



# DEQ Rulemaking Plan

June 4, 2024



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# Information and contacts

If you have questions about a specific rulemaking, you may contact the subject matter expert listed for that rulemaking.

If you have other questions about DEQ rulemaking, contact the Rules Coordinator, Emil Hnidey, at [hnidey.emil@deq.state.or.us](mailto:hnidey.emil@deq.state.or.us) or 503-568-0376.

# Summary

The Oregon Department of Environmental Quality uses Oregon Administrative Rules to implement Oregon laws. The Environmental Quality Commission has the legal authority to adopt rules that DEQ enforces.

A committee of DEQ's leadership team and the director review all proposed rulemaking concepts and considers how each concept aligns with DEQ priorities. They then determine whether to:

1. Add the concept to the DEQ Rulemaking Plan,
2. Postpone developing the rulemaking concept, or
3. Deny additional work on the concept.

# 2024 EQC Meeting Schedule:

- January 24
- March 21-22
- May 23-24
- July 30-31
- September 26-27
- November 21-22

## Rules adopted since last report:

### May 2024

#### **Klamath Falls Maintenance Plan 2022**

The Environmental Quality Commission approved submitting to the U.S. Environmental Protection agency a request to redesignate the Klamath Falls airshed from nonattainment to attainment with the 24-hour National Ambient Air Quality Standard for small particulate, diameter less than 2.5 microns.

DEQ will submit a revision to the State of Oregon Clean Air Act Implementation Plan, referred to as the State implementation Plan under OAR 340-200-0040. This revision will:

- Redesignate the Klamath Falls airshed as attainment for the 24-hour PM<sub>2.5</sub> NAAQS; and
- Include a maintenance plan to keep air quality within the PM<sub>2.5</sub> health standards for at least 10 years after the redesignation.

#### **Powder River Basin Bacteria TMDL**

The Environmental Quality Commission adopted rules that establish a Total Maximum Daily Load to address the impairments to water quality standards and beneficial uses in surface waters in the Powder River Basin. These impairments are caused by excess bacteria and will be addressed by identifying and quantifying sources of this pollutant. This rule also establishes a water quality management plan that includes pollutant management strategies, a list of parties responsible for developing management plans and implementing strategies, and a timeline to reduce pollutant loads and attain water quality standards.

# Pending rulemakings

There are 21 pending rulemakings in the current DEQ Rulemaking Plan. The table below provides the current schedule for each.

June 4, 2024	2024							2025				
	J	J	A	S	O	N	D	J	F	M	A	M
Legislative Session EQC Meeting												
		E		E		E		E		E		E
1. Lower Columbia-Sandy Sandy Temperature TMDL		E										
2. Willamette Subbasins Temperature TMDL		E										
3. Water Quality Fees 2024		E										
4. Aquatic Life Toxics Criteria 2024				E								
5. Medium Heavy-Duty ZEV Rebate 2024	N	H		E								
6. TV Affirmative Defense 2024												
7. Recycling Updates 2024	H					E						
8. Clean Fuels Program Updates 2024		N	H			E						
9. Wastewater Operator Certification 2024		N	H			E						
10. Climate Protection Program 2024	A	N	H			E						
11. Vehicle Inspection Program Updates 2024			N	H		E						
12. Willamette River Mainstem and Major Tributaries TMDL	N	H						E				
13. E-Cycles 2024	A		N	H				E				
14. Underground Storage Tanks 2025		A	A	A		N	H			E		
15. Volatile Organic Compounds (VOCs) 2025	A			A	A		A	N	H			
16. PFAS 2025					A	A				N	H	
17. AQ Rules to Address Federal Regulations	H	D										
18. Noise 2024	H	D										
19. Heavy Duty Diesel Low NOx 2024	D											
20. AQ Fees 2024	H			D								
21. Coquille TMDL - TBD												

A – Advisory Committee N – Providing Notice (opening comment period) H – Public Hearing  
E – EQC Meeting D – Director Delegated Decision



