

## STAFF REPORT

Agenda Item No.:	6
Title and # of Issue:	Wildfire Risk Management Priority Issue # 7 Objective # 3, Smoke Management
Date of Presentation:	January 3, 2007
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### SUMMARY

The purpose of this agenda item is to review the draft proposed rules that will make up a major portion of the revised Oregon Smoke Management Plan (SMP) and receive public comment on the rule drafts. Following discussion, staff will seek approval to begin the formal rulemaking process.

Staff will make a presentation highlighting the key elements of the draft rule proposal.

### CONTEXT

ORS 477.013 requires the State Forester and the Department of Environmental Quality (DEQ) to protect air quality through a plan for smoke management, and the DEQ is required to submit an updated state implementation plan in 2007 to the federal Environmental Protection Agency. The rule proposal that is the subject of this agenda item comes from a broad review of the existing smoke management plan, and staff work (in consultation with the Department of Environmental Quality) together with advice from the Smoke Management Advisory Committee in an effort to update the plan and maintain compliance with federal law.

### BACKGROUND

The Oregon Smoke Management Plan was developed as a voluntary program in 1969 and adopted as a regulatory program by the State Forester and the Environmental Quality Commission (EQC) in 1972. By law, the plan requires joint approval of both the State Forester and the Department of Environmental Quality. The plan has gone through several major revisions since then. The last major revision to the plan was completed in 1992. Minor revisions occurred in the mid-90's and rule changes affecting fees were implemented in 2004.

The Smoke Management Review Committee, a broad-based group, was established in 2002 to provide recommendations to the State Forester about the adequacy and currency of the plan.

Periodic reviews of the plan are part of the plan requirements, but major reviews had not been undertaken because of uncertainties about changes in federal air quality regulations.

The smoke management plan's overall purpose is to keep smoke from forestland prescribed burning from being carried to specific designated areas and other areas sensitive to smoke. The plan is a framework through which emission reduction goals were achieved. The State Forester administers the plan, in cooperation with landowners, land management agencies and air quality agencies. The plan applies to state, federal, and private forestland in Oregon. Mandatory smoke management constraints in the current form of the plan apply to burning in western Oregon, the Deschutes National Forest, Mt. Hood National Forest and federal forest lands in the Blue Mountains of northeast Oregon. Voluntary programs are in effect in the Klamath Falls and Lakeview areas. Monthly accomplishment reporting is required across the remaining forestlands in eastern Oregon.

Changes have occurred in fuel conditions, short-term climate, and state and federal air quality regulations since the last major revision of the smoke management plan. As a result, the Smoke Management Review Committee was charged with: 1) looking at the current objectives and the issues that have developed over the years, and 2) making recommendations for changes that are needed in the plan.

The review committee published a report (119 pages) in September 2005 containing 39 specific recommendations for the improvement of air quality and the smoke management plan. The Board has previously reviewed an implementation plan prepared by staff containing the full text of the 39 recommendations, and listing 61 actions that the department will pursue to carry out the recommendations. In addition, the Board has approved a legislative concept that, if passed will serve to implement some of the review committee's recommendation. This proposed rule package will respond to several more of those recommendations.

The current smoke management plan consists of one administrative rule and a lengthy internal department directive that provides operational guidance for carrying out the plan. Under this proposal, much of the overall design and intent of the SMP will be made more readily available and understandable to the public by incorporation into the administrative rules. The truly technical mechanics of developing smoke management forecasts and internal operational management of the program are still planned to be contained in a shortened agency directive.

## **ANALYSIS**

Proposed OAR 629-048-0010 describes the purpose of the rule package. In broad terms, the rules are designed to designate (per ORS 477.013) the areas that the smoke management plan will protect and the forestland that will be regulated; describe the objectives of the smoke management plan; establish procedures to be followed in administering prescribed burning; educate the public as to the necessity of prescribed burning and the measures being taken to protect air quality, public health and visibility; and to provide enforceable mechanisms to ensure the requirements of the smoke management plan are met.

The most significant changes that the rule proposals create, compared to the existing SMP, involve the extent to which the regulations are applied and the description of the areas to be protected, together with the process for designating future protected areas. Under the rule proposal, mandatory compliance with all elements of the SMP would be extended to all eastside federal forestlands within forest protection districts (proposed OAR 629-048-0100). Private forestlands in eastern Oregon and "grazing" forestlands in western Oregon that currently are required to report accomplishments monthly will be required to report their daily accomplishments on a weekly schedule to ensure more accurate data.

The criteria for, and listing of smoke sensitive receptor areas discussed initially at the Board's September meeting continue to be a topic of great interest to several parties. Staff anticipates significant public comment directed at this portion of the rules (proposed OAR 629-048-0140 and 629-048-0150).

The rules titled "Necessity of Prescribed Burning" (OAR 629-048-0020), "Protection Objectives" (OAR 629-048-0120) and "Visibility Objectives" (OAR 629-048-0130) are intended to educate the public and describe the dual nature of the smoke management program as it seeks to maintain and optimize the use of prescribed burning as a forest management tool while meeting air quality regulations and protecting public health.

The remainder of the proposed rules establishes the procedures and requirements to be followed by burners and program administrators to achieve the objectives of the plan. Most of these requirements do not significantly differ from current practice established in rule, agreements or directive. In some cases, such as "Alternatives to Burning" (OAR 629-048-0200), the rules encourage, but do not require, the listed practices. OAR 629-048-0500, "Enforcement" lists those elements of the rules, all in one place, that are intended to be enforceable standards which may carry penalties for violation.

Proposed OAR 629-048-0310, "Fee Structure" is shown twice in the proposal. The first version, in standard type, is consistent with existing statutory authority and direction. The second version, in italic type, is the preferred version, but requires statutory change as proposed in the department's legislative concept 629-02. Depending on what action the Legislative Assembly takes during the regular session, staff should be able to advise which rule is appropriate by the time the Board is requested to take action on rule promulgation.

## **RECOMMENDATION**

The Department recommends the Board authorize the State Forester to follow established procedures to prepare for adoption, amendment and deletion of the administrative rules shown in Attachment 1.

## **NEXT STEPS**

Approval of this item will allow staff to make the required notices of rulemaking to interested parties, conduct formal hearings and report back to the Board with any recommended adjustments and a request to promulgate the rule at a later time.

Hearings are projected to occur in late February and March with a return to the Board for approval of the final rules in June or July. Further discussion is needed to determine how best to coordinate the timing of rule implementation. Because some of the rules represent a change to current practice for a portion of the regulated community that may be less aware of agency actions, it may be wise to stage implementation of a few of the requirements to aid in education and eventual compliance. The DEQ anticipates action on the State Implementation Plan to be before the Environmental Quality Commission in December, 2007.

## **ATTACHMENT**

- (1) Draft OAR Chapter 629, Division 48 Smoke Management Rules Proposal