



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission meeting

May 7, 2020

Temporary Rulemaking, Action Item A VIP Certification Fee 2020

Table of Contents

DEQ Recommendation to EQC.....	2
Overview	3
Statement of Need	5
Justification	6
Rules Affected, Authorities, Supporting Documents.....	7
Fee Analysis.....	9
Implementation.....	13

DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission:

- Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the affected parties as presented in the Justification section of the staff report for this item;
- Reaffirm the finding that in accordance with ORS 468A.400 and ORS 468A.370, the Vehicle Inspection Program, including the proposed 2020 fee increase, is the most cost effective program consistent with Clean Air Act requirements; and
- Adopt temporary rules as proposed in Attachment A as part of Chapter 340, Division 256 of the Oregon Administrative Rules to be effective June 1, 2020.

Proposed motion language:

I move that the Oregon Environmental Quality Commission:

- *Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the affected parties as presented in the Justification section of the staff report for this item;*
- *Reaffirm the finding that in accordance with ORS 468A.400 and ORS 468A.370, the Vehicle Inspection Program, including the proposed 2020 fee increase, is the most cost effective program consistent with Clean Air Act requirements; and*
- *Adopt the temporary rules as seen in Attachment A of this staff report as part of Chapter 340, Division 256 of the Oregon Administrative Rules to be effective June 1, 2020.*

Overview

DEQ's Vehicle Inspection Program reduces air pollution and helps Oregon comply with national air quality standards by requiring that motorists in the Portland and Medford areas maintain their vehicles' emission control systems and obtain a certificate of compliance prior to renewing vehicle registrations. VIP is a fundamental pollution reduction strategy in DEQ's Clean Air Act required State Implementation Plan. In the Portland and Medford vehicle inspection areas combined, DEQ inspects about one-third of all cars registered in Oregon. Over the last decade, DEQ VIP staff have performed more tests each year, while keeping the average customer wait times low. DEQ VIP has also invested in new technology to increase efficiency, reduce operating costs and improve customer service. VIP has accommodated increasing personnel costs but has not raised the certification fee since 1997. Program revenue met program expenses until 2015, at which time, the program began operating at a deficit. VIP had to eliminate seven full time equivalent positions in 2017 to attain a balanced budget.

In 2018, DEQ convened an advisory committee, developed proposed rule revisions, including a fee increase and held a public comment period in early 2019 on those revisions and fee increase. DEQ also completed a cost effectiveness study requested by the Legislative Fiscal Office. When the 2019 Oregon Legislature did not approve DEQ's proposed VIP fee increase, the fee increase could not become effective on July 1, 2019, as planned. Consequently, DEQ was required to eliminate eight VIP permanent staff positions – a second set of budget deficit-driven staffing cuts.

As the 2019 Legislature had requested, DEQ updated and expanded the cost effectiveness study completed in spring 2019 and re-submitted the study in September 2019. DEQ presented the rule revisions, including the fee increase, and the Cost Effectiveness Report to the EQC in November 2019. EQC found that the VIP was a cost effective program and approved the rule revisions, including the fee increase in November 2019. DEQ did not file the rule revisions with the Secretary of State at that time because the agency sought to ensure that the 2020 Legislature ratified the fee increase, before filing the rule revisions. ORS 291.055 allows rulemaking authorities, including the EQC, to establish and adjust fees at any time. However, those fees are considered rescinded at the adjournment of the next regular session of the legislature, unless the legislative assembly takes action to authorize (i.e. ratify) the increase. During the February 2020 Legislative Session, the Joint Natural Resources Subcommittee and the Joint Ways and Means Committee recommended passage of DEQ budget items, including the VIP fee increase, but ultimately the Legislature failed to act on the fee ratification.

On March 8, 2020, Governor Brown issued an Executive Order requiring Oregonians to stay home except for essential needs, ordering social distancing protocols, and closing certain businesses to slow the spread of COVID-19. The DEQ Director closed VIP Clean Air Stations on March 17, 2020, to protect the health of employees and the public.