# Planned EQC July 2024

## 1) Lower Columbia-Sandy Subbasin Temperature TMDL Replacement

Subject Matter Expert: Michele Martin

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503-880-7737

In 2013, the United States Environmental Protection Agency (USEPA) disapproved the Natural Conditions Criterion contained in Oregon's water quality standard for temperature due to the 2012 U.S. District Court decision for NWEA v. EPA, 855 F. Supp. 2d 1199 (D. Or., 2012). This portion of the temperature water quality standard was used in most temperature TMDLs issued from 2003 through 2012. On Oct. 4, 2019, the U.S. District Court issued a judgment for NWEA v. EPA, No. 3:12-cv-01751-HZ (D. Or., Oct. 4, 2019) and required DEQ and USEPA to replace 15 Oregon temperature TMDLs that were based on the Natural Conditions Criterion and to reissue the temperature TMDLs based on the remaining elements of the temperature water quality standard.

DEQ will present this TMDL to the Environmental Quality Commission for proposed rule adoption in November 2023. Per the District Court's final order and judgement, DEQ must amend and submit replaced temperature TMDLs to EPA for approval or disapproval. The schedule for the Lower Columbia-Sandy Subbasin TMDL will be submitted to EPA in November 2023, for determination by Jan. 15, 2024.

DEQ plans to:

- Begin holding advisory committee meetings February 2023
- Publish the notice of rulemaking and open the public comment period in January 2024
- Hold a public hearing in February 2024

## 2) Willamette Subbasins Temperature TMDL Replacement

Subject Matter Expert: Michele Martin

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503-880-7737

In 2013, the United States Environmental Protection Agency disapproved the Natural Conditions Criterion contained in Oregon's water quality standard for temperature due to the 2012 U.S. District Court decision for NWEA v. EPA, 855 F. Supp. 2d 1199 (D. Or., 2012). This portion of the temperature water quality standard was used in most temperature TMDLs issued from 2003 through 2012. On Oct. 4, 2019, the U.S. District Court issued a judgment for NWEA v. EPA, No. 3:12-cv-01751-HZ (D. Or., Oct. 4, 2019) and required DEQ and USEPA to replace 15 Oregon Rulemaking Plan 2024

temperature TMDLs that were based on the Natural Conditions Criterion and to reissue the temperature TMDLs based on the remaining elements of the temperature water quality standard.

The temperature TMDLs for the Willamette Basin will be developed to address temperature listings for waterbodies upstream of the U.S. Army Corps of Engineers dams, as well as PGE's River Mill dam on the Clackamas River.. DEQ will develop this TMDL by rule per Oregon Administrative Rule Chapter 340 Division 42.

DEQ plans to:

- Begin holding advisory committee meetings February 2023
- Publish the notice of rulemaking and open the public comment period in January 2024
- Hold a public hearing in February 2024

### **3) Water Quality Fees 2024**

Subject Matter Expert: Jason Simpson

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503-995-4054

The Water Quality program is proposing to increase water quality permit, license, and certification fees by up to 3% in 2024 for fiscal year 2025, as provided in ORS 468B.051. The amount of the increase may not exceed the anticipated increase in the cost of administering the program or 3%, whichever is lower.

In addition to the 3% fee increase, the Onsite Septic program is proposing a one-time fee increase of approximately 14% to fund resource enhancements authorized by the 2023 Legislature in Policy Option Package 123 (POP 123).

DEQ plans to:

- Begin holding advisory committee meetings February 2024
- Publish the notice of rulemaking and open the public comment period in April 2024
- Hold a public hearing in May 2024

## **Planned EQC September 2024**

### **4) Aquatic Life Toxics Criteria 2024**

Subject Matter Expert: Mailea Miller-Pierce

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503-887-3344

The EPA has issued new or revised aquatic life criteria recommendations for several chemicals since DEQ performed the last comprehensive update of aquatic life toxics criteria for Oregon's Rulemaking Plan 2024

surface waters in 2004. Under the Clean Water Act, states must adopt criteria for chemicals once federal recommendations exist or provide a justification for not adopting criteria. This rulemaking proposes to adopt several new or updated toxics criteria to protect Oregon's aquatic life uses.

