



State of Oregon Department of Environmental Quality

## **Five Year Rule Review** ([ORS 183.405](#))

### **2021 review of rules adopted in 2016**

Contact: [Emil Hnidey](#), Agency Rules Coordinator

## **The purpose of the review**

ORS 183.405 of the Administrative Procedures Act requires agencies to review all newly adopted rules within five years after adopting them. This document meets DEQ's responsibilities under that law.

## **Legal requirements**

The statute requires agencies to review new rules to determine whether:

- The rule had the intended effect
- The agency over- or underestimated the rule's anticipated fiscal impact
- Subsequent changes in the law required the agency to amend or repeal the rule
- There is a continued need for the rule

Agencies are only required to use available information to conduct this review.

If the agency appointed an advisory committee in developing the rule, the agency must provide the committee members a copy of the review.

## **Exemptions**

Rules are exempt from this review if they:

- Consist only of the repeal of or an amendment to an existing rule
- Are adopted to implement court orders or to settle civil proceedings
- Only adopt federal laws or rules by reference
- Implement legislatively approved fee changes
- Only correct omissions or errors

## **Distribution of the review**

DEQ's Agency Rules Coordinator:

- Provides a copy of this review to DEQ's Leadership Team
- Provides a copy of this review to any advisory committee members

- Posts a copy of the review on DEQ’s rulemaking website
- Preserves a copy of the review in DEQ’s electronic rulemaking archives
- Sends a copy to the Oregon Secretary of State

## **EQC meetings in 2016**

In 2016, the EQC adopted rules subject to review at these meetings:

- Feb. 3, 2016
- Oct. 4, 2016

## **Rules subject to this review**

### **Title – Solid Waste Permit Fee**

**Adopted date:** 2/3/16

**Rule numbers:** 340-083-0500, 340-083-0510, 340-083-0520, 340-083-0530

**Reviewer:** Peter Spendelow

### **Summary**

This rulemaking:

- Increased the per-ton solid waste disposal permit and tipping fees to adequately fund implementation of *[Materials Management in Oregon: 2050 Vision and Framework for Action](#)*, including oversight of permitted solid waste disposal facilities and reuse, waste prevention and recovery, toxic reduction, product stewardship and other work to reduce impacts of materials use;
- Applied tipping fees and orphan site fees to construction/demolition and tire landfills;
- Defined a mechanism for reimbursing a portion of the tipping fee increase to distressed counties;
- Updated solid waste planning and recycling (materials management) grant rules to expand allowed uses for grant funds; allow businesses, non-profits and other entities as well as local governments to receive grant awards; and to conform to other statutory changes.

### **Did the rule have the intended effect?**

Yes. Much of the rulemaking amended existing rules to implement a legislatively-approved change to solid waste disposal fees. The new rules in Division 83 concerned legislatively-mandated rebates of solid waste disposal fees to the 9 most economically distressed counties each year. We have implemented those rules and issued those rebates ever since the rules were adopted.

### **Did the agency over- or underestimate the rule’s fiscal impact?**

DEQ accurately anticipated the fiscal impact of the rules and has not had to make any adjustment, although the law gives us a mechanism to do an adjustment.

**Do subsequent changes in the law require the agency to amend or repeal the rule?**

No. We will need to change the fee rule if the fee later proves inadequate to fund the work we do, but the law outlines what changes are allowed.

**Is there a continued need for the rule?**

Yes. We need to continue to provide rebates each year to the nine most economically-distressed counties, and to collect fees from disposal sites to fund our work.

**Title – Art Glass Permanent Rules**

**Adopted date:** 10/4/16

**Rule numbers:** 340-244-9000, 340-244-9010, 340-244-9020, 340-244-9030, 340-244-9040, 340-244-9050, 340-244-9060, 340-244-9070, 340-244-9080, 340-244-9090

**Reviewer:** Jill Inahara

**Summary**

DEQ proposed and the Oregon Environmental Quality Commission approved permanent rules for colored art glass manufacturers. These rules were based on the temporary rules adopted by EQC in April 2016, with corrections in May 2016, with modifications based on new information and public comment.

Elevated levels of hazardous air pollutants were found in the air around two glass manufacturing facilities in Portland. In May 2015, DEQ received the initial results of a study the U.S. Forest Service conducted looking at moss samples as an indicator or screening tool for contaminants in the air. The study’s results showed that moss samples in the areas near two CAGMs contained high levels of cadmium and arsenic in Southeast Portland and cadmium in North Portland.

This pilot study prompted DEQ to set up air monitoring systems near the glass company in Southeast Portland. The results of DEQ air monitoring in October 2015 confirmed that the glass company was the likely source. DEQ completed its quality assurance and quality control review of those samples in late January 2016 and then shared its analysis of the findings with the Oregon Health Authority and the Multnomah County Health Department. DEQ also identified a second area of concern near the glass company in North Portland.

The glass companies were operating in compliance with the current law. One company was operating within its permit and the other company was not required to have a permit.

Based on sampling results DEQ concluded that uncontrolled furnaces used at the two facilities were more likely than not to emit potentially unsafe levels of hazardous air pollutants, and that current federal regulations for this source category were not sufficient to protect public health

and the environment. The permanent rules that DEQ proposes for EQC adoption are intended to ensure that air emissions from colored art glass manufacturers do not cause unsafe levels of glassmaking hazardous air pollutants (arsenic, cadmium, chromium, lead, manganese, nickel and selenium) in the air nearby.

EQC adopted temporary rules April 21, 2016. The adopted rules replaced the temporary rules and made the requirements permanent, with modification.

**Did the rule have the intended effect?**

Yes. Adopting these rules allowed DEQ to require pollution control devices for colored art glass manufacturers, thus reducing emissions of hazardous air pollutants.

**Did the agency over- or underestimate the rule’s fiscal impact?**

DEQ accurately anticipated the fiscal impact of the rules and has not had to make any adjustment.

**Do subsequent changes in the law require the agency to amend or repeal the rule?**

The colored art glass manufacturing rules were duplicated in division 245 when the EQC adopted rules for toxic air contaminants in 2018. Since the colored art glass manufacturing rules address toxic air contaminants, DEQ wanted all of those rules in one division. The EQC adopted a savings provision in division 244 for the colored art glass manufacturing rules in case division 245 was legally challenged and stayed. Since division 245 was not legally challenged, DEQ is proposing to repeal the colored art glass manufacturing rules in division 244 and keep the same rules in division 245 except for the deletion of a compliance method that no colored art glass manufacturers are using.

**Is there a continued need for the rule?**

Yes, the rules are critical for controlling toxic air contaminant emissions from colored art glass manufacturers.

**Alternative formats**

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](mailto:deqinfo@deq.state.or.us).