

Date: April 25, 2025

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item I, Informational item: Cleaner Air Oregon Toxic Air Contaminant Review and Update Rulemaking
May 8-9, 2025, EQC meeting

Why this is important DEQ will provide a status update to the Environmental Quality Commission on the Cleaner Air Oregon Toxic Air Contaminant Review and Update Rulemaking in preparation for a request for EQC action when the rulemaking process has been completed. This triennial rulemaking is required to ensure that DEQ sets air quality standards using the most up-to-date science to protect public health.

Prior EQC involvement In 2022, the commission approved the Air Toxics Science Advisory Committee members that have been providing feedback on the proposed updates to the standards, or Toxicity Reference Values, as part of the Cleaner Air Oregon Toxic Air Contaminant Review and Update Rulemaking process.

Background Under the Division 247 rules for “Health Risk-Based Air Quality Standards for Toxic Air Contaminants,” DEQ is required to periodically update both the lists of “Priority Toxic Air Contaminants” and “Toxicity Reference Values.” These lists are used by all DEQ programs concerned with toxic air contaminants; under the Cleaner Air Oregon program, they serve as the basis for emissions reporting and regulatory standards. It is important to note that these standards are not federally enforceable under the Clean Air Act and only apply to state-only programs like Cleaner Air Oregon. The rules in Division 247 establish the following:

- Definitions for both “Toxic Air Contaminant” and “Toxicity Reference Value”
- The authoritative sources DEQ will use as sources of toxicity information used to establish the TRVs
- The Priority Toxic Air Contaminant list, which is used for reporting purposes under the CAO program
- The Toxicity Reference Values list which is used as the basis for regulatory standards under the CAO program
- The process for reviewing and updating both lists, including:
 - The frequency of the updates for every three years.
 - A petition process that allows the public to request the addition or removal of a chemical to the Priority list or provide information to adjust a TRV
 - Involvement and consultation with an Air Toxics Science Advisory Committee during the process
- The requirements for establishing the ATSAC and its scope

DEQ in partnership with the Oregon Health Authority began this rulemaking process in 2021 and separated it into two phases: (1) TRV and Priority list review, including convening the ATSAC; and (2) the formal rulemaking, including Public Notice, convening of a Rules and Fiscal Advisory Committee, and a Public Comment period. As part of phase one, DEQ and OHA have dedicated considerable resources to preparing technical documents and tools for the review of toxicity information. In 2023, based on the considerable workload reviewing toxicology information, DEQ hired a consultant, Eastern Research Group, to provide quality control of the toxicology data and proposed TRV updates. In parallel with this work, DEQ and OHA have also convened multiple ATSAC meetings that have included the following topics:

- Evaluation of DEQ and OHA's proposed methodologies for TRV review.
- A discussion of the public petition for adjusting the short-term, or acute, TRV for manganese exposure.
- Substantive review and discussions of the proposed TRVs.

The final ATSAC meeting of phase one of this process is scheduled for May 2025. After that, DEQ and OHA will summarize feedback from the ATSAC and finalize the proposed Priority List and TRVs in preparation for the Rules Advisory Committee. DEQ anticipates convening the Rules and Fiscal Advisory Committee in Summer 2025 and bringing the rules to the commission in early 2026 for consideration.

**CAO
program
background
and
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CAO background and rulemaking history

The Cleaner Air Oregon Program was created to address gaps in the federal regulatory structure for toxic air contaminants, or TACs, and their impacts on public health. The CAO process requires that permitted industrial and commercial facilities perform a Risk Assessment to determine the potential health risks their air emissions pose to the surrounding communities. Risk Assessments are a standard tool historically used by other programs within DEQ (e.g., the cleanup program), and other environmental agencies like the Environmental Protection Agency, to determine health effects from environmental exposure to pollutants. With the adoption of the CAO program, DEQ established a state-only permitting program that utilizes Risk Assessments to regulate TAC emissions to health-based standards. In this way, DEQ closed the previous gaps in the federal air permitting for these contaminants and can ensure that air quality permits issued under the CAO program are health protective.