On March 18, 2020, EQC issued an Order, delegating to the DEQ Director the authority to allow certain vehicle owners whose vehicle registrations expired during VIP station closure to obtain a certificate of compliance without having their vehicle physically tested until a later date. The Director issued an Order on April 1, 2020, and modified this Order on April 22, 2020, allowing eligible motorists until Dec. 31, 2020, to complete their emissions tests. Other options for vehicle owners remained in place, such as vehicle testing and certification payment through a DEQToo cooperating location. Motorists could also pay for an emission certificate online and agree to have their vehicle inspected by Dec. 31, 2020. In April 2020, daily certification payments were averaging approximately 10 percent of the number sold on a normal day with testing stations open.

The reduced revenue taken in by VIP since mid-March 2020, combined with the 2020 Legislature's failure to ratify DEQ's requested fee increase, required DEQ to eliminate seven limited duration vehicle inspector positions in mid-April 2020. At end of April 2020, VIP had 54 filled inspector positions.

VIP stations will remain closed through at least May 17, 2020. When the stations reopen, DEQ expects higher than normal testing volume, perhaps as high as a 35 percent increase, as motorists who deferred their emission tests from mid-March through at least mid-May, join motorists whose vehicle registrations expire in the second half of 2020. In addition to the recently terminated limited duration positions, VIP is holding four vacant inspector positions open. The reduced number of filled vehicle inspector positions is insufficient to operate VIP at the full capacity of each of the Clean Air Stations. Without a fee increase, DEQ will be unable to fully staff all Clean Air Stations and unprepared to provide the same level of customer service to motorists in the second half of 2020.

Although EQC approved a fee increase for a certificate of compliance in November 2019, the Legislature failed to act on the fee ratification in the 2020 Legislative Session. Out of an abundance of caution, DEQ is bringing EQC a temporary rule proposal to increase the VIP certification fee to \$25 for individual motorists and to \$30 for on-site dealership testing in the Portland Vehicle Inspection Area and to \$15 in the Medford-Ashland Vehicle Inspection area on June 1, 2020. These adjustments are consistent with those previously adopted in November 2019. DEQ is also asking EQC to reaffirm its finding that VIP is a cost effective program.

Statement of Need

What need is DEQ trying to address?

DEQ is trying to address the need to fill a funding shortfall in the Vehicle Inspection Program so that the program has adequate staffing to maintain high levels of customer service. Program expenditures have exceeded revenue since approximately 2015 and the COVID-19-associated VIP station closures have exacerbated the financial shortfall. Fully staffed testing stations will be necessary to respond to higher than normal testing volumes when the stations reopen. VIP will also need to replenish the program's fund balance.

How would the proposed rule address the need?

The proposed rule would allow DEQ to increase the fee charged for certificates of compliance for individuals and dealerships. The revenue gained from the increased fees would allow VIP to rebuild staffing its Clean Air Stations and replenish the now-depleted program fund balance.

Justification

DEQ finds that a temporary amended rule, OAR 340-256-0320, is necessary to prevent serious prejudice to the public interest or the interests of the affected parties. If DEQ does not amend the rule to increase the cost of a VIP certificate of compliance, DEQ will not have sufficient funds to operate the Clean Air Stations at their full capacity. As the COVID-19 pandemic expanded in the Northwest, DEQ closed testing stations in mid-March 2020 in alignment with the Governor's orders for Oregonians to shelter in place and restrict business activity to essential needs. When allowed by the Governor, and the DEQ Director determines it is safe to do so, DEQ will open testing stations.

When the stations reopen, DEQ expects higher than normal traffic volumes through the stations, as customers who deferred testing in March through May bring their vehicles in for certification. To minimize customer wait times and provide the highest level of quality and safety in the Clean Air Stations, DEQ requires sufficient staff to operate the stations at full capacity; DEQ also requires a VIP fund balance that is sufficient to address ongoing expenses.

Consequences of not taking immediate action

DEQ determined that not amending the rules would result in DEQ having insufficient funds to operate the Clean Air Stations at full capacity. Without sufficient staffing, DEQ would need to close lanes at testing stations, and potentially close an entire testing station. Lane or station closures could increase customer wait times and possibly compromise employee and public safety as lines of waiting vehicles caused congestion on adjoining roadways.

