

Oregon Department of Environmental Quality
Nov. 16-17, 2023

Oregon Environmental Quality Commission Meeting Temporary Rulemaking Action Item C

Amendments to the Heavy-Duty Engine and Vehicle Exhaust Emission Standards

DEQ recommendation to the EQC

DEQ recommends the Environmental Quality Commission:

Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned as provided under the Justification section of this staff report.

Adopt TEMPORARY rules as proposed in Attachment A as part of Chapter 340, Division 261 of the Oregon Administrative Rules to be effective Jan. 1, 2024.

Overview

DEQ is seeking to delay implementation of the Emission Standards for New Heavy-Duty Trucks in OAR Chapter 340, Division 261 by one year. The proposed temporary rule would delay the start of these new regulations from engine model year 2024 to engine model year 2025.

Background

The federal Clean Air Act grants the U.S. EPA original jurisdiction for establishing emission standards for new motor vehicles, including heavy-duty trucks. Section 209(a) of the federal Clean Air Act (42 USC § 7543) prohibits states (except California) or other political subdivisions, such as local or regional governments, from establishing emission standards for new motor vehicles. Under CAA Section 177 (42 USC § 7507), however, states that choose to adopt vehicle emission standards that are more stringent than the federal standards for new vehicles may adopt standards that are identical to any standards adopted by California. On Nov. 17, 2021, the Oregon Environmental Quality Commission acted to reduce emissions from new medium- and heavy-duty trucks sold in the state by adopting the Clean Truck Rules.¹ Adoption of the California Air Resources Board Heavy-Duty Engine and Vehicle Omnibus rules, or HD Omnibus rules, were a large part of that rulemaking.

Rule Summary

The HD Omnibus rules apply to on-highway heavy-duty engines sold in Oregon beginning with engine model year 2024. The rules require lower emissions, specifically engine model year 2024-2026 certified compliant engines are engines that meet the 75% lower oxides of nitrogen, or NOx, emission standard and 50% lower particulate matter, or PM, standard.

The rules also include transition flexibilities that allow for the sale of legacy engines. Legacy engines are those that meet the less restrictive federal emission standards starting in 2024. These engines would emit up to 75% more NOx than a similar CARB-certified compliant engine. The rules allow for the sale of a certain percentage of manufacturers' total engine sales in the state to be legacy engines. Manufacturers must offset all associated excess emissions. The excess emissions, or deficits, can be offset in one of three ways and applied sequentially. First, zero emission credits acquired by the manufacturer can be applied to outstanding deficits. Second, NOx emission credits acquired by the manufacturer can be applied to remaining deficits. If these two methods are exhausted, the manufacturer must offset all remaining deficits associated with legacy engines by planning and enacting NOx reduction projects. Projects carried out under this third method must benefit a disadvantaged community. As Oregon makes the transition to a zero-tailpipe emissions future, additional flexibilities to the legacy engine provisions are needed to ensure that the supply of medium- and heavy-duty conventionally fueled vehicles is not restricted.

CARB is in the process of amending the HD Omnibus rules, with a planned adoption in late 2023. DEQ determined that failing to act to delay the HD Omnibus rules put these rules at risk of

¹ 417th Meeting of the Oregon Environmental Quality Commission. Clean Truck Rules DEQ Staff Report, accessed on 10/2/2023. Available at: https://www.oregon.gov/deq/EQCdocs/111721_C_CleanTrucks.pdf

not meeting the identical requirements described in Section 177 of the federal Clean Air Act. DEQ determined that the risk of losing a year of implementation was preferable to putting the entire rule at risk to being challenged.

Statement of need

What need is DEQ trying to address?

CARB recently proposed significant and necessary amendments to the HD Omnibus rules. The delayed timing of the proposed CARB amendments, lack of detailed criteria related to the sale of legacy engines and uncertainty over when compliant engines will be available in 2024 will likely create significant restrictions to the supply of new medium- and heavy-duty vehicles. Some manufacturers have informed DEQ that they would be placing a temporary hold on the sale of new diesel engines in the state. Announcements of temporary holds have raised concern among fleet owners and managers that there will be a further tightening of the supply of new medium- and heavy-duty vehicles. Existing supply chain problems lead to significant backorders and long delays in projected vehicle delivery timelines. As a result, fleets have not been able to get the vehicles that they need over the previous year. Any temporary hold on vehicle delivery into Oregon in 2024 would exacerbate these already existing market conditions.