The extensive rulemaking process that established the CAO Program lasted from 2016 to 2018, and included Technical Advisory Committee meetings, public hearings across the state, and involvement by the Oregon legislature. In November 2018, the commission adopted the rules, and DEQ began immediately implementing the program. In 2020, DEQ proposed updates to the CAO rules to establish more protective health standards for noncancer health effects from exposure to TACs that are expected to cause developmental or other severe human health impacts when inhaled, as allowed under Oregon Senate Bill 1541, 2018. The commission adopted these updated standards, called Hazard Indexes, in April 2021. In 2021, DEQ proposed rules to establish a new standards division for toxic air contaminants under Division 247. This new division established the process for reviewing and updating these standards, called Toxicity Reference Values (TRVs), and the Priority List of reportable TACs, as well as setting

membership qualifications for the Air Toxics Science Advisory Committee members and the role and scope of the ATSAC. This rulemaking also proposed minor revisions and updates to the CAO program rules to provide clarification and increase efficiency of the program. The commission approved these rules in November 2021.

Current Toxicity Reference Value Rulemaking

As part of the rules approved in 2021, DEQ and OHA are directed to review the TRVs and Priority List every three years. The rulemaking process involves two phases: the first is a scientific review of the TRVs that involves convening an Air Toxics Science Advisory Committee, and the second is the formal rulemaking process. DEQ is nearing completion of the first phase of this process and will begin preparing feedback from the ATSAC meetings and developing the proposed TRVs to present to the Rules Advisory Committee during phase two for the formal rulemaking process.

The rules in Division 247 also establish the Authoritative Sources for TRV Review. These are primarily organizations that have the resources and expertise necessary to review the current science and develop inhalation reference standards, which is significant work. The rules identify four Authoritative Sources: (1) DEQ in consultation with ATSAC; (2) Environmental Protection Agency; (3) United States Agency for Toxic Substances and Disease Registry (ATSDR); and (4) California Environmental Protection Agency. The rules also establish a public petition process that allows members of the public to request an adjustment to TRVs based on scientific evidence; this occurred in the Fall 2022, when the DEQ received one petition for proposing an update to the acute or short-term TRV for manganese.

Air Toxics Science Advisory Committee (ATSAC)

The rules in Division 247 establish the qualifications for the ATSAC members, as well as define the ATSAC's role and scope. The ATSAC is not a decision-making body, and its role is to focus solely on scientific issues related to the toxicity of chemicals for the development of inhalation reference standards – the ATSAC's role is to “provide DEQ with findings and recommendations.” [OAR 340-247-0050(6)(c)]

ATSAC members must have experience in specific scientific fields for consideration (e.g., Toxicology, Environmental Chemistry, Epidemiology), and priority was given to those candidates who had experience setting regulatory health values and/or who worked at or with the Authoritative Sources established in the rules. The current ATSAC members were approved by EQC in July 2022, and DEQ held its orientation for these members in October of 2022. Initially, there were seven members of the ATSAC, currently five members remain.

The role of the ATSAC is to review and provide feedback to DEQ and OHA on proposed TRVs that can be used to revise them as applicable. The ATSAC is not a decision-making body and does not vote on any policy or decisions related to the proposed TRVs. In cases where DEQ and OHA serve as the Authoritative Source for a proposed TRV, DEQ must consult with the ATSAC to set those values. DEQ and OHA developed significant materials for the ATSAC to review as part of this process, including framing documents and worksheets the members were requested to complete and submit that contained their feedback and comments on the review process and the scientific review of the provided data. Here is a list of the ATSAC meetings DEQ and OHA have

convened and their content:

- Meeting #1 – October 2022 – Orientation Meeting:
In this orientation meeting DEQ and OHA introduced the ATSAC members and the committee's scope of work related to the TRV review process. They also presented the committee with a draft charter for review.
- Meeting #2 – January 2023 – TRV Rulemaking Background & Process:
DEQ and OHA presented background on the use of TRV values for DEQ programs, the background of the TRV rulemaking, and the proposed methodology and tools that DEQ and OHA developed for ATSAC members to review. The committee provided feedback on the methodology and tool, and adopted the final charter.
- Meeting #3 – April 2024 – Manganese Petition:
DEQ received one petition from the public petition process to adjust the short-term, or acute, manganese TRV. DEQ allowed the petitioners an opportunity to present supporting information to the ATSAC, and DEQ and OHA facilitated a discussion.
- Meeting #4 – January 2025 – TRV Review Materials Orientation:
DEQ and OHA presented the materials developed for the committee's TRV review process. This included framing documents targeting specific issues for committee members to provide feedback on and the TRV tool with all the proposed TRVs and supporting reference information.
- Meetings #5, 6, 7 – February 2025 – Substantive TRV Review Discussion:
DEQ and OHA dedicated three meetings to an in-depth review of the proposed TRVs and the supporting scientific information. The ATSAC members were presented with specific questions and were encouraged to raise other issues that they flagged during their own individual reviews.
- Meeting #8 – May 2025:
DEQ and OHA have scheduled a final meeting ahead of the Rule Advisory Committee in May to discuss diesel particulate matter TRV.

After Meeting #8, DEQ and OHA will summarize the ATSAC members' findings and feedback on the proposed TRVs and develop the list of proposed TRVs to present to the Rule Advisory Committee in the summer of 2025.

Rules Advisory Committee (RAC)

DEQ plans to convene a Rules Advisory Committee (RAC) and Fiscal Advisory Committee (FAC) in the summer of 2025 to gather feedback from the public on the proposed TRVs and any other rule updates (e.g., revising the frequency of the TRV update process itself). DEQ will invite members of the public that represent the following interested parties to serve as RAC and FAC members:

- Owners and operators of permitted facilities in Oregon
- Advocacy groups – Community, Environmental, and Industrial
- Business and environmental law professionals
- Environmental consultants
- Academic and nonprofit groups
- Public health officials

DEQ will present an overview of the TRV review process and information on the proposed TRVs, including feedback from the ATSAC, and revisions made based on this information. DEQ will allow committee members to comment on the review process or any specific proposals of interest. Additionally, DEQ will present a proposed update to the TRV review frequency based on the unexpected number of resources and time this initial process requires from DEQ and OHA. DEQ will also present the proposed implementation of the proposed TRVs, if approved by the EQC, specifically related to the Cleaner Air Oregon program.

Implementation planning

DEQ is beginning to evaluate implementation considerations, should the commission adopt changes to any TRVs, in order to mitigate the cost and resource impacts to permitted facilities in the state, as well as the agency.

DEQ is committed to working with all parties to ensure that the applicable health-based standards can be met while continuing to issue permits and modifications to facilities in Oregon in a timely manner.

Key issues

The following are key issues related to the TRV review and rulemaking:

- This is a highly technical rulemaking that included convening the ATSAC to discuss all technical aspects of the proposed TRVs and the scientific supporting information for these values.
- Most updates to the proposed TRVs come directly from the Authoritative Sources and did not require significant technical discussion.
- Some proposed TRVs were provided by DEQ and OHA in consultation with the ATSAC, which may stimulate further discussions from the public; this could include Diesel Particulate Matter (DPM) and a select number of Per- and Polyfluoroalkyl Substances (PFAS).
- DEQ is committed to working closely with different interested parties to ensure a thoughtful and reasonable implementation plan is in place should the EQC adopt any revisions to TRVs.

EQC involvement

DEQ plans to bring a rule proposal for commission action when the CAO Toxic Air Contaminant Review and Update rulemaking is complete, likely in 2026.

Supporting materials

ATSAC webpage: <https://www.oregon.gov/deq/aq/air-toxics/Pages/ATSAC.aspx>

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Translation or other formats

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