Affected parties

Affected parties include DEQ staff, specifically those who work in the Vehicle Inspection Programs, Portland and Medford metropolitan-area motorists and businesses requiring a vehicle certification, auto dealerships that participate in VIP's mobile testing, and the general public in the vicinity of Clean Air Stations.

How temporary rule would avoid or mitigate consequences

The proposed rule would avoid consequences by allowing DEQ to increase the fee charged for certificates of compliance for individuals and dealerships. The revenue gained from the increased fees would allow VIP to rebuild staffing at its Clean Air Stations, operate the stations at full capacity and restore a program fund balance. With all lanes operating at all testing stations, VIP can minimize customer wait times and long vehicle line-ups.

Rules Affected, Authorities, Supporting Documents

Lead division

Air Quality Division

Program or activity

Vehicle Inspection Program

Chapter 340 action: Amend

Rule Amended - OAR
340-256-0320

Statutory authority

Statutory Authority – ORS
ORS 468A.400

Statute implemented

Statute Implemented – ORS
ORS 468A.400

Documents relied on for rulemaking

Document title	Document location
VIP Cost Effectiveness Analysis	https://www.oregon.gov/deq/EQCdocs/11152019_ItemN_VIPfees.pdf

Housing Costs

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. A memo¹ pertaining to a study conducted by the University of Oregon to support Oregon Department of Land Conservation and Development rulemaking describes the major factors influencing the cost of residential housing construction. Cost components include land, material and labor, and regulatory costs such as permits, compliance with zoning requirements, and system development charges.

DEQ determined the proposed rules would have no effect on housing development costs because the temporary rule is intended to fill a revenue shortfall in DEQ's Vehicle Inspection Program by increasing the fee for a certificate of compliance. DEQ would not expect the certification fee increase to affect the major cost components of residential construction such as cost of land, building materials, or labor. Nor would the fee increase affect the administration of permit or zoning regulations.

https://www.oregon.gov/lcd/UP/Documents/UO-Cost_Components.pdf¹

Fee Analysis

EQC's approval of this rule proposal would increase existing fees. EQC authority to act on the proposed fees is ORS 468A.400.

Brief description of proposed fees

The cost of each certificate of compliance, including those issued at emission test stations and those issued through self-service and remote procedures will increase by \$4, from \$21 to \$25 in the Portland Vehicle Inspection area on June 1, 2020. The cost of each certificate of compliance in the Medford-Ashland Vehicle Inspection area will increase by \$5 to \$15 on June 1, 2020.

The cost of each Certificate of Compliance issued for on-site testing to an automobile dealership will increase \$4, from \$26 to \$30 on June 1, 2020.

Reasons for proposed fees

The proposed fees would address increased program costs and revenue shortfall. Program expenses have been increasing over the past several biennia because of personnel costs such as cost of living increases, employees' step progression within a salary range, health insurance and other benefits. Program expenses began to exceed program revenue in the 2013-2015 biennium. The program had been able to continue to cover expenses by using technological advancements, efficiency gains and ending balances from previous biennia. However, to attain a balanced budget in the 2015-2017 biennium, the program cut seven full time equivalent positions.

DEQ prepared to raise the VIP certification fee in 2018 and 2019 by convening an advisory committee and holding a public comment period. The 2019 Legislature, however, did not approve DEQ's proposed VIP fee increase and in July 2019, DEQ had to eliminate eight VIP staff positions to attain a balanced budget.

DEQ prepared a cost effectiveness analysis to accompany a fee increase request to the 2020 Legislature. DEQ presented rule revisions, including the fee increase, and the Cost Effectiveness Analysis to the EQC in November 2019. EQC found that the VIP was a cost effective program and approved the rule revisions, including the fee increase, in November 2019. The Oregon Legislature met in February 2020 but failed to act on the fee ratification.

The DEQ Director closed VIP Clean Air Stations on March 17, 2020, to protect the health of employees and the public during the COVID-19 pandemic. Revenue from certification payments since the station closures has been approximately 10 percent of normal revenue. In response to this ongoing financial shortfall, in mid-April, DEQ eliminated seven limited duration vehicle inspector position appointments.

