



State of Oregon Department of Environmental Quality

# Notice of Proposed Rulemaking

**Dec. 15, 2023**

High Hazard Rail Tank Fee 2023

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules

## **Note for Readers:**

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

- Click on the “Windows” item in the top ribbon
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# Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

## Request for Other Options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

## Overview

This rulemaking will fulfill Department of Environmental Quality (DEQ)'s statutory obligation in establishing a "per tank fee" on train cars filled with oil entering the state of Oregon. The proposed fees established under ORS 468B.435 (13)(c) authorize a fee up to \$20 per tank car to be paid by the owner of the crude oil that is transporting the oil along the high hazard rail route in the state. This rulemaking would establish a new fee created by statute of \$19 per rail car. DEQ anticipates this fee to be used to implement railroad training exercises. Personnel for these exercises include a Public Safety Training Specialist 2 with the Department of the State Fire Marshal (DSFM). Use of the funding is described in ORS 468B.435 (3)(a),(b),(c) and (d) as well as ORS 453.392 (1)(d).

## Procedural Summary

### More information

Information about this rulemaking is on this rulemaking's web page: [High Hazard Rail Tank Fee 2023](#)

### Public Hearings

DEQ plans to hold one virtual public hearing.

**Date:** Jan. 16, 2024

**Start time:** 10 a.m.

[Join via Microsoft Teams](#)

Teleconference phone number: [+1 503-446-4951,,100054706#](#)

Phone Conference ID: 100 054 706#  
Meeting ID: 220 575 203 918  
Participant code: VYtUiL

Instructions on how to join webinar or teleconference: [Instructions](#)

## How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments through an by email, regular mail or at the public hearing.

- **Email:** Send comments by email to: [hhrfee2023@deq.oregon.gov](mailto:hhrfee2023@deq.oregon.gov)
- **Postal mail:** Oregon DEQ, Attn: Kyrion Gray/High Hazard Rail Planning Program, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
- **At public hearing:** 10 a.m. Tuesday, Jan. 16, 2024

### Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives **by 4 p.m., on Jan. 22, 2024.**

### Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

## Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [GovDelivery](#);
- Signing up on the rulemaking web site: [High Hazard Rail Tank Fee 2023](#)

## What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ's intended action is to present the proposed rule changes to the EQC as soon as possible after the earliest date on which the rule changes could take effect. DEQ intends to submit the proposed rule changes to the EQC on or after January 24, 2024.

# Statement of need

## **What need would the proposed rule address?**

This rule would provide funding to the Department of the State Fire Marshal as required from ORS 468B (13)(c).

## **How would the proposed rule address the need?**

These new rules would establish a fee that would fund a position with Department of the State Fire Marshal.

## **How will DEQ know the rule addressed the need?**

DEQ will know the need has been addressed when the new Public Safety Training Specialist 2 position is filled and Department of the State Fire Marshal.

# Rules affected, authorities, supporting documents

## Lead division

Land Quality

## Program or activity

Emergency Response - High Hazard Rail Planning Program

## Chapter 340 action

Adopt				
340-141-0290				

Statutory Authority - ORS				
468.020	468.065	468B.437		

Enter additional statutory authorities here if needed.

Statutes Implemented - ORS				
468B.435				

## Legislation

HB-2209 (2019)

## Documents relied on for rulemaking

This rulemaking has been undertaken due to DEQ requirements listed in ORS 468B.435.

Document title	Document location
Oregon Laws 2019 c. 518 sec. 13(b)	<a href="https://www.oregonlegislature.gov/bills_laws/ors/ors468b.html">https://www.oregonlegislature.gov/bills_laws/ors/ors468b.html</a>

# Fee Analysis

These proposed rules would establish new fees. EQC authority to act on the proposed fees is ORS 468B.437

## Brief description of proposed fees

Proposed fees established under ORS 468B.435 (13)(c) authorize a fee of \$19 per tank car to be paid by the owner of the oil that is transporting the oil along the high hazard rail route within Oregon.

## Reasons

The proposed fees would address the funding of a new position within the Department of the State Fire Marshal. This is a new fee created by statute. DEQ has set the amount of the fee to be collected by Department of Revenue (DOR) at \$19 railcar loaded with oil.

## Fee proposal alternatives considered

No alternative has been considered since this is a requirement described in statute. If this fee is not implemented, DEQ will not be compliant with its statutory requirement as described in ORS 468B.435. This section specifically requires DEQ to establish a fee per loaded oil tank railcar.

## Fee payer

The language in the statute sets the fee payer as “the owner of the oil at the time the loaded tank railroad car enters this state.”

## Affected party involvement in fee-setting process

The amount of the fee was discussed and agreed to during the Rule Advisory Committee meeting, which included stakeholders from industry, potential shippers and members of the Department of Revenue and Department of the State Fire Marshal.

## Summary of impacts

This rulemaking requests a new fee for a new DSFM program. The analysis provides cost estimates for what is currently a conceptual program. DSFM and DOR will use existing staff to implement the law. If revenues are not sufficient to support the associated workload, the agencies may ask the Emergency Board or an Interim Legislative Session for additional funding.

