

Summary of Public Comment and Agency Response

Title of Rulemaking: Oregon Low Emission Vehicle Rules

Prepared by: Dave Nordberg

Date: May 8, 2006

Comment period

The public comment period opened on January 17, 2006 and closed at 5 p.m. Mar. 3, 2006.

DEQ held public hearings in Medford, Bend, Pendleton and Portland, Oregon. DEQ staff began each meeting at 7 p.m. with a brief presentation on the proposed Oregon Low Emission Vehicle (LEV) regulations plus a short question and answer session. A DEQ presiding officer then opened each hearing asking each speaker to limit oral comments to 3 minutes. The four public hearings are discussed separately in the Presiding Officers' Report included as **Attachment C**. The four hearings are briefly summarized below:

Medford

February 22, 2006, 7:00 p.m.
Community Justice Center
1101 W Main St., Suite 101
Medford, OR

Summary

Approximately 65 people attended.
Twenty-five gave oral comments with
22 in support and 3 in opposition.

Presiding Officer: John Becker, DEQ

Bend

February 21, 2006, 7:00 p.m.
Central Oregon Assoc. of Realtors
2112 NE 4th St.
Bend, OR

Summary

Twenty-five people attended with 9
giving oral comments. All spoke in
support of the proposed regulations.

Presiding Officer: Mark Fisher, DEQ

Pendleton

February 23, 2006, 7:00 p.m.
Pendleton City Hall
Community Room
Pendleton, OR

Summary

Approximately 15 adults attended.
Three gave oral comments with
one speaking in support and 2 in
opposition of the proposed rules.

Presiding Officer: Larry Calkins, DEQ

Portland

February 27, 2006, 7:00 p.m.
DEQ Headquarters, 3rd Flr.
811 SW 6th Ave
Portland, OR

Summary

Approximately 120 people attended.
Thirty-four gave oral comments with
30 in support, 3 in opposition
and 1 of indeterminate position.

Presiding Officer: Loretta Pickerell, DEQ

Following is a brief summary of the types of comments received:

Organization of comments and responses	<u>For</u>	<u>Against</u>	<u>Other</u>
Email	3164	49	12
OSPIRG Cards	812		
Sierra Club	602		
WALD Ltrs.	182		
Havurah Shalom Ltrs.	26		
General Letters	339	27	5
Verbal (Hearings)	<u>68</u>	<u>9</u>	<u> </u>
	5193	84	17

- WALD (Working Assets Long Distance)
- OSPIRG (Oregon State Public Interest research Group)

Summaries of individual comments and the Department's responses are provided below. Comments supporting the proposal are presented first and those opposing the proposal are second. Comments on specific regulatory or technical aspects of the proposed rules are shown last. A list of commenters is provided in Attachment D.

Summary of Comments and Agency Responses	
	Comments Supporting Adoption
Comment	Make the Clean Cars program permanent. (emails titled "Oregon Clean Cars Program")
Comment	Finalize the Clean Car program. Oregon should be a leader in cutting global warming pollution from cars and trucks. (emails titled "Please Support the Clean Cars Program")
Comment	Adopt the Oregon Low Emission Vehicle (LEV) rules as soon as possible. This will lower vehicle pollution, reduce dependence on fossil fuels, benefit the health of Oregonians and save money. (emails titled "Oregon Clean Car Standards")
Comment	Adopt Oregon LEV permanent rules. This action will reduce fossil fuel dependence, slow global warming, provide health benefits, save gasoline costs and be good for Oregon's economy. (emails titled "Adopt Clean Car Standards Now")
Comment	"Thank you for taking the first major step toward curbing global warming pollution by moving to bring cleaner cars to Oregon this year. With Oregon's legacy of environmental leadership, we should be leading the nation toward addressing global warming.