DEQ plans to:

- Begin holding advisory committee meetings September 2023
- Publish the notice of rulemaking and open the public comment period in February 2024
- Hold a public hearing in March 2024

## **5) Medium Heavy-Duty ZEV Rebate 2024**

Subject Matter Expert: Gerik Kransky

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503-229-5177

The 2023 Oregon Legislature passed House Bill 3409 authorizing the Oregon Environmental Quality Commission (EQC) to adopt rules to implement a new rebate program supporting the purchase of zero emissions medium and heavy-duty vehicles.

HB 3409 provides \$3M in revenue for the new Zero-Emission Medium and Heavy-Duty Vehicle Incentive Fund and authorizes Oregon Department of Environmental Quality (DEQ) to establish a program for providing rebates for the purchase or lease of qualifying vehicles for use in Oregon. DEQ proposes to complete a rulemaking for the rebate program to specify application requirements, rebate allocation criteria, other requirements included statute, and program elements to improve air quality outcomes.

DEQ plans to:

- Begin holding advisory committee meetings between February and May 2024
- Publish the notice of rulemaking and open the public comment period in June 2024
- Hold a public hearing in July 2024

## **6) TV Affirmative Defense 2024**

Subject Matter Expert: Megan Duenas

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503-887-7934

On July 21, 2023, EPA issued a SIP Call to state permitting programs, including Oregon, requiring the removal of Affirmative Defense clauses from Oregon Administrative Rules during Startup, Shutdown, and Malfunction (SSM). If adopted by the Commission, this rulemaking will remove affirmative defenses from Title V permits and require that violations of emission limits are reviewed for enforcement, regardless of the cause of that violation.

An affirmative defense is a legal defense that Title V sources utilize to avoid liability for noncompliance with permit programs for excess emissions resulting from SSM and excess

emissions occurring as the result of an emergency. EPA has allowed state stationary sources to claim affirmative defense for operational permit program violations during periods of SSM since 1992 and for federal operation permit program violations since 1996. On July 12, 2023, the EPA removed the “emergency” affirmative defense provisions from the Title V operating permit program regulations.

DEQ plans to:

- Hold an advisory committee meeting in April 2024
- Publish the notice of rulemaking and open the public comment period in May 2024
- Hold a public hearing in June 2024

## **Planned EQC November 2024**

### **7) Recycling Updates 2024**

Subject Matter Expert: Roxann Nayar

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503-348-8904

This rulemaking is to implement the Plastic Pollution and Recycling Modernization Act of 2021, which requires producers of packaging, paper products and food serviceware to support and expand recycling services in Oregon. This rulemaking will focus on the rules necessary for the successful implementation and administration of the Act. Due to the Act’s complexity, this is the second rulemaking of two that Materials Management is leading.

The rulemaking will include rules whose adoption in fall 2024 will be critical to the successful implementation and administration of the Plastic Pollution and Recycling Modernization Act. The rulemaking will focus on the following primary topics:

- Set contamination management, processor commodity risk, and waste prevention and reuse fees;
- Establish permitting and certification standards for commingled recycling processing facilities,
- Establish living wages and benefits for commingled recycling processing facility workers;
- Define packaging and address covered product exemptions;
- Clarify local government compensation for contamination evaluation studies; and
- Develop requirements for end market certification and environmental impact assessments.

DEQ plans to:

- Hold advisory committee meetings between July 2023 and March 2024
- Publish the notice of rulemaking and open the public comment period in April 2024
- Hold a public hearing in May 2024

## 8) Clean Fuels Program Updates 2024

Subject Matter Expert: Cory-Ann Wind

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503-869-1326

Some of the items contained in this rulemaking were topics identified in the scoping of the CFP 2022 Expansion Rulemaking but were delayed due to the need to harmonize those changes with the California Low Carbon Fuel Standard program. California has begun their rulemaking process and the proposed timeline of our rulemaking aligns with theirs. Both jurisdictions will implement the changes in a parallel timeframe.