Fee proposal alternatives considered

An alternative to raising the certification fees is maintaining current fees, which would result in not having sufficient staff to operate the Clean Air Stations at their full capacity. Operating at such a reduced level of staffing would necessitate lane, and potentially station, closures. Closures would have adverse impacts on customer service such as increased wait times, reduced ability to respond to public inquiries, and reduced technical support. Considering expected increased

testing volumes when testing stations reopen in summer 2020, long traffic line-ups could adversely affect VIP employees' and the public's safety on adjacent roadways.

Fee payers

Fee payers affected by these proposed rule revisions and fee increase are motorists, businesses that own vehicles, and auto dealerships participating in mobile on-site testing.

Affected party involvement in fee-setting process

DEQ did not convene an advisory committee for this temporary rule proposal. However, DEQ did convene an advisory committee of affected parties to assist DEQ in evaluating the fiscal impacts of the increased fees when they were originally proposed in 2018. In 2018 and 2019, DEQ considered advisory committee input and comments received during the public comment period in developing the proposed rule revisions presented to the EQC in November 2019.

Summary of impacts

On June 1, 2020, motorists whose cars are registered in the Portland Vehicle Inspection areas will pay \$4 more than the current fee of \$21, a biennial fee total of \$25, for a certificate of compliance. On June 1, 2020, motorists whose cars are registered in the Medford Vehicle Inspection areas will pay \$5 more than the current fee of \$10, a fee total of \$15.

On June 1, 2020, auto dealerships in the Portland Vehicle Inspection areas participating in on-site testing will pay \$5 more than the Portland area fee for a certificate of compliance, for a total fee of \$30.

How long will the current fee sustain the program?

The current fee combined with ending balances sustained the program through June 30, 2019.

Current Fees		
Program costs covered by fees	\$24,116,285	100%
Program costs covered by General Fund	\$0	0%
Fee Last Changed	1997	

How long will the proposed fee sustain the program?

Since DEQ proposes the fee increase as a temporary rule, DEQ calculated the fiscal effects only on the current biennium.

Proposed Fees		
Expected change in revenue (+/-)	\$2,326,752	9.7%
Example effective date used in calculations	June 1, 2020	

Transactions and revenue

Biennium	Number of fee payers*	Impact on revenue (+/-)	Total revenue (+/-)
Current biennium	1,136,738	\$2,326,752	\$26,443,037

*Fee payer estimates are based on DMV's projections of registered vehicles due for renewal in the Portland and Medford vehicle inspection areas.

Fee schedule

Cost for a certificate of compliance would increase according to the following schedule:

Portland Vehicle Inspection Area

\$25 effective on June 1, 2020

Medford Vehicle Inspection Area

\$15 effective on June 1, 2020

On-site Testing Auto Dealerships

\$30 effective on June 1, 2020

Cost Effectiveness Analysis

DEQ completed a cost effectiveness analysis in preparation for the 2019 proposed fee increase. A core element of this analysis was a review of data collected by the National On-Board Diagnostic Clearinghouse established by the National Center for Automotive Science and Technology at Weber State University. DEQ evaluated 38 programs nationwide by considering program characteristics and performance information such as program type, annual tests performed, test fees and testing frequency. DEQ also conducted a survey of like programs through the national Inspections and Maintenance Solutions Forum. DEQ's analysis indicates that the Oregon Vehicle Inspection Program fee is among the lowest fees in the nation. With that fee, Oregon VIP also provides customer conveniences that other programs do not, such as self-service lanes and remote testing. DEQ's Cost Effectiveness Analysis is attached to EQC November 2019 staff report.

EQC Prior Involvement

DEQ shared information about VIP and proposed rule revisions, including a fee increase, through an information item on the May 16, 2019, EQC agenda. DEQ presented proposed rules, including a fee increase, and the Cost Effectiveness Analysis as a decision item on the Nov. 15, 2019, EQC agenda.

Implementation

Notification

The proposed rules would become effective on June 1, 2020. VIP would implement the fee increase on or as soon as possible after June 1, 2020, as program resources allow. DEQ would notify affected parties by posting information on the Vehicle Inspection Program page of DEQ's external website and sending a notice via the GovDelivery system to air quality policy subscribers.