	<p>The Clean Cars program will require 30 percent cuts in global warming pollution coming out of the tailpipes of cars and trucks sold in Oregon. It will also make sure that more hybrids and other advanced-technology vehicles are put on the market in Oregon, spurring the innovation needed to truly curb global warming.</p> <p>I encourage you to make sure the Clean Cars program is adopted in full, including the “zero-emissions vehicle” requirement that increase sales of advanced-technology cars, this year.”</p> <p>(OSPIRG postcard.)</p>
Comment	<p>“Thank you... For Protecting the Oregon We Love.”</p> <p>“I applaud your efforts to bring Clean Cars to Oregon and make our state a leader in curbing global warming.”</p> <p>(OSPIRG thank-you card.)</p>
Comment	<p>“Please support Oregon’s improved vehicle emission standards. Doing so will cut down on air pollution today and encourage the production of more fuel efficient cars tomorrow. This will result in fewer air-pollution caused health risks, an improved quality of life for Oregonians and will help our country move towards greater energy independence.”</p> <p>(Sierra Club postcard.)</p>
Comment	<p>I support the Oregon LEV standards as a person of faith. Adoption of LEV standards will reduce global warming gases, help protect the environment and benefit people who are poor and vulnerable to health problems. Increased cost of new vehicles will be offset by reduced operating costs and will provide environmental and economic dividends in the future.</p> <p>(26 letters from members of the Havurah Shalom congregation, plus letter forwarded by Ecumenical Ministries of Oregon citing the names of 249 supporters.)</p>
Comment Bill Bradbury	<p>Oregon’s Secretary of State urges that the proposed rules be adopted noting that this action is part of a regional effort and is key to making the West Coast a “Clean Car Corridor.” In addition to promoting sustainability through GHG reductions, Mr. Bradbury notes these rules would improve Oregon’s quality of life, save money, and benefit the economy.</p>
Comment Sam Adams, Dan Saltzman	<p>Two Portland City Commissioners indicate that the effects of global warming are beginning to appear including “diminished snowpack, altered hydrological patterns, and increased forest fires.” They urge that the proposed rules be adopted because they would reduce GHG emissions and promote economic stability by reducing dependence on fossil fuels while saving money for businesses and citizens.</p>

Comment Kate Brown	Oregon Senator Brown supports the proposed rules for the GHG reductions they would produce and the substantial economic benefit they would have for Oregon's economy. She also notes the proposal would promote energy independence.
Comment Peter Buckley	State Representative Buckley approves of the proposed Oregon LEV program because it will reduce air pollution as well as GHGs.
Comment Greg Macpherson	State Representative Macpherson indicates his support for Oregon LEV noting that the Environmental Quality Commission has full authority to adopt these rules.
Comment Matthew Garrett	The Director of Oregon Department of Transportation (ODOT) supports adoption of the proposed Oregon LEV noting that the transportation system produces approximately one third of GHG emissions in this state and that reductions from transportation are therefore crucial in combating climate change. He recognizes that if the rules are adopted, ODOT's Driver and Motor Vehicle Services Division would play a role in verifying compliance with their requirements and foresees no major hurdles in this process. The proposal will reduce other pollutants in addition to GHGs and will help achieve the Oregon Transportation Plan's policy of providing transportation system that is environmentally responsible and conserves natural resources.
Comment Tom Chamberlain	AFL-CIO's President expresses support of the proposed Oregon LEV program. He indicates that federal vehicle standards do not address GHGs and that Oregon should take responsibility for its contribution to global warming. The rules would provide health benefits, save consumers money and be good for the economy.
Comment	Several commenters expressed their support for the proposal indicating they are willing to pay more for vehicles with lower emissions.
Comment	Many commenters offered their general support for adoption of the proposed regulations.
Response	<i>DEQ acknowledges the support cited above for the proposed Oregon LEV program. The department agrees that the proposed program will reduce vehicle emissions of GHG and other pollutants in a cost-effective manner.</i>
Comment WA Dept. of Ecology	Washington Department of Ecology fully supports Oregon's adoption of the proposed rules. Washington's LEV program was developed in concert with Oregon's proposed LEV program and Washington's rules will not go in effect without Oregon's similar action. Therefore, adoption will produce emission reductions in both states and create a common set of vehicle standards for the West Coast.

