-0055
340-040-0020	340-040-0108	340-040-0125	340-040-0160	340-041-0016
340-041-0046	340-041-0061	340-041-0101	340-041-0121	340-041-0130
340-041-0140	340-041-0151	340-041-0160	340-041-0170	340-041-0180
340-041-0190	340-041-0201	340-041-0220	340-041-0230	340-041-0250
340-041-0260	340-041-0271	340-041-0286	340-041-0300	340-041-0310
340-041-0315	340-041-0320	340-041-0330	340-041-0340	340-041-0345
340-041-8033	340-043-0120	340-043-0150	340-044-0035	340-045-0100
340-050-0035	340-052-0020	340-053-0080	340-053-0090	340-064-0035
340-073-0025	340-073-0050	340-073-0085	340-090-0360	340-093-0030
340-093-0190	340-093-0210	340-093-0270	340-094-0040	340-095-0020
340-095-0095	340-096-0050	340-101-0004	340-101-0040	340-106-0004
340-120-0001	340-120-0010	340-122-0076	340-122-0084	340-122-0210
340-122-0218	340-122-0330	340-122-0335	340-124-0040	340-141-0001
340-141-0160	340-142-0001	340-150-0001	340-150-0200	340-151-0010
340-151-0020	340-163-0010	340-172-0005	340-172-0010	340-172-0020
340-172-0040	340-172-0070	340-177-0005	340-177-0025	340-200-0020
340-202-0060	340-202-0070	340-202-0090	340-202-0100	340-202-0130
340-202-0210	340-206-0030	340-206-0040	340-206-0050	340-206-8010
340-206-8020	340-206-8030	340-206-8040	340-208-0110	340-208-0210
340-208-0610	340-212-0120	340-212-0140	340-212-0220	340-216-0025
340-216-0052	340-216-0060	340-216-0070	340-216-8020	340-216-8030
340-218-0040	340-218-0050	340-218-0120	340-220-0080	340-220-0130
340-220-0150	340-220-0160	340-220-0170	340-222-0042	340-223-0020
340-223-0030	340-223-0060	340-224-0070	340-225-0020	340-225-0040
340-225-0045	340-225-0050	340-225-0070	340-226-0010	340-226-0210
340-226-8010	340-228-0020	340-228-0110	340-228-0120	340-228-0210
340-228-0300	340-228-0639	340-230-0030	340-230-0120	340-230-0130
340-230-0200	340-230-0310	340-230-0335	340-230-0340	340-230-0350
340-230-0383	340-230-0390	340-230-0500	340-232-0030	340-232-0060
340-232-0080	340-232-0085	340-232-0090	340-232-0100	340-232-0110
340-232-0120	340-232-0140	340-232-0160	340-232-0170	340-232-0220
340-232-0230	340-234-0010	340-234-0240	340-234-0510	340-234-0540
340-236-0410	340-236-8010	340-238-0040	340-240-0050	340-240-0120
340-240-0210	340-240-0220	340-240-0430	340-240-0610	340-240-0630

Rules Amended				
340-242-0020	340-242-0390	340-244-0040	340-244-0242	340-244-0244
340-244-9050	340-244-9070	340-246-0150	340-248-0270	340-248-0275
340-253-0040	340-253-8010	340-253-8020	340-253-8030	340-253-8040
340-253-8050	340-253-8060	340-253-8070	340-253-8080	340-253-8090
340-253-8100	340-257-0030	340-257-0090	340-258-0120	340-258-0290
340-258-0400	340-259-0030	340-260-0030	340-264-0078	340-266-0070

Rules adopted – OAR 340	
340-230-8010	340-232-8010

Statutory authority - ORS				
183	183.335(7)	183.325-183.337	454.615	454.625
459.005-459.418	459A.100-459A.120	459A.650-459A.685	459A.025	459.045
459.046	459A.590	459A.595	459.995	459.995
465.200-465.455	466.000(1)	465.009	465.315	465.400
465.400	465.410	466	466.706-466.835	466.850-466.870
466.070-466.080	466.020	466.090	466.625	466.746
466.855	466.994	466.995	468B	468
468.015	468.020	468A	468A.025	468B.030
468B.035	468A.040	468A.266	468A.268	468A.277
468B.048	468A.050	468B.055	468A.055	468.065
468A.070	468.150	468A.310	468A.315	468.996
536.137	--	--	--	--

Statutes implemented - ORS				
454.605	454.607	454.610	454.615	454.625
454.655	454.675	454.695	454.725	454.745
454.755	454.775	454.780	454.780	454.784
459	459.205-459.245	459.205-459.245	459.411-459.405	459.005

459.015	459.015	459.388	459.415	459.715
459.720	459.995	459A	459A.580- 459A.585	459A.590
459A.655	465.200-465.455	465.200-465.455	465.900	466.706-466.835
468.090-468.140	468.150-468.190	466.070-466.080	466.990-466.994	466.020
466.025	466.045	466.055	466.060	466.075
466.100	466.715	466.720	466.746	466.855
466.870	466.895	468	468.020	468.035
468.045	468.065	468A	468A.020	468A.025
468A.035	468A.050	468A.055	468A.070	468A.265 – 468A.277
468B	468B.030	468B.035	468B.048	468B.050
468B.055	468B.080	468B.155	468B.160	468B.165
468B.166	468B.167	468A.310	468A.363	517.770

## Legislation

2017 Oregon Law Chapter. 750, Section 148-157; House Bill 4059 (2018), Section 18-21

## Other authority

None

## Documents relied on for rulemaking

None

## **Fee Analysis**

This rulemaking does not involve fees.