This rulemaking proposes the following:

- Regulatory changes to Division 253 are expected to:
  - Update the OR-GREET model used to calculate carbon intensity values in Oregon, in alignment with model updates occurring in California
  - Add new requirements for high-risk fuel pathways
  - Require third party verification for additional types of reports
  - Require validation for some fuel pathway applications
  - Clarify miscellaneous pathways and reporting requirements
- Regulatory changes to Division 272 are expected to:
  - Require third party verification for additional types of reports
  - Require validation for some fuel pathway applications
- Regulatory changes to Division 012 are expected to clarify violations associated with transferring illegitimate credits.

DEQ plans to:

- Hold advisory committee meetings between March and May 2024
- Publish the notice of rulemaking and open the public comment period in July 2024
- Hold a public hearing in August 2024

## 9) Wastewater Operator Certification 2024

Subject Matter Expert: Kimi Grzyb

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503-229-5349

DEQ's Wastewater Operator Certification Program is conducting this rulemaking to address the growing challenge of ensuring there is a sustainable, certifiable workforce to operate and maintain Oregon's wastewater utilities. This rulemaking proposes to:

- Update qualification pathways to certification for wastewater system operators with post-high school education;
- Facilitate operator certification reciprocity among states;

- Modernize the manner in which wastewater systems are classified to resemble neighboring states;

DEQ plans to:

- Hold advisory committee meetings between April and May 2024
- Publish the notice of rulemaking and open the public comment period in July 2024
- Hold a public hearing in August 2024

## 10) Climate Protection Program 2024

Subject Matter Expert: Nicole Singh

[Nicole.SINGH@deq.oregon.gov](mailto:Nicole.SINGH@deq.oregon.gov)

503-869-2119

DEQ staff propose to conduct a rulemaking to reestablish a climate mitigation program in place of the recently invalidated rules that established Oregon's Climate Protection Program. In December 2023 the Oregon Court of Appeals determined that DEQ did not fully comply with notice requirements during the 2021 rulemaking process, thereby invalidating these rules (formerly OAR 340, Division 271) and the program. The Climate Protection Program 2024 rulemaking would re-establish an enforceable and declining limit, or cap, on greenhouse gas emissions from fossil fuels used throughout Oregon, including diesel, gasoline, natural gas, and propane beginning in 2025.

DEQ plans to:

- Hold advisory committee meetings between April and June 2024
- Publish the notice of rulemaking and open the public comment period in July 2024
- Hold a public hearing in August 2024

## 11) Vehicle Inspection Program Updates 2024

Subject Matter Expert: Brett Schneider

[Brett.Schneider@deq.oregon.gov](mailto:Brett.Schneider@deq.oregon.gov)

971-673-1652

This rulemaking is for non-fee program-wide rule updates for the Vehicle Inspection Program. Topics under consideration for this rulemaking include:

- Codifying the DEQ Too test method in rule
- Updating reciprocity provisions for vehicles that are temporally operating less than 150 miles outside of the Oregon border

DEQ plans to:

- Begin holding advisory committee meetings in April 2024
- Publish the notice of rulemaking and open the public comment period in late Summer 2024
- Hold a public hearing in early Fall 2024

# Planned EQC January 2025

## 12) Willamette River Mainstem and Major Tributaries TMDL

Subject Matter Expert: Michele Martin

[Michele.Martin@deq.oregon.gov](mailto:Michele.Martin@deq.oregon.gov)

503-880-7737

In 2013, the United States Environmental Protection Agency disapproved the Natural Conditions Criterion contained in Oregon's water quality standard for temperature due to the 2012 U.S. District Court decision for *NWEA v. EPA*, 855 F. Supp. 2d 1199 (D. Or., 2012). This portion of the temperature water quality standard was used in most temperature TMDLs issued from 2003 through 2012. On Oct. 4, 2019, the U.S. District Court issued a judgment for *NWEA v. EPA*, No. 3:12-cv-01751-HZ (D. Or., Oct. 4, 2019) and required DEQ and USEPA to replace 15 Oregon temperature TMDLs that were based on the Natural Conditions Criterion and to reissue the temperature TMDLs based on the remaining elements of the temperature water quality standard.