Response	<i>DEQ acknowledges Washington Ecology's support and notes that having uniform requirements along the West Coast will allow each state's program to be efficiently and effectively implemented.</i>
Comment NATA	The Northwest Automotive Trades Association (NATA) supports the proposed rules in general and the proposed exclusion of the 15-year extended warranty for Partial Zero Emission Vehicles (PZEVs) in particular. NATA observes that the extended warranty requirements of California's vehicle emissions standards would unfairly divert emission-system repair work from independent repair shops and make vehicle owners dependent on franchised dealers. NATA indicates the extended warranty would hurt competition and that it should be excluded from the rules (as DEQ has proposed).
Response	<i>DEQ acknowledges NATA's support for the proposal. The final proposed rules do not include the extended PZEV warranty.</i>
Comment Oregon Environmental Council	The Oregon Environmental Council (OEC) offers their support of the proposed rules and believes that the rules would be cost effective in reducing emissions. OEC believes that the auto industry's claims of increased vehicle costs are exaggerated and that the industry's projection of emission reduction benefits is too low. However, the OEC considers the exclusion of the extended warranty for PZEVs to be unfair to consumers. A study of the effects of the extended warranty in California predicts that the independent repair industry will continue to grow even with an extended warranty. OEC urges that this feature be added to the final rules.
Response	<i>DEQ notes the general support of the OEC, but disagrees that dropping the 15-year extended warranty for PZEVs would be unfair to consumers. The proposed rules would require manufacturers to use components of equal quality to those in vehicles that are covered by the extended warranty in other states. DEQ believes that requirement will allow consumers to receive most of the warranty's benefits while maintaining access to a wide selection of repair facilities throughout the state.</i>
Comment Oregon Electric Vehicle Association	The Oregon Electric Vehicle Association supports the proposed rules observing that the program would have a positive effect on the development of electric vehicles, but notes that hydrogen fuel cell vehicles are not ready for general use.
Response	<i>DEQ recognizes that electric vehicles may be used to comply with the Zero Emission Vehicle (ZEV) provisions of the proposed rules. DEQ agrees there is no certainty about when hydrogen fuel cell vehicles (Type III ZEVs) will be available for widespread use. DEQ notes that the proposed rules delay the requirements for Type III ZEVs until an adequate hydrogen refuelling infrastructure is available in Oregon.</i>
Comment	The proposed exemption for vehicles with more than 7,500 miles is a significant loophole that will weaken the program's effectiveness.

Response	<i>The California vehicle emission standards only apply to new vehicles which are defined as those having fewer than 7,500 miles. DEQ believes that changing the 7,500 mile limit would violate the Clean Air Act's requirement that states adopting California's standards must adopt standards that are identical to California's.</i>
Comment	Several commenters supporting Oregon LEV stressed the economic benefit of the new requirements.
Response	<i>DEQ recognizes that the proposed regulations should be a financial benefit to individual vehicle owners and the state's economy as a whole.</i>
Comment	Some indicated that other types of engines (i.e. heavy-duty trucks and non-road engines) should be regulated as well.
Response	<i>Emissions such as VOC, NOx, and Particulate from other types of engines (e.g. heavy-duty trucks, non-road vehicles and non-road engines) are being reduced in a variety of ways, both through California and federal regulations.</i> <i>Tighter engine standards for heavy-duty diesel trucks are being phased in. EPA has also developed over the past decade additional regulations that reduce emissions from a variety new engine uses, such as lawn and garden equipment, recreational boat engines, engines used in construction machinery, and diesel locomotives. At this time, neither California nor federal regulations address greenhouse gas (GHG) emissions from these types of engines.</i>
Comment	Eleven members of the Specialty Equipment Manufacturing Association expressed their support for the proposed exemptions for custom-built, hot rod and specialty cars.
Response	<i>DEQ notes the support expressed for specialty-car exemptions, which are retained in the final proposal.</i>
Comment	Several supporters cited the benefits that the Oregon LEV program would have for reducing dependence on fossil or foreign fuel.
Response	<i>The purpose of the proposed Oregon LEV program is to reduce the emission of GHGs while cutting the emission of other harmful pollutants. DEQ acknowledges, however, the rules may have the additional benefit of reducing the use of fossil and/or foreign fuels.</i>
Comment	Some supporters of the proposed rules specifically referred to the health benefits the rules would provide Oregonians.
Response	<i>DEQ agrees that the proposed regulations will decrease harmful emissions.</i>
Comment	Several supporters specifically noted that the proposed regulations would benefit the development and use of Zero Emission Vehicles or ZEVs. One

