



State of Oregon Department of Environmental Quality

Annual Legislative Rulemaking Report Rules Adopted in 2023

([ORS 183.403](#); [ORS 192.245](#))

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1) Introduction

This report satisfies the requirements of ORS 183.403 and ORS 192.245 that require administrative agencies to annually submit a report to the legislature describing their rulemaking activities.

2) Permanent Rules

The Department of Environmental Quality adopted, amended, repealed or suspended 175 rules during 2023.

3) Temporary Rules

The Department of Environmental Quality adopted, amended or suspended 7 temporary rules during 2023.

List of Temporary Rules Amended

340-220-0030, 340-220-0040, 340-220-0050, 340-261-0020, 340-261-0040, 340-261-0050, 340-271-0420

Justification for Temporary Rules

DEQ 9-2023 (Title V Permit Fees)

Rule No. 340-220-0030, 340-220-0040, 340-220-0050

Statement of Need for the Rule

EPA delegates authority to DEQ to operate the Title V program in Oregon and regularly reviews Oregon's program for compliance with federal requirements. DEQ must comply with federal requirements to maintain a federally approved and delegated program.

The federal Clean Air Act requires each state to fully pay for its Title V program through permit fees. The Oregon Legislature established three categories of Title V fees:

- An annual base fee assessed to all Title V sources regardless of emission quantities.

- Emission fees assessed per ton of emissions from individual sources per calendar year.
- Fees for specific activities as authorized under ORS 468A.315(1)(b).

The fees cover DEQ's costs to implement the Title V program to regulate Oregon's major industrial sources. Activities include permit writing, permit modifications, construction approvals, annual report reviews, inspections, air quality monitoring, source test reviews, enforcement, small business assistance and public engagement.

Oregon's Title V operating permit program requires increased funding to provide essential program services. Costs have significantly risen since the last time the legislature adjusted the Title V fees in 2011. Failure to increase Title V fees will diminish DEQ's ability to maintain adequate program staff and jeopardize effective program administration.

Finding that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned

Title V of the 1990 Federal Clean Air Act requires each state to develop a comprehensive operating permit program for major industrial sources of air pollution. The program clarifies the environmental obligations of a business through a Title V permit that includes all of its air pollution control requirements.

DEQ currently has insufficient funds to operate its Title V program and cannot fulfill its obligations for this EPA delegated program. DEQ finds that a temporary rule is necessary for DEQ to continue its important work to protect air quality and public health.

Failure to fulfill DEQ's obligations to administer our Title V program could result in poorer air quality in Oregon and additional risk for fence-line communities. Oregon's major sources and local economies can also be impacted by delayed permit issuance and construction approvals.

Who would suffer these consequences?

The members of the public and stakeholders who could be harmed if EQC did not take this action are:

- Fence-line communities living adjacent to Title V sources without permits or with an expired permit, who may be directly exposed to air contaminant emissions that might be prevented under new, applicable permit requirements;
- Vulnerable populations who are sensitive to poor air quality, for the same reason;
- Members of the public for the same reason;
- Existing facilities needing modifications or construction approvals; and
- New facilities needing a Title V permit to begin operations.

Why or how failure to immediately take rulemaking action would cause these consequences?

DEQ cannot regulate Oregon's major sources of pollution, process permit applications, and issue construction approvals without adequate staffing and funding. A temporary rulemaking provides

DEQ the ability to collect the legislatively approved fee increase in the upcoming August 2023 invoice cycle, allowing DEQ to begin restoration of its Title V program immediately. Failure to pass a temporary rulemaking to implement these fee increases will delay DEQ from restoring its Title V program and effectively regulating Oregon's major sources of pollution until 2025.

How would the temporary rule avoid or mitigate consequences?

If EQC adopts the proposed temporary rule amendments, DEQ will have the necessary funding to support continuity within the program and prevent continued growth of a permit backlog. The funding will allow DEQ to begin restoration of its Title V program in late 2024.

The funding also allows DEQ to address the consequences identified for industrial sources and surrounding communities, including timely permit issuance and air quality protection for communities. The Title V program protects Oregonians from pollution-related health problems and premature death, and improves the health and productivity of Oregon's work force.

Explanation of why ORS 183.335(5) was most appropriate

Adopting this temporary rule will allow DEQ to implement the approved fee increase for the 2023 Title V invoicing cycle, which begins in August 2023. Failure to act promptly will force DEQ to wait an additional year before it can apply the fee increase to its annual Title V invoicing process. DEQ's Title V program is currently underfunded and understaffed to address a significant renewal permit application backlog.