This proposed rulemaking is to develop the **Willamette River mainstem and major tributaries** Total Maximum Daily Load (TMDL) for temperature for the Temperature TMDL Replacements under court order.

DEQ plans to:

- Hold advisory committee meetings between March and May 2024
- Publish the notice of rulemaking and open the public comment period in June 2024
- Hold a public hearing in July 2024

## 13) E-Cycles 2024

Subject Matter Expert: Rachel Harding

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503-929-7125

Rulemaking is required to clarify and implement [House Bill 3220 \(2023\)](#), which updates and makes necessary changes to the Oregon E-Cycles program. Potential instability in the program's collection network resulted in the passage of HB 3220. In addition to addressing the potential instability, HB 3220:

- expands the type of electronic devices that the program covers;
- increases the minimum number of collection sites the program must provide by statute;
- requires the program to provide equitable service throughout the state, including to rural areas and historically underserved populations; and
- streamlines program administration.

DEQ plans to:

Rulemaking Plan 2024

- Hold advisory committee meetings between February and June 2024
- Publish the notice of rulemaking and open the public comment period in August 2024
- Hold a public hearing in September 2024

## Planned EQC March 2025

### 14) Underground Storage Tanks 2025

Subject Matter Expert: Diana Foss

[Diana.FOSS@deq.oregon.gov](mailto:Diana.FOSS@deq.oregon.gov)

503-869-0770

The intent of this rulemaking is to improve the safety of underground storage tank (UST) systems by increasing DEQ oversight of the work that UST service providers and supervisors perform on UST systems, and by ensuring that those who work on UST equipment demonstrate a minimum competency in performing that work. The rules governing UST service providers were updated in 2003, and do not reflect the newer requirements for testing of UST equipment that were updated in Oregon in 2018 and implemented in 2020.

DEQ plans to:

- Hold advisory committee meetings between July and September 2024
- Publish the notice of rulemaking and open the public comment period in November 2024
- Hold a public hearing in December 2024

## Planned EQC May 2025

### 15) Volatile Organic Compounds (VOCs) 2025

Subject Matter Expert: Farrah Fatemi

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503-915-5671

This rulemaking will reduce emissions of volatile organic compounds (VOCs) from consumer products and architectural and industrial maintenance (AIM) coatings. This rulemaking is part of efforts in the Air Quality Division to reduce key pollutants that impact public health, and impact the State's ability to meet federal Air Quality standards.

DEQ plans to:

- Hold advisory committee meetings between June and December 2024
- Publish the notice of rulemaking and open the public comment period in January 2025
- Hold a public hearing in February 2025



# Planned EQC July 2025

## 16) PFAS 2025

Subject Matter Expert: Sarah Van Glubt

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503-709-8253

This rulemaking proposes to include perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, in the definition of hazardous substances in Oregon Administrative Rule (OAR) 340-122-0115 (30) which would give the Department authority to require investigation and removal and remedial actions of PFOA and PFOS releases and align with the US Environmental Protection Agency's (EPA) approach. PFOA and PFOS are among the most commonly detected PFAS, are known or suspected carcinogens, and have been shown to exhibit toxicity effects to humans and wildlife even at low levels of exposure.

DEQ plans to:

- Hold advisory committee meetings between October and November 2024
- Publish the notice of rulemaking and open the public comment period in March 2025
- Hold a public hearing in April 2025

## Rulemakings delegated to the DEQ Director:

### 17) Air Quality Rules to Address Federal Regulations 2023

Subject Matter Expert: Dan DeFehr

[Daniel.Defehr@deq.oregon.gov](mailto:Daniel.Defehr@deq.oregon.gov)

503-875-5520

This rulemaking is to meet DEQ's obligations to U.S. EPA under the Clean Air Act and Performance Partnership Agreement by adopting rules every two years which implement amended and updated federal regulations in Oregon that have been promulgated by EPA. The purpose of this rulemaking is to ensure that Oregon's rules are updated to align with the most recently updated federal regulations.