	suggested that DEQ mandate the use of battery/electric vehicles an alternative to the proposed delay of the fuel-cell vehicle requirement.
Response	<i>DEQ agrees that the Oregon LEV program would promote ZEVs. DEQ also notes that the proposed rules would allow using battery/electric vehicles to meet the ZEV targets under both the “base path” and the “alternative path” to ZEV compliance. Because of this flexibility, DEQ sees no need at this time to mandate the use of battery/electric vehicles.</i>
Comment	Five people commented on DEQ’s vehicle emission testing program which applies to cars and trucks registered in the Portland and Medford areas. Two felt that hybrid vehicles such as the Toyota Prius should be exempt from emissions testing or the testing fee. One commenter felt that the emissions testing program should be extended statewide, one thought the test should be administered by local service stations, and one felt that Oregon should have tougher enforcement for high-emitting vehicles.
Response	<i>DEQ acknowledges the commenters views. However, these comments are outside of the scope of the proposed rules.</i>
Comment	One supporter of Oregon LEV objected to deleting the extended 15-year/150,000 mile warranty for Partial Zero Emission Vehicles (PZEVs) because doing so would adversely affect Oregon’s consumers—especially the poor.
Response	<i>DEQ disagrees. Manufacturers are expected to respond to the PZEV extended warranty requirement primarily by installing more durable components rather than paying dealers to perform an increased amount of warranty work. By requiring that Oregon PZEVs be outfitted with the same quality components used in vehicles that are subject to the warranty, the proposed regulations should achieve most of the benefit of the extended warranty without adversely affecting the independent auto repair industry.</i>
	General Comments Opposing Adoption
Comment	DEQ should not ban the sale of diesel vehicles. Diesel engines can emit low levels of pollution, emit less carbon dioxide than comparable gasoline engines, promote energy independence, and can operate on biodiesel fuel.
Response	<i>The proposed Oregon LEV regulations do not ban the use of automotive diesel engines, and do not apply to heavy-duty diesel (truck) engines. Oregon LEV would replace the more lenient passenger diesel engine requirements provided by the federal Tier 2 regulations. The proposed LEV regulations establish the same emissions limits for both gasoline and diesel passenger vehicle engines for Non Methane Organic Gases (NMOG), Oxides of Nitrogen (NOx) and Carbon Dioxide (CO2). In the past, these diesel engines could not reach the low emission rates of gasoline engines, but that is expected to change with the switch to Ultra Low Sulfur Diesel Fuel (ULSD) later this year. DEQ expects that some or all of the three</i>

	<p><i>manufacturers of automotive diesel (Mercedes, Volkswagen and Jeep Liberty) engines will have products that meet the proposed requirements by model year 2009 when the rules take effect.</i></p> <p><i>It is true that diesel engines inherently produce less CO2 than their gasoline counterparts, but they are also expensive to build. By making gasoline and diesel engines subject to the same emission limits, the rules establish a performance-based standard that lets manufacturers use the most efficient means available in meeting that standard. The relative effect that adopting a single standard for both gas and diesel engines might have on the nation's energy independence is beyond the agency's purview and was not considered in proposing these rules.</i></p> <p><i>Finally, DEQ notes that the automotive diesel engines affected by this regulation consume a very small percentage of the diesel fuel market. The success of biodiesel fuel is far more likely to be determined by its use in heavy duty vehicles, which are not subject to Oregon LEV standards.</i></p>
Comment	Government should not impose more emission restrictions on cars until it addresses the problem of pollution produced by diesel trucks and busses.
Response	<i>Light and medium duty vehicles are not the only focus of reduced emission requirements. Since the Clean Air Act Amendments of 1990 were approved, the U.S. Environmental Protection Agency (EPA) adopted regulations that reduce diesel emissions from a wide range of newly manufactured vehicles. These regulations apply to heavy duty trucks and busses as well as off highway applications such as marine engines and construction equipment. These rules are being phased in and will take many years for their emission reduction benefits to have full effect. To speed this process, DEQ is implementing a voluntary clean diesel initiative to retrofit existing diesel engines with modern emission control equipment.</i>
Comment State Rep. Gordon Anderson	The proposed rules should not be adopted until the legal issues raised against them are settled.
Response	<i>DEQ respectfully disagrees. It will likely take many years for the legal challenges to California's GHG regulations (and subsequent appeals) to be fully resolved in state and federal courts. DEQ believes that Oregon would lose an important opportunity for emission reduction and public health protection if it waited until all legal issues are resolved. If California's GHG requirements are ultimately overturned in the courts, the remedy would simply be to align the state program fully with California rules or return to the federal standards. Even without GHG reduction, Oregon would still benefit from reduced emissions of carbon monoxide, volatile organic compounds, oxides of nitrogen, and air toxics provided by the California LEV standards.</i>
Comment Anderson	Scientists are uncertain about the effects of global warming.
Response	<i>Consensus science is clear that Global Warming poses a serious threat to</i>