# Statement of Fiscal and Economic Impact

## Fiscal and economic impact

This rulemaking has no fiscal impact on any party. The rulemaking does not add or remove any requirements or obligations on any party.

## Statement of cost of compliance

### State agencies

This rulemaking will not have any fiscal impact on any state agency.

### Local governments

This rulemaking will not have any fiscal impact on any local governments.

### Public

This rulemaking will not have any fiscal impact on the public.

### Large businesses: Businesses with more than 50 employees

This rulemaking will not have any fiscal impact on any large businesses.

### 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.

This rulemaking will not have any fiscal impact on any 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 rulemaking will not create any new or additional recordkeeping or other administrative requirements for any small businesses.

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

This rulemaking will not require any small businesses to purchase additional supplies, equipment or labor.

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

DEQ did not involve small businesses in developing this proposed rule. The proposed rule changes will not impose any new or additional requirements on any small businesses. The proposed rule changes will not impose any fiscal impact on any small businesses.



## **Documents relied on for fiscal and economic impact**

None.

## **Advisory committee fiscal review**

DEQ did not appoint an advisory committee.

The proposed rule changes will not impose any new or additional requirements on any small businesses. The proposed rule changes will not impose any fiscal impact on any small businesses.

## **Housing cost**

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 will not have any effect on the development costs. This is because the proposed rule changes will not impose any new or additional requirements on any party.

## Federal Relationship

ORS 183.332 and 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.

The proposed rules are not different from or in addition to federal requirements.

## Land Use

### 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 statewide 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:

- (1) The statewide land use planning goals specifically refer to the rule or program, or
- (2) The rule or program is reasonably expected to have significant effects on:
  - (a) Resources, objectives or areas identified in the statewide planning goals, or
  - (a) 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  | Natural Resources, Scenic and Historic Areas, and Open Spaces |
| 6  | Air, Water and Land Resources Quality                         |
| 11 | Public Facilities and Services                                |
| 16 | Estuarine Resources   |
| 19 | Ocean 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

DEQ is not making substantive changes to rules in this rulemaking that could affect land use. To the extent that any rules in this rulemaking themselves affect land use, DEQ considered and addressed those effects when DEQ adopted or amended those rules. In this rulemaking, DEQ is not amending any rules in a manner that will affect land-use considerations.

## EQC Prior Involvement

This proposed rulemaking has not previously been presented to the EQC.

## Advisory Committee

DEQ did not convene an advisory committee because the changes in this rulemaking have no adverse fiscal impact on any party and do not change any substantive requirements for any party.

## Public Engagement

### Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on Feb. 19, 2019, by:

- Filing a notice with the Oregon Secretary of State for publication in the March 1, 2019 Oregon Bulletin
- Posting the notice, including the draft rules, on the web page for this rulemaking, located at: [Table attachments rulemaking](#)
- Emailing 8,460 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
- Emailing the following key legislators required under [ORS 183.335](#):
  - Senator Michael Dembrow
  - Senator Alan Olsen
  - Representative Brian Clem
  - Representative Susan McLain
  - Representative Bill Post
  - Representative Ken Helm
  - Representative E. Werner Reschke
  - Representative Sheri Schouten
  - Representative Brad Witt
  - Representative Chris Gorsek
- Postings on Twitter and Facebook
- Posting on the DEQ event calendar: [DEQ Calendar](#)

## Public Hearing

DEQ held one public hearing. Only DEQ staff attended the hearing. DEQ received no comments at the hearing.

## Presiding Officer's Record

Date	March 18, 2019
Place	DEQ Headquarters, 700 NE Multnomah St., Portland, OR
Start Time	2:00 p.m.
Ending Time	2:30 p.m.
Presiding Officer	Meyer Goldstein

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. Only the presiding officer was present at the hearing. No person presented any testimony at the hearing.

## Summary of Public Comments and DEQ Responses

DEQ accepted public comment on the proposed rulemaking from Feb. 19, 2019, until 4 p.m. on March 21, 2019. No person submitted any comments on the rulemaking.

## Implementation

There are no implementation requirements because DEQ is not changing any substantive requirements.

# Five-year Review

## Requirement

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

## Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review, except those newly adopted and identified below, because the proposed rules would only amend existing rules. (ORS 183.405(4)).

## Five-year rule review required

These rules are newly adopted and subject to the five-year review requirement:

- OAR 340-230-8010
- OAR 340-232-8010

No later than five years after DEQ adopted these rules, DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

## Accessibility Information

You may review copies of all documents referenced in this document 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 Meyer Goldstein, 503-229-6478 (800-452-4011, ext. 5622 toll-free in Oregon).

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).