DEQ plans to:

- Publish the notice of rulemaking and open the public comment period in May 2024
- Hold a public hearing in June 2024

## 18) Noise 2024

Subject Matter Expert: Rachel Fernandez

[FERNANDEZ@deq.oregon.gov](mailto:FERNANDEZ@deq.oregon.gov)

503-724-7706

The primary purpose of this rulemaking is to amend Division 35 to allow solar photovoltaic energy generation facilities to demonstrate compliance with noise regulations in the same manner as allowed for wind electrical generation facilities. This includes:

- 1) Extending the maximum noise limits listed in Table 8 to solar energy facilities;
- 2) Allowing the use of an assumed ambient background baseline noise level of 26 dBA for solar energy facility sites, unless evidence shows that the actual background level is higher; and
- 3) Allowing for a willing landowner to waive the ambient noise degradation standard for their property, while maintaining the Table 8 limits.

This rulemaking is being conducted in partnership with the Oregon Department of Energy, Energy Facility Siting Council who certify the construction of new, large energy facilities in Oregon.

DEQ plans to:

- Hold an advisory committee meeting April 2024
- Publish the notice of rulemaking and open the public comment period in May 2024
- Hold a public hearing in June 2024

## 19) Heavy-Duty Diesel Low NOx 2024

Subject Matter Expert: Eric Feeley

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503-915-2798

DEQ is conducting this rulemaking to adopt California Air Resources Board amendments to maintain identicality with CARB rules for new medium- and heavy-duty vehicles and to permanently adopt an implementation delay of 1 year which will replace the temporary rule adopted by the EQC on Nov. 16, 2023. This action will provide manufacturers and buyers compliance certainty and add additional flexibilities to the legacy engine sales allowances for engine model year 2025 and 2026. DEQ plans to:

- Hold an advisory committee meeting April 2024
- Publish the notice of rulemaking and open the public comment period in April 2024
- Hold a public hearing in May 2024

## 20) Air Quality Fees 2024

Subject Matter Expert: Tim Wollerman

[Tim.WOLLERMAN@deq.oregon.gov](mailto:Tim.WOLLERMAN@deq.oregon.gov)

503-875-4965

DEQ is proposing to increase Asbestos and Cleaner Air Oregon program fees by the increase in the Consumer Price Index or three percent, whichever is lower.

Costs to operate Oregon's Asbestos and Cleaner Air Oregon programs have increased over the last two years due to inflation and require the proposed funding increases to continue to provide essential program services.

State law authorizes DEQ to increase fees by the annual change in the consumer price index, or three percent, whichever is lower.

DEQ plans to:

- Hold an advisory committee meeting May 2024
- Publish the notice of rulemaking and open the public comment period in June 2024
- Hold a public hearing in July 2024

## Rulemakings with no EQC date

### 21) Coquille Subbasin Bacteria, Dissolved Oxygen and Temperature TMDLs

Subject Matter Expert: Bryan Duggan

[Bryan.DUGGAN@deq.oregon.gov](mailto:Bryan.DUGGAN@deq.oregon.gov)

503-367-3400

DEQ is conducting a rulemaking to establish Total Maximum Daily Loads to address the impairments to water quality standards and beneficial uses in surface waters in the Coquille Subbasin (South Coast Basin). These impairments are caused by excess bacteria and temperature and inadequate dissolved oxygen and are addressed by identifying and quantifying sources of pollutants affecting these parameters. This rule will also establish a water quality management plan that includes pollutant management strategies, a list of parties responsible for developing management plans and implementing strategies, and a timeline to reduce pollutant loads and attain water quality standards.

DEQ plans to:

- Hold advisory committee meetings 2023
- Publish the notice of rulemaking and open the public comment period in late 2023
- Hold a public hearing in early 2024

# Links

## Proposed and Filed Rules

DEQ's rules web page lists proposed and adopted rules.

[DEQ Rulemakings](#)

## EQC Meetings

EQC meeting dates, locations and agendas are on the commission web page.

Meeting agendas include rulemaking staff reports that describe DEQ's rulemaking proposal, the process used to develop the proposed rules and the draft rules showing the proposed changes.

[EQC Meetings](#)