

Oregon Department of Environmental Quality

**October 16, 2013**

Oregon Environmental Quality Commission Meeting

Temporary Rulemaking Action Item: #

**Clean Diesel Grant Program – Alignment with Federal Guidelines**

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| **DEQ recommendation to the EQC** |

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed TEMPORARY rule amendment in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective upon filing with the Secretary of State through March 30, 2014.

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| **Statement of need and justification** ORS 183.335(5) |

Short summary

Senate Bill 249 (now 2013 Or. Laws Ch. 44) was adopted unanimously by the 2013 Oregon Legislature and signed into law on April 18, 2013. The bill authorized DEQ to administer federal grants received for clean diesel projects in accordance with federal grant guidelines rather than more limited state guidelines. Before SB 249 was approved, DEQ did not have statutory authority to accept and administer federal clean diesel grants for some projects. Although SB 249 was enacted with an emergency clause making it effective upon signing, a rule implementing the statutory provision is also necessary because current rules limit DEQ’s ability to administer federal grants available for some clean diesel projects. A temporary rule is needed to implement SB 249 because a permanent rule could not be adopted in time for the current federal grant cycle.

Background

In 2007 the Oregon Legislature adopted a grant, loan and tax credit supported program to reduce environmental and public health risks from diesel engine pollution. Oregon’s original authorization for clean diesel grants, loans and tax credits is currently limited to exhaust retrofits, nonroad engine repowers and truck scrapping while federal program guidelines currently allow for ten other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement.

State funds for clean diesel work have not been appropriated since the 2007-09 biennium and the tax credit program was shut down in 2012. Remaining funding incentives for clean diesel work is available primarily through the federal Diesel Emission Reduction Act. While the Act allows a broad range of eligible activities, DEQ is constrained in applying for and managing federal grants by the original statutory authority. This is hampering DEQ’s ability to be successful in recruiting projects and securing federal awards. As a consequence, despite widespread outreach, there was no interest by diesel owners to retrofit vehicles or equipment during the FY 2012 grant cycle and no federal grants were awarded in Oregon that year.

Consequences of not taking immediate action

DEQ determined that failure to amend the proposed rule would delay implementation of projects to reduce the harmful emission from diesel engines through vehicle and equipment replacement. Older diesel engine exhaust emits particulate matter and other pollutants that are harmful to human health and the environment. Federal clean diesel grants provide funding to improve and retrofit diesel engines to decrease the amount of such harmful emissions. Failure to adopt the temporary rule would prevent DEQ from administering grants that meet federal funding criteria as authorized by Senate Bill 249. This includes, for example, vehicle replacement and exhaust retrofitting highway maintenance vehicles to reduce emissions that contribute to air toxics and climate change. Delaying this project implementation will damage DEQ’s ability to secure future grant awards from EPA, which will undermine the Oregon Clean Diesel Initiative’s effort to reduce the adverse impacts from toxic air pollutants and mitigate climate change in a timely manner. In summary, further delay in implementing such clean diesel grant projects will seriously prejudice the public’s interest, and other parties’ interests, in the ways described above.

How temporary rule would avoid or mitigate consequences

The temporary rule will allow DEQ to administer clean diesel grant projects that meet federal funding criteria. Successful completion of these projects contributes toward meeting the legislatively adopted goal contained in ORS 468A.793 to reduce excess lifetime cancer risk from exposure to diesel exhaust to one in a million by 2017.

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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Air Quality Clean Diesel Initiative

Chapter 340 action

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| Amend | ORS 340-259-0010 |

Statutory authority

ORS 468.020, 468A.803

Statute implemented Legislation Year

ORS 468A.803 2013 Or. Laws Ch. 44 (SB 249) 2013

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

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| **Document title** | **Document location** |
| SB 249 | www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf |

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| Housing costs - [ORS 183.534](http://www.leg.state.or.us/ors/183.html) |

DEQ determined the proposed rules 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 rule only affects administration of grants to reduce emissions from diesel engines.

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| Public notice OAR 183.355, OAR 137-001-0080 |

Advisory committee

DEQ did not convene an advisory committee. The proposed adoption is determined to be straightforward and non controversial.

 EQC prior involvement

The EQC was briefed on this topic and the temporary rule in the Director’s Dialogue submitted at the August 2013 meeting.

Public notice

DEQ provided notice of the temporary rule in the following ways:

* Posted notice on DEQ’s webpage ([www.deq.state.or.us/regulations/proposedrules.htm](http://www.deq.state.or.us/regulations/proposedrules.htm)) on Sept. 25, 2013.
* E-mailed notice on September 25, 2013 to:
* Approximately 11,400 interested parties through GovDelivery.
* Approximately 6,000 stakeholders on the Department rulemaking interested persons list.
* Three key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html). Key legislators included:
  + Senator Jackie Dingfelder, Chair, Senate Environment and Natural Resources Committee
  + Senator Lee Beyer, Chair, Senate Business and Transportation
  + Representative Jules Bailey, Chair, House Energy and Environment Committee
* Sent notice to EPA on Sept. 25, 2013.

Public comment

DEQ did not solicit public comment on the temporary rule.

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| Implementation |

Notification

The proposed rule would become effective upon filing with the Secretary of State, which will likely occur on Oct.17, 2013. DEQ will notify affected parties by email.

Implementation

The proposed rule allows for DEQ to administer funding for clean diesel projects derived from federal funds in accordance with the federal grant guidelines in place for that grant award. This would be implemented when providing notice to interested parties of the availability and particulars of funding, including vehicle and equipment eligibility, geographic and operational priorities, assistance limits, conditions on operations and eligible technologies and other supportable actions. Notice would be provided through common methods of communication like GovDelivery mailing lists, webpage postings and when possible, free media.

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| 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

The following APA exemptions from the five-year rule review apply to all of the proposed rule:

* Amendments or repeal of a rule. ORS 183.405 (4)