Without this fee, DSFM will not be able to adopt a schedule to include a triennial tabletop exercise, a triennial statewide exercise of a spill or release from rail transport and a multi-agency, multi-jurisdictional and multi-disciplinary oil or hazardous material spill or release exercise.

## Fee payer agreement with fee proposal

The Rulemaking Advisory Committee included members who represent the interests of potential fee payers and will provide valuable input to our committee and rulemaking process.

## Links to supporting documents for proposed fees

The proposed fee amount was established at \$19 per loaded tank car, with input from the Rulemaking Advisory Committee. Rail volume of oil by rail for the past three years is at the back of this document titled “Addendum” as well as the planned income with the new fee amount listed.

## How long will the current fee sustain the program?

This is a new program and a new fee. There is no fee being modified, the current fee will go into effect if the Environmental Quality Commission adopts it. The fee is due to sunset on January 2, 2027.

Current Fees		
Program costs covered by fees	\$0	0%
Program costs covered by General Fund	\$0	0%
Fee Last Changed		

Proposed Fees		
Expected change in revenue (+/-)	\$0	0%
Main GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	Beginning of 2024 - after publication of rules	



<b>Transactions and Revenue</b>				
<b>Biennium</b>	<b>Number of transactions</b>	<b>Number of fee payers</b>	<b>Impact on revenue (+/-)</b>	<b>Total revenue (+/-)</b>
Current biennium	0	0	\$0	\$0
Next biennium	8	2	\$533,044	\$533,044

## **Fee schedule**

To be established with input from Department of Revenue.

<b>Filing due dates for quarterly reports</b>		
<b>Quarter</b>	<b>Quarter ending date</b>	<b>Due date</b>
1st – Jan-Feb-Mar	March 31	April 30
2nd – Apr-May-Jun	June 30	July 31
3rd – Jul-Aug-Sep	September 30	October 31
4th – Oct-Nov-Dec	December 31	January 31

If the due date is a weekend or holiday, the return is due the next business day

# Statement of fiscal and economic impact

DEQ is unable to quantify the total cumulative effect. However, based on the fee of \$20 per tank car, and numbers provided during 2022, the total amount for that year would have been \$258,880. The funds generated from these fees will go directly to DSFM for their involvement in the exercise planning and exercise execution processes, and to DOR for the administrative cost of collecting the fee.

## Fiscal and Economic Impact

Department of the State Fire Marshal (DSFM) and Department of Revenue (DOR) will use existing staff to develop the fee collection process and ensure compliance with the regulations. If revenues are not sufficient to support the associated workload, DSFM and DOR may ask the Emergency Board or an Interim Legislative Session for additional funding.

## Statement of Cost of Compliance

### State agencies

DEQ does not anticipate this rulemaking to create any new costs for DEQ. The proposed rules establish a mechanism to fund the position of a Public Safety Training Specialist 2 with the Department of the State Fire Marshal. The funding of this position will require the fee to be collected by Department of Revenue.

### Local governments

No fiscal impacts are anticipated for local governments as participation in the training exercises is not mandated. Participation is at the discretion of the local budgetary authority and subject to existing funding levels.

### Public

DEQ does not anticipate the proposed rules having a significant impact on the public.

### Large businesses - businesses with more than 50 employees

DEQ does not anticipate the proposed rules having significant adverse impact on large businesses. This fee would be applicable only to the owner of oil at the time the oil is transported by loaded railroad car through Oregon

### Small businesses – businesses with 50 or fewer employees

#### a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

DEQ does not anticipate the proposed rules having significant adverse impact on small businesses.

**b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.**

The proposed rules do not require any additional activities for small businesses.

**c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.**

The proposed rules will not require any additional resources.

**d. Describe how DEQ involved small businesses in developing this proposed rule.**

DEQ did not involve small businesses in this process since there would be no anticipated impact on any small businesses.

**Documents relied on for fiscal and economic impact**

Document title	Document location
Yearly rail data with proposed fee amounts and annual revenue	Addendum at end of this notice

**Advisory committee fiscal review**

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement and

- its findings are stated in the approved minutes dated Oct. 9, 2023.

The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

**Housing cost**

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 the supply of housing or land for residential development. The proposed rule amendments will not impact the cost of labor or administration related to such development.

# Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

DEQ does not believe that adoption of this rule will have any effect on racial equity in Oregon.

# 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.

The RAC determined there would be no detrimental impact on environmental justice concerns for potential payers and regulated entities. The new position could help ensure disadvantaged communities are better protected and compensated in the event of a spill through drill and exercise evaluation.

## **Federal relationship**

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules add requirements additional to those in federal requirements. This new fee is specific to Oregon and will be used to fund a position with the Department of the State Fire Marshal. The work of this new position will ensure protection of the environment and public health by implementing drills and exercises with high hazard rail operators.

### **What alternatives did DEQ consider if any?**

DEQ did not consider any alternatives since this fee is a requirement from Oregon Statute.

# Land use

## Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
- Resources, objects, or areas identified in the statewide planning goals, or
- Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

<b>Goal</b>	<b>Title</b>
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

## Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.