	<p><i>nations around the world. Adopting the Oregon LEV rules was one of the leading recommendations of the Governor's Advisory Group on Global Warming. That group addressed the issue of global warming uncertainty in its formal report "Oregon Strategy for Greenhouse Gas Reductions" (page 32). The group indicated "Considerable uncertainty remains over the timing, distribution and potential severity of climate change on... terrestrial effects." But, the group concluded: "What is clear, however, is that the more greenhouse gas concentrations accumulate, the more we will be affected by these changes."</i></p> <p><i>DEQ agrees with the Advisory Group that global warming presents serious consequences for Oregonians that merit proactive solutions.</i></p>
Comment Anderson	The proposed rules constitute a "tailpipe tax" that will increase the cost of new vehicles \$2,000 to \$3,000 while only saving \$50 per year in reduced operating costs.
Response	<i>DEQ respectfully disagrees. DEQ believes that the most realistic estimates of the cost of complying with California's vehicle emission standards are those developed by the California Air Resources Board (CARB). Using CARB's figures, DEQ estimates the average cost of meeting the Oregon LEV's requirement to be approximately \$1,200 once fully implemented in 2016. In addition, DEQ anticipates that--on average--increased vehicle costs will be completely offset by reduced operating costs, resulting in a net savings to consumers. DEQ's cost estimate is described in the Statement of Need and Fiscal Impact.</i>
Comment	Adopting California's vehicle emission standards in Oregon is likely to eliminate the availability of air-cooled motorcycles.
Response	<i>The proposed Oregon LEV rules do not apply to motorcycles.</i>
Comment	The proposed rules are not necessary because the use of gasoline will soon be replaced by diesel fuel which produces approximately 30% less GHG emissions.
Response	<i>DEQ is not aware of any regulatory requirement or market trend that would replace the use of gasoline with diesel fuel for passenger vehicles and light-duty trucks.</i>
Comment	One commenter opposes the proposal because the requirements only apply to new light and medium-duty vehicles sold in Oregon. Their effect will be diluted because they do not include used vehicles or vehicles travelling from other states.
Response	<i>DEQ is not aware of any practical and cost-effective technology to substantially reduce GHG emissions from existing vehicles. DEQ does not have authority to regulate vehicles registered in other states that visit Oregon.</i>

Comment	There is no requirement to restrict new non compliant vehicles from out of state. Rental car agencies and other fleet managers will buy vehicles outside Oregon to save money.
Response	<i>DEQ disagrees. Under the proposed rule OAR 340-257-0040 rental car agencies are required to use compliant vehicles in Oregon and all fleet owners must license vehicles that comply with Oregon LEV. Non compliant vehicles moving to Oregon can also be identified through the Vehicle Inspection Programs in the Portland and Medford areas as well as through DMV records.</i>
Comment	Adoption of the proposed rules should be decided by Oregon voters.
Response	<i>Oregon Governor Kulongoski requested that the Environmental Quality Commission (EQC) consider adopting the Oregon LEV program now in order to begin GHG reductions in Oregon as soon as possible. This is consistent with other opt-in states, including Washington, that are beginning the GHG/LEV program with the 2009 model year. The EQC has authority to adopt the proposed rules under existing Oregon law.</i>
Comment	Oregon could immediately reduce the GHG emissions by imposing a fuel tax of \$2.00 or more per gallon.
Response	<i>A new fuel tax was not recommended by the Governor's Global Warming Advisory Group. DEQ does not have legal authority to establish a fuel tax.</i>
Comment	The global warming effect of human-generated GHG emissions is a tiny fraction of the global warming produced by naturally-occurring water vapor.
Response	<i>Consensus science studies from around the world show that human caused air pollution (GHG emissions) are responsible for climate change. It was the consensus of the Governor's Advisory Group on Global Warming that climate change, driven by human caused emissions, poses a serious threat to Oregon's citizens, environment, and economy.</i>
Comment	By increasing the cost of new vehicles, the proposed rules will decrease the sale and use of new vehicles and increase the average age of Oregon's fleet. Because vehicles emit higher levels of pollution as they age, emission reductions will be less than is projected.
Response	<i>California ARB estimated that the increased cost imposed by the new GHG regulations, taken together with the anticipated fuel savings to the consumer, would have a minor effect on vehicle sales and vehicle turnover. DEQ expects to see a negligible impact on the average age of the Oregon fleet due to these regulations.</i>
Comment	The reformulated gasoline needed for vehicles that comply with the proposed rules will add additional costs.
Response	<i>Reformulated gasoline is not needed, nor required, to achieve the significant</i>

