

Oregon Department of Environmental Quality

**October 1, 2013**

Notice of Proposed Rulemaking

 **Air Quality Rule Changes and Updates**

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|  **Overview** |

Short summary

DEQ proposes minor changes to the clean diesel grant and loan program

Brief history

1. Implement Senate Bill 249A – Update clean diesel grant and loan rules: The 2013 Oregon Legislature adopted Senate Bill 249. The bill authorized DEQ to administer federal grants for clean diesel projects and to complete the projects according to federal grant guidelines rather than the more limited state guidelines. Although the legislation included an emergency clause making it effective upon filing, DEQ must now adopt implementing rules. Failure to adopt the proposed rule would delay implementation of projects that would reduce harmful emissions from diesel engines through vehicle and equipment replacement projects.

Regulated parties

The proposed rules affect all businesses, agencies, and local governments who now have or are required to obtain air quality permits.

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|  **Statement of need** |

| **Proposed Rule or Topic** | **Discussion** |
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| 1. Clarify and update rules
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| 1. Implement 2013 SB 249A - Clean diesel grant and loan rules
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| What problem is DEQ trying to solve? | 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. Federal program guidelines currently allow for ten other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement. Oregon has not appropriated state funds for clean diesel work since the 2007-09 biennium and the tax credit program ended 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 Oregon’s original statutory authority. This hampers DEQ’s ability to successfully recruit projects and secure federal awards. As a consequence, despite widespread outreach, diesel owners were not interested in retrofitting vehicles or equipment during the FY 2012 grant cycle and no federal grants were awarded in Oregon that year.  |
| How would the proposed rule solve the problem?  | The proposed rule would allow DEQ to administer grants that meet the federal funding criteria authorized by Senate Bill 249 to include a broader variety of clean diesel implementation methods than currently authorized under Oregon rules. Expanding the scope of allowable activities broadens the range of fundable projects in Oregon and supports the Oregon Clean Diesel Initiative’s effort to reduce the adverse impacts from toxic air pollutants and mitigate climate change. |

How will DEQ know the problem has been solved?

For all of nine categories in the table above, DEQ will submit the rules to EPA to update Oregon’s State Implementation Plan after the EQC adopts the proposed rules. DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the State Implementation Plan revision. DEQ will know that the state-level rules have solved the problem once it starts successfully permitting air contaminant emission sources in sustainment and reattainment areas under the new rules.

Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the substantive goals of the proposed rules while reducing any negative economic impact of the rules on business.

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|  Rules affected, authorities, supporting documents |

Amend OAR:

340-259-0010

Statutory authority

ORS 468 and 468A

Statutes implemented

ORS 468, 468A, 468A.025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070, 468A.135, 468A.155, 468A.310, 468A.327, 468A.460 through 468A.515, 468A.803

 Legislation Year

Clean Diesel Engine ORS 468A.803 (1) SB 249 2013

 <http://www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf>

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 |

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| 2013 SB 249A | <http://www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf> |
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A crosswalk of all rules changes, including the rules in the State Implementation Plan, with more detail is available as part of the rulemaking package.

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|  Fee Analysis  |

This rulemaking does not involve any change in fees.

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|  Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.leg.state.or.us/ors/183.html) |

Fiscal and economic impacts

The proposed rules would have fiscal and economic impacts on the public, businesses, state agencies and units of local governments. DEQ proposes:

Statement of Cost of Compliance

Impacts state agencies, units of local government and the public

1. **Implement 2013 SB 249A - Clean diesel grant and loan rules**

State agencies: The proposed rules would not create a fiscal or economic impact for DEQ or other state agencies because the direct and indirect costs of administering the grant are recovered from the grant itself.

Units of local governments: The proposed rules would not create a fiscal or economic impact for units of local governments.

Public: DEQ anticipates the proposed rules could have a small positive fiscal and economic impact on the public if more equipment upgrades occur in Oregon and grant recipient pass savings to the public or customers.

Impact on businesses – general (see specific impacts on small businesses below)

DEQ anticipates the following fiscal and economic impact on approximately 1130 large businesses and 1550 small businesses.

1. **Implement 2013 SB 249A - Clean diesel grant and loan rules**

This is a voluntary program; therefore, there would be no fiscal or economic impact from proposed rule in this category.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](http://www.leg.state.or.us/ors/183.html)

In addition to the fiscal and economic impact described under Impact on business – general above, the proposed rules could have the following impacts on small business.