How would the proposed rule address the need?

The proposed temporary rule would delay the implementation of the HD Omnibus rules for one year. It will provide the manufacturers and buyers with compliance certainty for the year 2024 and allow the delivery and sale of legacy engines for an additional year. If the proposed temporary rules are adopted, the HD Omnibus rules go into effect with engine model year 2025 and/or vehicle model year 2026 depending on the specific rule section. The temporary rules would provide more time for the department and commission to consider and permanently adopt significant and necessary legacy engine amendments CARB plans to finalize just prior to the end of 2023. Delayed implementation will also allow CARB to develop a more detailed approval process for legacy engine offset projects.

Justification

Finding of serious prejudice

Failing to act promptly would result in serious prejudice to the interests of vehicle and engine manufacturers, public and private fleets that are seeking to acquire new medium- and/or heavy-duty vehicles in 2024 and vehicle dealers that sell new medium- and heavy-duty vehicles. If the proposed temporary rules are not adopted, public and private fleets may not be able to purchase compliant new medium- and heavy-duty vehicles as their needs dictate, vehicle dealers may need to stop selling, or sell fewer new medium- and heavy-duty vehicles and vehicle and engine manufacturers may stop selling these vehicles and engines into Oregon.

Consequences of not taking immediate action

If the commission does not adopt these temporary proposed rules, DEQ's existing rules would conflict with California's rules once they are amended at the end of 2023. Because Oregon has opted-in to California's vehicle emissions standards, under Section 177 of the federal Clean Air

Act, our rules must be identical to California's. Not having identical rules puts Oregon at risk of having our rules challenged.

This conflict would likely create risk for companies selling new medium- and heavy-duty internal combustion engines in Oregon which could lead to a temporary halt of these new engine sales into Oregon. This supply restriction could create problems for both public and private fleets that need to purchase new vehicles in 2024 either as replacements or for fleet expansion. If the proposed rules are not adopted, it could also harm businesses that rely on revenue from the sale of these vehicles since it is not clear that an equal supply of zero emission vehicles would be sold in their place.

Affected parties

- Public and private fleets that need to acquire new medium- and/or heavy-duty vehicles in 2024
- Vehicle dealerships that sell new medium- and heavy-duty vehicles with internal combustion engines
- Vehicle manufacturers that sell medium- and heavy-duty vehicles with internal combustion engines
- Engine manufacturers that sell internal combustion engines that are included in medium- and heavy-duty vehicles

Why or how failing to act immediately would cause the harm described above

The harm described above would occur if EQC does not act immediately to adopt the proposed temporary amendment because engine manufacturers would likely place temporary holds on the sale of new medium- and heavy-duty engines into Oregon. That would likely lead to a cascade of impacts that are described above.

How the proposed temporary rule would avoid or mitigate consequences

If EQC adopts the proposed temporary amendment, this will prevent the harm described above because delayed implementation would provide more time to consider and permanently adopt significant and necessary legacy engine amendments CARB plans to finalize just prior to the end of 2023. Delayed implementation will also allow CARB to develop a more detailed approval process for legacy engine offset projects. The projects are necessary when NOx or Zero Emission Vehicle credits are not available to replace deficits from the sale of legacy engines. Delay will also allow for potential NOx credit reporting improvements and NOx and zero emission credit pooling processes for Section 177 states. Credit pooling could potentially allow manufacturers to move excess zero emission credits earned in one state that has adopted CARB standards (per Section 177 of the Federal Clean Air Act) for use in another "Section 177 state" where that manufacturers' deficits exceed the credits earned within the state. A pooling process would offer additional flexibility to manufacturers in states where there is a greater imbalance between medium- and heavy-duty zero emission vehicle supply and demand. A similar credit pooling process currently exists under the Advanced Clean Cars II rules adopted by EQC in 2022. Additionally, a delay provides time to learn from California's implementation for model year 2024, a greater likelihood of increased availability of HD Omnibus compliant engines on the market for engine model year 2025. Additionally, the U.S. Environmental Protection Agency has yet to approve the California waiver for the HD Omnibus rule. Under Section 177 of the

