



Oregon Department of Environmental Quality

Oct. 16-17, 2013

Oregon Environmental Quality Commission meeting
Temporary rulemaking, Action item: F

Clean Diesel Grant Program – Alignment with Federal Guidelines

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed TEMPORARY rule amendment in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective upon filing with the Secretary of State for 180 days.

Statement of need and justification ORS 183.335(5)

Short summary

The 2013 Legislature unanimously adopted Senate Bill 249 that became effective April 18, 2013. The bill authorized DEQ to administer federal grants received for clean diesel projects in accordance with federal grant guidelines rather than more limited state guidelines. Before the bill was approved, DEQ did not have statutory authority to accept and administer federal clean diesel grants for some projects. While Senate Bill 249 was effective upon signing, it is nevertheless necessary for DEQ to adopt a new rule because current rules limit DEQ's ability to administer federal grants. Since DEQ was not able to propose permanent rules in time for the current federal grant cycle, DEQ is proposing a temporary rule at this time to enable DEQ to administer federal clean diesel grants.

Background

In 2007, the Legislature adopted a public health program to reduce diesel engine pollution supported by grant, loan and tax credit funding. DEQ operates this program. The original authorization for clean diesel grants, loans and tax credits is currently limited to exhaust retrofits, non-road engine repowers and truck scrapping. The federal program guidelines currently allow for ten other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement.

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. 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 is constrained in applying for and managing federal grants by the original statutory authority. This is hampering DEQ's ability to be successful in recruiting projects and securing federal awards. As an example, despite widespread outreach for the FY 2012 grant cycle, diesel engine owners showed no interest in clean diesel projects under the

limited options authorized in state law and no federal grants were awarded in Oregon that year.

Consequences of not taking immediate action

DEQ determined that failure to amend the proposed rule would delay implementation of projects to reduce harmful emissions from diesel engines through vehicle and equipment replacement. Older diesel engine exhaust emits particulate matter and other pollutants that are harmful to human health and the environment. Federal clean diesel grants provide funding to improve and retrofit diesel engines to decrease the amount of such harmful emissions. Adopting the temporary rule would enable DEQ to administer grants that meet federal funding criteria authorized by Senate Bill 249, which includes replacing vehicles and retrofitting highway maintenance vehicles to reduce emissions that contribute to air toxics and climate change. Delaying project implementation would also damage DEQ's ability to secure future grant awards from EPA, which will undermine the Oregon Clean Diesel Initiative's effort to reduce the adverse impacts from toxic air pollutants and mitigate climate change in a timely manner. In summary, further delay in implementing such clean diesel grant projects will seriously prejudice the public's interest, and other parties' interests, in the ways described above.

How temporary rule would avoid or mitigate consequences

The temporary rule would allow DEQ to administer clean diesel grant projects that meet federal funding criteria. Successful completion of these projects contributes toward meeting the legislatively-adopted goal contained in ORS 468A.793 to reduce excess lifetime cancer risk from exposure to diesel exhaust to one in a million by 2017.

Rules affected, authorities, supporting documents

Lead division Program or activity
Air Quality Clean Diesel Initiative

Chapter 340 action
Amend ORS 340-259-0010

Statutory authority
ORS 468.020, 468A.803

Statute implemented	Legislation	Year
ORS 468A.803	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	www.leg.state.or.us/13reg/measpdf/sb0200.dir/sb0249.en.pdf

Housing costs - ORS 183.534

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.

Public notice OAR 183.355, OAR 137-001-0080

Advisory committee

DEQ did not convene an advisory committee for this temporary rule.

EQC prior involvement

DEQ provided the commission with information on this topic and the temporary rule in the Director's Dialogue at the August 2013 meeting.

Public notice

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

- Posted notice on DEQ's webpage (<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/DESLGRNT.aspx>) Oct. 2, 2013.
- E-mailed notice Oct. 2, 2013, to:
 - Approximately 11,400 interested parties through GovDelivery, including DEQ's Diesel and biodiesel, Fleet Forward, Truck efficiency/reduced idling interested persons list.
 - Approximately 5,600 interested parties through GovDelivery, including DEQ's rulemaking interested persons list.
 - Three key legislators required under ORS 183.335. Key legislators included:
 - Senator Jackie Dingfelder, 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 Oct. 2, 2013.

Public comment

DEQ did not solicit public comment on the temporary rule.

Implementation

Notification

If approved by the commission, the proposed rule would become effective upon filing with the Secretary of State on Oct. 17. DEQ would notify affected parties by email.

Implementation

The proposed rule allows 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. DEQ would provide notice through common electronic methods of communication like GovDelivery mailing lists, webpage postings and, when possible, free media.

Five-year review

Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date 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)

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 grants or loans made by the Department using moneys received from the federal government for initiatives to reduce emissions from diesel engines. The Department 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

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08