

Oregon Department of Environmental Quality

**October 16, 2014**

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:

Amend the proposed TEMPORARY rule 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

SB 249A was adopted unanimously by the 2013 Oregon Legislature and signed into law on April 18, 2013. While the law was enacted with an emergency clause making it effective upon signing, the Attorney General has determined that adoption of a rule implementing the statutory provisions is also necessary. SB 249A authorizes the Department to administer federal grants received for clean diesel projects to be completed in accordance with federal grant guidelines rather than more limited state guidelines.

Background

In 2007 the Oregon Legislature outlined the elements of a grant, loan and tax credit supported program to reduce environmental and public health risks from diesel engine pollution. There are a wide variety of strategies to reduce the pollution impact from diesel engines, including installing advanced exhaust controls, repowering engines to more stringent emission standards, increasing efficiency in operations involving diesel engines, reducing unnecessary idling, switching to lower emitting alternative fuels, among other actions. Some of these actions have an inherent economic advantage and represents an ineffective use of public financial resources to subsidize. Other actions, e.g., alternative fuels, have levels of public financial support from other programs. The original limited authorization for clean diesel grants, loans and tax credits managed by DEQ reflected a strategic decision to support a limited number of cost effective strategies not otherwise financed through private returns on investment or other public assistance.

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. This has led to a constrained grant program that is not in alignment with the range of allowable activities under available funding. The primary remaining funding stream is managed by EPA through the federal Diesel Emission Reduction Act. The Act includes a more expansive list of allowable project activities than were authorized under Oregon statutory authority. However DEQ is still constrained in applying for and managing federal grants by the statutory authority. As an example, there was no interest in pursuing projects within the original statutory scope for the FY 2012 cycle despite broad outreach and project recruitment efforts. Consequently no federal funds were awarded for Oregon projects in that year. Aligning DEQ’s clean diesel project authority with federal grant guidelines allows for ongoing and developing interest in clean diesel activities to be supported, e.g., vehicle and equipment replacement as compared to exhaust retrofitting.

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 projects both proposed and in hand. Timely movement on grant administration reinforces the Department’s reputation as effective in taking meaningful action towards protection of public health and the environment. Failure to adopt the rule dissipates momentum generated by the unilateral support by the Oregon Legislature as well as a diverse group of industry, public health, public interest and environmental advocacy groups that worked for the passage of SB 249. Failure to adopt the rule delays timely implementation of a project intended to showcase climate change and public health benefits that can arise from vehicle replacement and exhaust retrofitting in highway maintenance vehicles, that in turn, will be used to recruit other interested parties to take comparable actions. Delays in project implementation contribute to issues in completing projects in a timely manner, which reflects unfavorably upon the Department’s ability to secure future grant awards from EPA. Failure to adopt the proposed amendment will 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.

How temporary rule would avoid or mitigate consequences

The temporary rule will allow projects to proceed in a timely manner with expected air quality improvements to be achieved sooner rather than later.

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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 (1) 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 249A | http://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

There has been no prior involvement with the EQC regarding this temporary rule.

Public notice

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

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on September 25, 2013.
* E-mailed notice to:
* Approximately 11,400 interested parties through GovDelivery on September 25, 2013.
* Approximately 6,000 stakeholders on the Department rulemaking interested persons list.
* Seven key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on September 25, 2013. Key legislators included:
  + Senator Peter Courtney, President of the Senate
  + Representative Tina Kotek, Speaker of the House
  + Senator Jackie Dingfelder, Chair, Senate Environment and Natural Resources Committee
  + Senator Alan Olsen, Vice-Chair, Senate Environment and Natural Resources Committee
  + Representative Jules Bailey, Chair, House Energy and Environment Committee
  + Representative Deborah Boone, Vice-Chair, House Energy and Environment Committee
  + Representative Mark Johnson, Vice-Chair, House Energy and Environment Committee
* Sent notice to EPA on September 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 on October 17, 2013. DEQ will notify affected parties by email.

Implementation

The proposed rule allow 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 provide 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)