	<i>emissions reductions projected for the proposed Oregon LEV program. DEQ's emissions projections are based on the continued use of conventional gasoline. Reformulated gasoline is required in California and some other states to address violations of federal ozone (smog) standards.</i>
Comment	We oppose adopting the proposed rules. However, if the rules are adopted, specialty vehicles such as street rods, replica cars and assembled vehicles should be exempted from emissions testing requirements.
Response	<i>The final proposed rules retain the exemptions for specialty vehicles as originally proposed. However, the Oregon LEV rules would only apply to the manufacture and sale of new vehicles. They do not affect DEQ's Vehicle Inspection Program.</i>
Comment	The proposed rules are unnecessary as most cars sold in Oregon already comply with California's vehicle emission standards.
Response	<i>DEQ disagrees. While it is true that some cars sold today in Oregon meet California vehicle emissions standards, adopting Oregon LEV rules will ensure that all vehicles sold in Oregon will meet the new California standards for GHGs.</i>
Comment	Adopting these rules will allow California regulators to control the kind of vehicles used in Oregon and will limit vehicle choice.
Response	<i>The California LEV program is specifically designed to not limit a consumer's choice of vehicles. The standards anticipate the continued sale of all types of vehicles from hybrid cars to larger pick-up trucks. Under the Clean Air Act, Oregon has the option of choosing federal vehicle emissions standards or those established by California. If the proposed rules are adopted, Oregon will retain the ability to "opt out" of the California emissions standards at any time in the future.</i>
Comment	The proposed rules include anti-tampering provisions that will prevent vehicle modifications such as hydrogen injection that could be environmentally beneficial.
Response	<i>DEQ regards provisions that prohibit tampering with vehicle pollution control systems to be a necessary feature of vehicle emissions standards.</i>
Comment	Auto dealers in communities that border other states will lose sales to out-of-state dealerships.
Response	<i>DEQ does not agree. California and Washington will also be marketing LEV-compliant vehicles creating a level playing field across the West Coast. DEQ will review DMV vehicle registration records to detect any significant influx of non compliant vehicles from other states and take appropriate action if problems are found.</i>
Comment	The proposed rules will not allow flex-fuel vehicles that run on ethanol.

Response	<i>DEQ does not agree. The proposed rules do provide for the use of ethanol and other alternative fuels as a way to meet the requirements.</i>
Comment	DEQ should designate a class of vehicle with extremely low or no emissions that can be used in High Occupancy Vehicle lanes.
Response	<i>DEQ acknowledges the commenter's idea. However, the development of HOV lanes is beyond the scope of this rulemaking.</i>
Comment Alliance of Automobile Manufacturers (AAM)	Governor Kulongoski's veto of a provision preventing DEQ from working on the Oregon LEV program was unconstitutional. Therefore, DEQ does not have authority to adopt vehicle emission rules.
Response	<i>The Marion County Circuit Court ruled that Governor Kulongoski's line-item veto was legal.</i>
Comment AIAM AAM	EPA says the LEV II regulations will only reduce Volatile Organic Compounds (VOC) 1% and Air Toxics 2% more than federal requirements.
Response	<p><i>EPA's emission estimates are lower than DEQ's partly because they are expressed as a percentage of a larger baseline--the earlier National Low Emission Vehicle (NLEV) emission standard, which is no longer in effect. DEQ's estimates are expressed as a direct comparison of the two sets of standards actually available to Oregon: Federal Tier 2 emission limits and California's LEV II limits.</i></p> <p><i>DEQ's projections of the expected VOC and Air Toxic emission reductions were based on studies by Washington's Department of Ecology (WDOE). WDOE followed EPA's guidance for performing such analyses and used fleet data that characterize Oregon's conditions. The analysis also captures the effects of different strategies that manufacturers might use to comply with federal vehicle emission standards.</i></p> <p><i>Finally, this comment's focus on VOCs and Air Toxics overlooks the main purpose of the proposal—namely that it will require a 30% reduction of GHG emissions.</i></p>
Comment AAM	Projected theoretical emission reductions do not account for the rebound effect and the fleet turnover effect. The rebound effect is where the lowered cost of driving produced by the GHG regulations stimulates more vehicle use and a consequent increase in total emissions. The fleet turnover effect refers to the possibility that the increased cost of compliant new vehicles will lead to an older and dirtier fleet. These effects will generate an actual increase in emissions.
Response	<i>California Air Resources Board (CARB) did not consider the rebound effect in its first analysis of the GHG regulations but did so in a later analysis. Staff concluded from that subsequent analysis that the rebound effect would not</i>