# **EQC Prior Involvement**

DEQ did not present additional information specific to this proposed rule revision.

# Advisory Committee

## Background

DEQ convened an advisory committee and held a meeting on Oct. 9, 2023.

The committee members were:

Rulemaking Name Advisory Committee	
Name	Representing
Dominic Winslow	BNSF Railroad
Robert Bavier	Union Pacific Railroad
Antonio Machado	Western States Petroleum Association
Audie Huber	Confederated Tribes of the Umatilla Indian Reservation
Jerry Henderson	Clean Rivers Cooperative
Jim McCauley	League of Oregon Cities
Marcus Cridge	OR Department of Revenue
Mariah Rawlins	Oregon Office of the State Fire Marshal
Tiffany Brown	Clatsop County

## Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
  - Rulemaking
  - DEQ Public Notices
  - Environmental Cleanup Program
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

## Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee found that a fee of \$19 per tank car would be an adequate amount to fund the new position with Department of the State Fire Marshal. The committee also decided that the proposed fee would go into effect on the first day of the 2<sup>nd</sup> quarter of 2024 (April 1, 2024). This way there would be no burden on the fee payers to determine what product was covered by the fee before the EQC meeting.

# Public Engagement

## Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Dec. 14, 2023, filing notice with the Oregon Secretary of State for publication in the January 2024 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Tank fee Rulemaking 2023](#);
- Emailing approximately 23,850 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - DEQ Public Notices
  - Environmental Cleanup Program
- Emailing the following key legislators required under [ORS 183.335](#):
  - Representative Dacia Grayber, Chair, House Committee On Emergency Management, General Government, and Veterans
  - Representative Rick Lewis, Vice- Chair, House Committee On Emergency Management, General Government, and Veterans
  - Representative Thuy Tran, Vice-Chair, House Committee On Emergency Management, General Government, and Veterans
  - Representative Charlie Conrad, Member, House Committee On Emergency Management, General Government, and Veterans
  - Representative Maxine Dexter, Member, House Committee On Emergency Management, General Government, and Veterans
  - Representative Paul Evans, Member, House Committee On Emergency Management, General Government, and Veterans
  - Representative James Hieb, Member, House Committee On Emergency Management, General Government, and Veterans
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

## How to comment on this rulemaking proposal

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- **Email:** Send comments by email to: [hhrfee2023@deq.oregon.gov](mailto:hhrfee2023@deq.oregon.gov)
- **Postal mail:** Oregon DEQ, Attn: Kyrion Gray/High Hazard Rail Planning Program, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
- **At public hearing:** 10 a.m. Tuesday, Jan. 16, 2024

## **Comment deadline**

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**Date:** Jan. 16, 2024

**Start time:** 10 a.m.

[Join via Microsoft Teams](#)

Teleconference phone number: [+1 503-446-4951](tel:+15034464951),100054706#

Phone Conference ID: 100 054 706#

Meeting ID: 220 575 203 918

Participant code: VYtUiL

Instructions on how to join webinar or teleconference: [Instructions](#)

# Accessibility Information

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Contact: 800-452-4011 | TTY: 711 | [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us)

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities.

Visit DEQ's [Civil Rights and Environmental Justice page](#).

## Supporting documents

2020		
Number of cars per year	Fee amount per car	Annual \$
21,210	\$19.00	\$402,990.00

2021		
Number of cars per year	Fee amount per car	Annual \$
18,221	\$19.00	\$346,199.00

2022		
Number of cars per year	Fee amount per car	Annual \$
12,944	\$19.00	\$245,936.00

2023		
Number of cars per year	Fee amount per car	Annual \$
11,500*	\$19.00	\$218,500.00

\* Numbers for 2023 are an estimate based on the number of cars reported to ODOT from **Jan. to June of 2023 and then multiplied by 2.**

Contents of cars listed are UN1267 and UN3494.

# Draft Rules

Note: These are new rules so no changes are shown.

## **Division 141 Oil Spill Contingency Planning and Fees**

### **340-141-0290**

#### **Loaded Tank Railroad Car Fee**

- (1) The terms used in this rule have the meanings provided by Or Laws 2019 c. 518 sec. 13(b)
- (2) The owner of oil at the time the oil is transported by loaded tank railroad car in this state shall pay to the Department of Revenue a fee of \$19 for each tank railroad car loaded with oil.
  - (a) If the loaded tank railroad car enters this state from outside of this state, the fee shall be imposed on the owner of the oil at the time the loaded tank railroad car enters this state.
  - (b) If the tank railroad car is loaded with oil in this state, the fee shall be imposed upon the loading of the oil into or onto the tank railroad car for transport in or through this state.
- (3) Each owner of oil transported by loaded tank railroad car shall remit payment of the fee established under this section on a quarterly basis. The assessment of this fee shall commence on April 1, 2024. Payment shall accompany a return submitted to the Department of Revenue within 30 days following the end of the preceding calendar quarter.

**Statutory/Other Authority:** ORS 468B.437, 468.020, 468.065

**Statutes/Other Implemented:** ORS 468B.435