federal Clean Air Act, for states to be able to implement and enforce any California emission standard rule EPA must approve a waiver of the preemption which prohibits states from enacting emission standards for new motor vehicles.

Rules affected, authorities, supporting documents

Lead division

Air Quality Division

Program or activity

Transportation Strategies

Chapter 340 action

Amend

Rules Amended - OAR				
340-261-0020	340-261-0040	340-261-0050		

Statutory authority

Statutory Authority – ORS				
468.020	468A.025	468A.360		

Statutes implemented

Statutes Implemented – ORS				
468.020	468A.025	468A.360		

Documents relied on for rulemaking

Document title	Document location
California Air Resources Board Staff Report: Initial Statement of Reasons – Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation	https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/isor.pdf
California Air Resources Board and the Truck and Engine	https://ww2.arb.ca.gov/sites/default/files/2023-

Housing costs

The proposed temporary rule amendment seeks to delay implementation of the Emission Standards for New Heavy-Duty Trucks, or HD Omnibus in OAR Chapter 340, Division 261 by one year. The temporary proposed rule would delay the start of these new regulations from engine model year 2024 to engine model year 2025.

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an 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. DEQ determined the proposed rules would have no effect on development costs because they only affect manufacturers and of new medium- and heavy-duty vehicles and engines. While indirect impacts to transportation costs that are related to the supply of new medium- and heavy-duty vehicles are possible, DEQ is unable to estimate the extent of such an impact. However, that impact from this proposed temporary rule would likely be to avoid an increase in the price of new vehicles associated with supply restrictions and lack of market availability of HD Omnibus compliant engines.

Environmental Justice Considerations

Environmental Justice analysis

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

If adopted, the proposal to delay implementation of the HD Omnibus rules would mean that new, conventionally fueled trucks sold in Oregon in 2024, will not be 75% lower NOx emitting as originally intended in the rules. Instead, the requirements for lower emitting medium- and heavy-duty vehicles would be delayed until engine model year 2025. DEQ recognizes that emissions from medium- and heavy-duty vehicles disproportionately impact some communities more than others. Those communities are typically lower income and have more people that identify as black, indigenous and people of color. DEQ did not seek input from specific environmental justice communities as it developed this temporary rule proposal. However, it did reach out to clean air advocacy organizations to inform them of our intentions to bring the proposal to delay the rules before EQC.

DEQ determined that failing to act to delay the HD Omnibus rules put these rules at risk of not meeting the identical requirements described in Section 177 of the federal Clean Air Act, once

CARB adopts its planned amendments in late 2023. DEQ determined that the risk of losing a year of implementation was preferable to putting the entire rule at risk to being challenged. DEQ determined that the pollution reduction benefits to be gained from the full implementation of the rules over the coming years outweighs the loss of the 2024 engine model year alone. DEQ determined that this proposed temporary rule was the option that posed the least harm to communities suffering from disproportionate impacts associated with medium- and heavy-duty vehicle pollution.

Public notice

DEQ did not send out a formal advance public notice prior to proposing this temporary rule. However, DEQ staff held numerous individual meetings with representatives of engine manufacturing companies, environmental and clean air advocacy organizations, engaged fleet representatives and medium- and heavy-duty vehicle dealers. DEQ also held a public Clean Truck Rule Forum on Sept. 29, 2023, to describe the plan to bring a temporary rule, to delay implementation of the HD Omnibus rules by one year, before the commission at their regular meeting in November 2023. Over 200 attendees listened to a short presentation after which DEQ staff responded to many questions from the public related to the proposed delay and other medium- and heavy-duty vehicle related topics. DEQ intends to hold another public forum in early November, to provide an additional opportunity to hear about DEQ's intended actions and respond to questions.

