



Oregon Department of Environmental Quality

March 19-20, 2014

**Oregon Environmental Quality Commission meeting
Rulemaking, Action Item: N**

Align Diesel Grant Program with Federal Guidelines

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

Overview

Short summary

DEQ proposes minor changes to the clean diesel grant and loan program rules to implement Senate Bill 249 (2013). The commission approved these changes by temporary rule Oct. 16, 2013, to allow DEQ to administer federal grants received for clean diesel projects during the current federal grant cycle. The temporary rules expire April 27, 2014, and these proposed permanent rules would continue that work.

Brief history

The 2013 Oregon Legislature unanimously 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. Authority to administer clean diesel grants was first provided to DEQ in 2007. Projects that qualified for grants were limited to retrofitting diesel exhaust controls, non-road engine repowers and scrapping pre-1994 trucks. The federal program guidelines provide for many other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement.

Although the legislation included an emergency clause making it effective upon filing, DEQ must adopt implementing rules. Failure to adopt the proposed rule would prevent DEQ from offering the broader range of projects that are now more attractive to Oregon's potential applicants interested in reducing harmful emissions from diesel engines.

Regulated parties

Participation in the grant program is voluntary. The proposed rules would affect owners of diesel powered vehicles and equipment as sub-recipients of DEQ-secured grant funds. The successful implementation of projects supported by grants authorized under this proposal would affect Oregonians by reducing harmful emissions.

Statement of need

What need is DEQ trying to address?

Oregon rules constrain DEQ in applying for and managing federal funds under the Diesel Emission Reduction Act.

The 2007 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 are available primarily through the federal Diesel Emission Reduction Act. While the act allows a broad range of eligible activities, DEQ has been 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. In one example, during the 2012 fiscal year grant cycle no diesel owners were interested in retrofitting vehicles despite widespread outreach. As a result, no federal grants were awarded in Oregon that year.

How would the proposed rule address the need?

DEQ would be able to apply for and administer all federally funded grants under the broader range of eligible projects authorized under those programs.

How will DEQ know the need has been addressed?

To determine the rulemaking met this objective, DEQ would observe the number and extent of responses to notices of available grant opportunities. Increasing involvement and additional project activity indicates that rulemaking is successful.

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

Rules affected, authorities, supporting documents

Lead division
Air Quality

Program or activity
Clean Diesel Initiative

Chapter 340 action
Amend

ORS 340-259-0010

Statutory authority
ORS 468.020, 468A.803

Statute implemented
ORS 468A.803

Legislation
2013 Or. Laws Ch. 44 (SB 249), 2013

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
SB 249	https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB249

Fee Analysis

This rulemaking does not involve fees.

Fiscal and Economic Impact

Grant recipients would participate voluntarily. In some cases, federal grant guidelines require partial financial participation to receive a grant but participants would know these conditions and requirements when they decide to participate. Diesel emissions result in known adverse public health and environmental costs from exposure that could be avoided upon successful completion of grant funded projects.

Statement of Cost of Compliance

Impacts on general public

DEQ anticipates the proposed rule could have a positive fiscal and economic impact on the public. Reduced emissions lower adverse health and environmental impacts.

Impact on other government entities other than DEQ

a. Local governments

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

b. State agencies

The proposed rule would not create a fiscal or economic impact for other state agencies.

Impact on DEQ [ORS 183.335](#)

Administrative costs for grant management are recoverable under the grant. DEQ would incur no additional costs.

Impact on large businesses (all businesses that are not small businesses below)

Grant recipients would participate voluntarily. In some cases, federal grant guidelines require partial financial participation to receive a grant but participants would know these conditions and requirements prior to participation.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](#)

Grant recipients would participate voluntarily. In some cases, federal grant guidelines require partial financial participation to receive a grant but recipients would know these conditions and requirements prior to participation.

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

Approximately one to three businesses a year with diesel powered vehicles and equipment could receive a grant. As many as 10 to 15 businesses may submit applications.

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

No additional activities are required to comply with the proposed rule. All participation is voluntary.

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

No additional resources are required for compliance with the proposed rule. All participation is voluntary.

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

DEQ did not involve small businesses in developing the proposed rule. The proposed rule would only affect administration of grants to willing participants voluntarily choosing to reduce emissions from diesel engines.