Failure to restore resourcing of the Title V program will increase the permit renewal and new application backlog, prevent some sources from implementing necessary upgrades, and hinder DEQ's ability to regulate Oregon's major industrial sources. The lack of staff and resources delays sources from implementing changes and upgrades and allows existing sources to continue to operate under the requirements of expired and outdated permits. Current levels of resourcing limits DEQ's ability to appropriately regulate air emissions from those major sources. Delaying implementation of the new fees by a year will result in continued insufficient staffing levels and prevent DEQ from initiating hiring of essential additional staff.

DEQ 16-2023 (Heavy-Duty Engine and Vehicle Exhaust Emission Standards)

Rule No. 340-261-0020, 340-261-0040, 340-261-0050

Statement of Need for the Rule

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 has 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 leading to significant backorders and long delays in projected vehicle delivery timelines mean that 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 to consider and permanently adopt significant and necessary legacy engine amendments that CARB plans to finalize just prior to the end of 2023. Delayed implementation will also allow for CARB to develop a more detailed approval process for legacy engine offset projects.

Finding that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned

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 EQC fails to act, 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. This conflict would likely create risk for companies selling new medium- and heavy-duty internal combustion engines in Oregon which could lead to temporary stoppages of sales of these new engines 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. Not taking action 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 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.

Explanation of why ORS 183.335(5) was most appropriate

The temporary amendment will prevent the harm described above because delayed implementation would provide more time to consider and permanently adopt significant and necessary legacy engine amendments that CARB plans to finalize just prior to the end of 2023. Delayed implementation will also allow for CARB to develop a more detailed approval process for legacy engine offset projects. The projects are necessary when NOx or Zero Emission Vehicle (ZEV) 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. Further reasons for the delay include the ability to learn from the California implementation for model year 2024, a greater likelihood of increased availability of HD Omnibus compliant engines on the market for engine model year 2025 and giving more time for US EPA to approve the California waiver that Section 177 of the federal Clean Air Act requires prior to implementation.

DEQ 26-2023 (Climate Protection Program Correction)
Rule No. 340-271-0420

Statement of Need for the Rule

What need is DEQ trying to address?

It is imperative that covered fuel suppliers regulated by the program have a clear understanding of how DEQ calculates and distributes compliance instruments. Liquid fuels and propane suppliers need to know how DEQ plans to calculate and distribute compliance instruments from each year's annual cap to each fuel supplier, each year. DEQ staff believes that the current rule is potentially ambiguous and unclear in explaining how DEQ would distribute compliance instruments, specifically for the 2024 annual compliance instrument distribution.

How would the proposed rule address the need?

The proposed rule amendment would provide additional clarity by adding a definition for "total emissions" for the 2024 annual distribution of compliance instruments, along with other minor clarifications.

Finding that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned

Finding of serious prejudice

Failing to act promptly will result in serious prejudice to the interests of liquid fuels and propane suppliers regulated by the program. It is imperative that liquid fuels and propane suppliers regulated by the program have a clear understanding of how DEQ calculates and distributes compliance instruments. If a covered fuel supplier does not understand or misinterprets DEQ's methodology for distributing compliance instruments, a fuel supplier might mistakenly estimate that it would receive a different number of compliance instruments than it actually would from DEQ. This could negatively impact companies' ability to develop and execute plans for compliance with the program. Additionally, individual fuel suppliers might not pursue the most cost-effective compliance strategies. DEQ will distribute 2024 compliance instruments no later than June 30, 2024, so it is imperative that the clarifications are adopted as soon as possible, to avoid such prejudice.

Consequences of not taking immediate action

Not immediately amending the rules would cause harm to the affected parties because if a liquid fuels and propane supplier does not understand or misinterprets DEQ's methodology for distributing compliance instruments, a fuel supplier might mistakenly estimate that it would receive a different number of compliance instruments than it actually would from DEQ. The fuel supplier might fail to pursue other emission reduction and compliance strategies and could fail to achieve compliance with the program, potentially facing significant penalties.

Affected parties

The members of the public or parties who would be directly harmed if EQC did not take this action include the liquid fuels and propane suppliers (covered fuel suppliers that are not local distribution companies) that must comply with the program.

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 for the reasons stated above. If EQC does not act immediately, liquid fuels and propane suppliers might mistakenly misinterpret the number of compliance instruments they would receive from DEQ, which could lead them to not make appropriate decisions for compliance strategies, which could impact their ability to demonstrate compliance.

Explanation of why ORS 183.335(5) was most appropriate

The temporary rule amendment will mitigate the harm described above by clarifying how DEQ plans to calculate and distribute compliance instruments for the 2024 annual compliance instrument distribution.

Obtaining copies of report

Any person can obtain a copy of the report by:

- Using the link to the report posted on DEQ's rulemaking web page: [DEQ Rulemaking Web Page](#)
- Contacting the DEQ Agency Rules Coordinator at: 700 Multnomah St. NE, 6th Floor, Portland, OR 97232

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