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | The proposed rules would require approximately 1550 small businesses to comply with lower grain loading and opacity standards, many of which already have the lower standards in their permits. Current compliance information indicates that most small businesses already comply with the proposed standards. Approximately 4 or 5 businesses may have to add controls.  |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | Fewer costs for reporting, recordkeeping or other administrative activities are expected if the amendments are adopted because approximately 540 gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline would not be required to report. There would be more recordkeeping and reporting for emergency generators and small natural gas or oil-fired equipment.  |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | DEQ does not expect additional costs for equipment, supplies, labor or administration if the EQC adopts the proposed rules.  |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | DEQ informed small businesses by announcements on the DEQ website, through direct mailings and email lists, stakeholder meetings, notices in the Secretary of State Bulletin, and ads in local papers. DEQ requests comments during the public comment period and at public hearings held in November. DEQ staff will participate in the December Northwest Environmental Conference in Portland informing people about the rulemaking. Attendees at this conference include representatives from large and small businesses.  |

 Documents relied on for fiscal and economic impact

Advisory committee for fiscal and economic impact statement

DEQ did not appoint an advisory committee for this rulemaking. The majority of the proposed rule changes are for the New Source Review program. These rules are very complex and affect very few businesses; one to three businesses apply for a New Source Review permit each year. DEQ held stakeholder meetings around the state in August to get input from affected businesses and the public on the proposed rule changes. DEQ will accept comment on the fiscal and economic impact statement during the public notice period.

Housing cost

1. **Implement 2013 SB 249A - Clean diesel grant and loan rules**

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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|  **Federal relationship** <http://www.leg.state.or.us/ors/468a.html> |

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

Relationship to federal requirements

1. **Implement 2013 SB 249A - Clean diesel grant and loan rules**

The proposed rules are “in addition to federal requirements” and not required by federal requirements.

What alternatives did DEQ consider, if any?

DEQ did not consider any alternatives because failure to adopt the proposed amendment would undermine the Oregon Clean Diesel Initiative’s effort to support program goals to reduce the adverse impacts from toxic air pollutants and mitigate climate change.

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|  Land use  |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

 [ORS 197.180](http://www.leg.state.or.us/ors/197.html), [OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

* Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

 **Goal Title**

 5 Open Spaces, Scenic and Historic Areas, and Natural Resources

 6 Air, Water and Land Resources Quality

 11 Public Facilities and Services

 16 Estuarial resources

 19 Ocean Resources

* [OAR 340-018-0030](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules would significantly affect land use. If yes, how will DEQ:
	+ Comply with statewide land-use goals, and
	+ Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the following proposed rules listed under the Chapter 340 Action section above are existing rules that affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program:

ORS 340-210 Source Notification Requirements

ORS 340-216 Air Contaminant Discharge Permits

ORS 340-218 Oregon Title V Operating Permits

The air quality permit programs require that a new business provide a Land Use Compatibility Statement (LUCS) from local government when applying for a permit. This assures that the business is an approved use for the property where it is located. Existing permittees have provided a LUCS, which are on file with DEQ. No change in the land use procedures in the air quality permitting program is proposed.

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules.

* 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans
* 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement.

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|   Stakeholder and public involvement |

 Advisory committee

Stakeholder meetings allowed input on the preliminary rules. DEQ sent an announcement of the meetings to all permitted facilities and people who expressed interest in air quality rulemakings. DEQ sent the announcement by postcards, email using Oregon’s GovDelivery system, a free e-mail subscription service that provides subscribers with automatic notices of updates to the Oregon DEQ Web page on topics they select, and posted the announcement on the DEQ website. EPA was involved throughout the rule development process.

DEQ did not use an Advisory Committee but held several meetings throughout the state (Portland, Pendleton, Eugene and Medford) with stakeholders to discuss preliminary rules. DEQ also called all the businesses identified as being affected by the more stringent particulate standards and offered to meet with them individually.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ shared information about this rulemaking with the EQC through an information item on the October 16, 2013 EQC agenda.

Public notice

The November 2013[*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html) will publish the Notice of Proposed Rulemaking with Hearing for this rulemaking. DEQ also:

* Posted notice on DEQ’s webpage <http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/aqperm.aspx> on October 1, 2013.
* E-mailed notice on October 1, 2013 to:
* Approximately 6,500 interested parties through GovDelivery.
* 1,562 stakeholders, including representatives of facilities holding Title V and Air Contaminant Discharge Permits, through GovDelivery.
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
	+ Senator Lee Beyer, Chair, Senate Business and Transportation
	+ Jackie Dingfelder, Chair, Senate Environment and Natural Resources
	+ Jules Bailey, Chair, House Energy and Environment
* Mailed the notice by U.S. Postal Service to 449 stakeholders on October 1, 2013, including representatives of facilities holding Title V and Air Contaminant Discharge Permits.
* Legal ad in the Oregonian and Daily Journal of Commerce on October 1, 2013
* Sent notice to EPA on October 1, 2013.

Public hearings

DEQ plans to hold one statewide public hearing that will be accessible throughout the state from the regional offices. The table below includes information about how to participate in the public hearings.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), the staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html) and respond to any questions about the rulemaking.

DEQ will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. DEQ will consider all oral and written comments received at the hearings listed below before finalizing the proposed rules. All comments will be summarized and DEQ will respond to comments in the Environmental Quality Commission staff report.

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Close of public comment period

The comment period will close on November 20, 2013 at 5:00 p.m.