Documents relied on for fiscal and economic impact

Document title	Document location
Senate Bill 249	https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB249

Advisory committee

DEQ did not appoint an advisory committee. The proposed rule amendment implements a change in statute. In addition, the proposed rule would only affect administration of grants to participants that voluntarily choose to reduce emissions from diesel engines.

Housing cost

To comply with [ORS 183.534](#), DEQ determined the proposed rule 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.

Federal relationship

"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..." [ORS 183.332](#)

Relationship to federal requirements

This section complies with [OAR 340-011-0029](#) and [ORS 468A.327](#) to clearly identify the relationship between the proposed rule and applicable federal requirements.

The proposed rule is not “different from or in addition to federal requirements” and is equivalent in stringency to federal requirements. The proposed rule allows DEQ to administer federal grants in accordance with federal grant guidelines.

What alternatives did DEQ consider if any?

DEQ considered the implications of not changing the program rules and continuing under current program. This means DEQ would not be able to address the full range of eligible activities that diesel engine owners are interested in doing. Air quality improvements that could have been possible would not be secured because of the funding restriction based on current rules.

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](#), [OAR 018-0010](#)

Land-use considerations

To determine whether the proposed rule involves 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](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rule will 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](#).
- 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 rule.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the ORS 340-259-0010 **does not affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

DEQ did not convene an advisory committee. The proposed rule amendments implement a change in statute. The Oregon House of Representatives and the Oregon Senate unanimously adopted the authorizing 2013 legislation (Senate Bill 249) after holding public hearings.

EQC prior involvement

DEQ shares general rulemaking information with EQC through the Director's Report. EQC adopted a temporary rule, identical to this proposed rule, at its Oct. 16, 2013, meeting.

Public notice

The January 2014 *Oregon Bulletin* published the Notice of Proposed Rulemaking with Hearing.

On Dec. 18, 2013, DEQ:

- Posted notice on DEQ's webpage
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/DESLGRNTP.aspx>.
- E-mailed notice to:
 - Approximately 11,400 interested parties through GovDelivery to persons on DEQ's Diesel and biodiesel, Fleet Forward, Truck efficiency/reduced idling interested persons list.
 - Approximately 5,750 interested parties through GovDelivery to persons on DEQ's rulemaking interested persons list.
 - The following key legislators required under ORS 183.335:
 - Michael Dembrow, 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.
- Published notice in The Oregonian.

Public hearings and comment

DEQ held one public hearing. DEQ received no public comments.

Presiding Officers' Record

Presiding Officer Report Date: Jan. 31, 2014

Hearing Location	DEQ headquarters, 811 SW 6 th Ave., Portland, Oregon
Date	Jan. 16, 2014
Time	Convened 5:10 p.m. Closed 5:45 p.m.
Presiding Officer	Cindy Troupe, Air Quality Specialist, Program Operations

No one attended the hearing and no one provided comment.

DEQ creates a record of each hearing, including those with no attendance. The presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer explained that anyone who wanted to present verbal comments to complete, sign and submit a registration form to indicate their intent to present comments.

According to [Oregon Administrative Rule 137-001-0030](#), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](#).

Close of public comment period

The comment period closed Jan. 21, 2014, at 5 p.m.

Implementation

Notification

The proposed rule would become effective upon filing with the Secretary of State, approximately March 21, 2014. DEQ will notify affected parties by GovDelivery notification of the expanded funding opportunities as federal grants become available.

Systems

- DEQ will update its website as grants become available to reflect DEQ's expanded opportunity to be directly supportive of grant applications for clean diesel activities.

Training

- DEQ staff will monitor available federal grant opportunities and provide information and support as needed to interested applicants.

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 from five-year rule review

The Administrative Procedures Act exempts this rulemaking from the five-year rule review because the proposed rule changes would amend or repeal an existing rule. ORS 183.405(4).

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 259

CLEAN DIESEL GRANT AND LOAN RULES

340-259-0010

Purpose and Scope

(1) The purpose of the clean diesel grant and loan rules is to make grants and loans available to the owners or operators of diesel engines for the retrofit of an Oregon diesel engine, for the repower of a non-road Oregon diesel engine, or for the scrapping of an Oregon truck engine.

(2) The rules in this division do not apply to DEQ grants or loans using moneys received from the federal government for initiatives to reduce emissions from diesel engines. DEQ may exercise its discretion to issue such grants and awards as it deems appropriate, consistent with and subject to federal law.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)), ORS 468.020, 468A.803

Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007)), 468A.803