EQC prior involvement

DEQ shared information about this temporary rulemaking with EQC in part 3.2 of the Director's Report from Sept. 14, 2023. Conversations with engine manufacturers and fleet managers along with unanticipated delays to the CARB rulemaking process led to a reassessment of DEQ's approach for the temporary rulemaking as described in that report. The current proposed temporary rule before EQC would delay implementation of the HD Omnibus rule in Oregon for one year. Instead of going into effect with engine model year 2024 the rules would go into effect with engine model year 2025.

Implementation

Notification

The proposed rules would become effective beginning on Jan. 1, 2024. DEQ would notify affected parties by:

- Emailing interested parties on the DEQ Diesel and Biodiesel GovDelivery list.
- Updating all relevant program webpages.

Compliance and enforcement

The proposed rule amendment would not make any changes to Division 12.

Measuring, sampling, monitoring and reporting

DEQ does not see a need for changes to any measuring, sampling, monitoring and reporting process in order to implement the proposed temporary rule.

Systems

DEQ does not see a need for changes to any systems, such as the external website or invoicing procedures, to implement the proposed temporary rule.

Training

DEQ does not see a need for training related to this temporary rule, for affected entities or DEQ staff. DEQ will work individually with any affected parties, as needed, to provide necessary training or answer any questions on the proposed rule amendment.

Accessibility Information

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Proposed Temporary Rule Amendments to the Heavy-Duty Engine and Vehicle Exhaust Emission Standards

Key to changes in this document:

~~Strikethrough in red~~: Text removed

Underline in red: New text

Division 261 EMISSION STANDARDS FOR NEW HEAVY-DUTY TRUCKS

340-261-0020

Applicability

This division is in effect as of January 1, 2022 and applies to and establishes requirements for medium- and heavy-duty truck, engine and trailer manufacturers, Oregon truck dealers, all ~~2024~~2025 and subsequent model year on-highway heavy-duty engines, and all ~~2025~~2026 and subsequent model year trucks and trailers delivered for sale or sold in the State of Oregon, except as provided in OAR 340-261-0060 Exemptions.

Statutory/Other Authority: ORS 468.020, ORS 468A.025 & 468A.360

Statutes/Other Implemented: ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050 & 468A.279

History:

DEQ 17-2021, adopt filed 11/17/2021, effective 11/17/2021

340-261-0040

Requirement to Meet California Vehicle Emission Standards

(1) Starting with the ~~2024~~2025 engine model year and for each engine model year thereafter no person may deliver for sale, or sell, in Oregon any new on-highway heavy-duty engine unless such engine is certified to the California emission standards as required under OAR 340-261-0050, except as provided in OAR 340-261-0060, Exemptions.

(2) Starting with the ~~2025~~2026 model year and for each model year thereafter no person may deliver for sale, or sell, in Oregon any new medium- or heavy duty truck or trailer unless such vehicle is certified to the California emission standards as required under OAR 340-261-0050, except as provided in OAR 340-261-0060, Exemptions.

(3) All motor medium- and heavy-duty truck and trailer manufacturers and dealers must comply with the sales and reporting requirements contained in this division.

Statutory/Other Authority: ORS 468.020, ORS 468A.025 & 468A.360

Statutes/Other Implemented: ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050 & 468A.279

History:

DEQ 17-2021, adopt filed 11/17/2021, effective 11/17/2021

340-261-0050

Incorporation by Reference

(1) For purposes of applying the incorporated sections of the California Code of Regulations described in this rule, “California” means “Oregon” and “Air Resources Board (ARB)” or “California Air Resources Board (CARB)” means Department of Environmental Quality (DEQ) or Environmental Quality Commission (EQC) depending on context, unless otherwise specified in this division or the application is clearly inappropriate.