DEQ would notify affected parties by making fact sheets and signage available at all Clean Air Stations, posting information on DEQ's social media and coordinating with DMV. DEQ will notify by email and postal mail all businesses that participate in the mobile on-site testing program, pre-paid voucher purchases and DEQ Too service providers. The Vehicle Inspection Program and Air Quality Division will continue to consult with DEQ Communications and Outreach on external communications needs.

Compliance and enforcement

The temporary rule would not change or affect the compliance and enforcement of the VIP certification fee collection.

Measuring, sampling, monitoring and reporting

The temporary rule will not change VIP's monitoring or reporting activities. The Vehicle Inspection Program produces an annual report to EPA demonstrating the program's compliance with federal requirements. Vehicle Inspection Program Technical Center staff and management coordinate with Air Quality Division budget and policy analysts to track program revenue and expenses.

Systems

DEQ will update its external website and VIP payment systems with the 2020 fee schedule.

Training

The Vehicle Inspection Program, Air Quality Division, assisted by the Office of Communications and Outreach, will provide guidance or training to staff who interact with or may receive questions from the public.

Accessibility Information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality
700 NE Multnomah St., Ste. 600
Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Karen Williams, 503-229-5519 (800-452-4011, ext. 5622 toll-free in Oregon).

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

Key to Identifying Changed Text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

**Division 256
MOTOR VEHICLES**

Summary of Changes: This temporary rule increases the cost for a certificate of compliance by \$4 in the Portland Vehicle Inspection area and by \$5 in the Medford Vehicle Inspection area.

340-256-0320

Emission Control System Inspection: Motor Vehicle Inspection Program Fee Schedule

This rule sets out the fee schedule for Certificates of Compliance and licenses issued by the Department's Vehicle Inspection Program:

(1) The cost of each Certificate of Compliance issued by the Department, including those issued at emissions test stations and those issued through the Clean-Screen and Self-Service Testing procedures, is:

(a) In the Portland Vehicle Inspection Area ~~a maximum of \$21~~ until May 31, 2020, and \$25 effective June 1, 2020; or

(b) In the Medford-Ashland Air Quality Maintenance Area ~~a maximum of \$10~~ until May 31, 2020, and \$15 effective June 1, 2020.

(2) The cost of each Certificate of Compliance issued by a Private Business Fleet or Public Agency Fleet is:

(a) In the Portland Vehicle Inspection Area is a maximum of \$10; and

(b) In the Medford-Ashland Air Quality Maintenance Area is a maximum of \$5.

(3) The cost of each License issued to a Private Business Fleet or Public Agency Fleet is:

(a) Initial \$5;

(b) Annual renewal \$1.

(4) The cost of each License issued to a Private Business Fleet or Public Agency Fleet Vehicle Emission Inspector is:

(a) Initial \$5;

(b) Annual renewal \$1.

(5) The cost of each License issued for a Gas Analytical System is:

(a) Initial \$5;

(b) Annual renewal \$1.

(6) The cost of each Certificate of Compliance issued on-site to an automobile dealership is a ~~maximum of \$26~~ until May 31, 2020, and \$30 effective June 1, 2020.

Statutory/Other Authority: ORS 468A.400

Statutes/Other Implemented: ORS 468A.400

History:

DEQ 14-2003, f. & cert. ef. 10-24-03

DEQ 11-2001, f. & cert. ef. 10-4-01

DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0307

DEQ 25-1996, f. & cert. ef. 11-26-96

DEQ 4-1993, f. & cert. ef. 3-10-93

DEQ 3-1992, f. & cert. ef. 2-4-92

DEQ 20-1981, f. 7-28-81, ef. 8-1-81

Division 256
MOTOR VEHICLES

340-256-0320

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(2) The cost of each Certificate of Compliance issued by a Private Business Fleet or Public Agency Fleet is:

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(a) Initial \$5;

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History:

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DEQ 25-1996, f. & cert. ef. 11-26-96

DEQ 4-1993, f. & cert. ef. 3-10-93

DEQ 3-1992, f. & cert. ef. 2-4-92

DEQ 20-1981, f. 7-28-81, ef. 8-1-81