(2) The sections of the California Code of Regulations (CCR), Title 13 and Title 17, adopted by reference in sections (3) and (4) are in addition to, and compatible with, the CCR, Title 13, standards and requirements adopted by reference under OAR 340-257-0050. It is the intent of this rule that the standards and requirements adopted by

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reference under OAR 340-257-0050 also apply in Oregon to the on-highway medium- and heavy-duty engines, vehicles and trailers regulated by the CCR, Title 13 and Title 17, standards and requirements adopted by reference in this rule, to the same extent and identical to how they would apply in California.

(3) Emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference. Each manufacturer of new ~~2024~~2025 and subsequent model year on-highway medium- and heavy-duty engines and ~~2025~~2026 and subsequent model year trucks and trailers must comply with each of the following applicable standards specified in CCR, Title 13 as incorporated by reference herein:

(a) Section 1956.8(a) – (f) and (i): Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles. California adopted date 9/9/21. Except that CCR Title 13, Section 1956.8(a)(2)(F) “Transit Agency Diesel-Fueled Bus Engine Exemption Request” shall be disregarded and is not incorporated by reference.

(b) Section 1971.1: On-Board Diagnostic System Requirements – 2010 and Subsequent Model-Year Heavy-Duty Engines. California adopted date 9/9/21.

(c) Section 2036: Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers. California adopted date 9/9/21.

(d) Section 2121: Penalties. California adopted date 9/9/21. Except that the reference in this regulation to “a violation of Health and Safety Code Section 43105” shall be disregarded and is not incorporated by reference.

(e) Section 2137: Vehicle, Engine, and Trailer Selection. California adopted date 9/9/21.

(f) Section 2139: Testing. California adopted date 9/9/21.

(g) Section 2139.5: CARB Authority to Test for Heavy-Duty In-Use Compliance. California effective date 04/21/03.

(h) Section 2140: Notification and Use of Test Results. California adopted date 9/9/21.

(i) Section 2166: General Provisions. California adopted date 9/9/21.

(j) Section 2166.1: Definitions. California adopted date 9/9/21.

(k) Section 2167: Required Recall and Corrective Action for Failures of Exhaust After-Treatment Devices, On-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors. California adopted date 9/9/21.

(l) Section 2168: Required Corrective Action and Recall for Emission-Related Component Failures. California adopted date 9/9/21.

(m) Section 2169: Required Recall or Corrective Action Plan. California adopted date 9/9/21.

(n) Section 2169.1: Approval and Implementation of Corrective Action Plan. California adopted date 9/9/21.

(o) Section 2169.2: Notification of Owners. California adopted date 9/9/21.

(p) Section 2169.3: Repair Label. California adopted date 9/9/21.

(q) Section 2169.4: Proof of Correction Certificate. California adopted date 9/9/21.

(r) Section 2169.5: Preliminary Tests. California 9/9/21 date 9/9/21.

(s) Section 2169.6: Communication with Repair Personnel. California adopted date 9/9/21.

(t) Section 2169.7: Recordkeeping and Reporting Requirements. California adopted date 9/9/21.

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(u) Section 2169.8: Extension of Time. California adopted date 9/9/21.

(v) Section 2423(n): Exhaust Emission Standards and Test Procedures – Off-Road Compression-Ignition Engines. California adopted date 9/9/21.

(w) Section 2485: Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling. California adopted date 9/9/21.

(4) Emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference. Each manufacturer of new ~~2025~~2026 and subsequent model year on-highway medium- and heavy-duty vehicles and trailers must comply with each of the following applicable standards specified in CCR, Title 17 as incorporated by reference herein:

(a) Section 95660: Purpose. California effective date 1/1/2015.

(b) Section 95661: Applicability. California effective date 1/1/2015.

(c) Section 95662: Definitions. California 9/9/21 date 9/9/21.

(d) Section 95663: Greenhouse Gas Exhaust Emission Standards and Test Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles. California adopted date 9/9/21.

Statutory/Other Authority: ORS 468.020, ORS 468A.025 & 468A.360

Statutes/Other Implemented: ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050 & 468A.279

History:

DEQ 17-2021, adopt filed 11/17/2021, effective 11/17/2021