	<p><i>significantly change CARB’s previous results. DEQ believes CARB’s conclusion also applies to Oregon.</i></p> <p><i>Similarly, DEQ does not expect the proposed rules to slow the turnover of Oregon’s fleet and did not include this factor in its emissions reduction analysis. DEQ believes that in Oregon such effects (if any) would be negligible and unlikely to outweigh the substantial emission reductions achieved by Oregon LEV regulations. DEQ notes that Oregon LEV-compliant vehicles on average are likely to produce a net savings to their owners from the first month of ownership. In analyzing the effects of the GHG regulations on low-income families, CARB predicted that purchasers of used GHG-compliant vehicles would also realize a net financial benefit.</i></p>
Comment AAM	<p>Oregon has a different mix of vehicles than California. Meeting the fleet average emissions requirement for Non Methane Organic Gases (NMOG) in Oregon could require manufacturers to restrict the sale of certain vehicles in this state. Such a restriction would be an indirect limit on the sale of California-certified vehicles in violation of the provisions of Clean Air Act section 177. Oregon should change the requirement to meet the fleet average emission limit to a requirement to simply report the fleet average emission limit.</p>
Response	<p><i>The NMOG fleet average emissions limit is a key requirement of the California standards and DEQ believes failing to adopt it would violate the identity requirement of the Clean Air Act. DEQ believes that adopting the California NMOG fleet average standard does not prohibit or limit the sale of any specific California-certified vehicle.</i></p> <p><i>The Second Circuit Court of Appeals addressed a similar issue in the case of Motor Vehicle Mfrs. Assn. v. New York State Dept. of Environmental Conservation (17 F.3d521 (2d Cir. 1994). In that case, the Court found that meeting the fleet average requirement by marketing or other competitive practices would “affect” the sale of California-certified vehicles, but it would not “limit” sales in the sense used in the statute. DEQ considers the fleet average requirement to be an integral part of the standards and has retained the fleet average limits in the proposed final rules.</i></p>
Comment Association fo International Automobile Manufacturers (AIAM) AAM	<p>Oregon’s proposed phase-in provisions could prevent manufacturers from fully using emission credits accrued in California to demonstrate compliance with Oregon’s program (if credits were accrued before Oregon’s program takes effect). That could limit the sale of California-certified vehicles, in violation of section 177. The industry recommends that NMOG credits accrued during the transitional period be treated as being earned in the final year of the transitional period, and that all transitional period debits be forgiven.</p>
Response	<p><i>In response to these considerations, DEQ is modifying the final proposed rules to incorporate further modifications to the transition period requirements adopted by WDOE. The resulting provisions reduce the transition period to three years and allow credits earned during the transition</i></p>

	<p><i>period to be used to offset previously accrued debits. Up to two years of transition period debits may be forgiven. The unused amount of transition period net credits will be discounted over time. DEQ feels that the updated approach provides a reasonable transition process for auto makers while preserving some responsibility for debits accrued during the transition period. This approach is consistent with the final approach adopted by WDOE and provides a level playing field for phasing in LEV requirements in Oregon and Washington.</i></p>
Comment AAM	<p>Oregon must adopt the Zero Emission Vehicle (ZEV) program intact or not at all. Oregon LEV violates the Clean Air Act's requirement that Oregon's program be identical to California's.</p>
Response	<p><i>Oregon's proposed LEV program includes two modifications of California's requirements. The first extends the travel provision, i.e., the date that fuel cell vehicles placed outside Oregon may be used to meet Oregon's ZEV requirements. This change recognizes that a hydrogen refueling infrastructure to support the use of fuel-cell vehicles may not exist in Oregon by 2012 when these vehicles would otherwise be required.</i></p> <p><i>The second modification omits the requirement for PZEVs to have a 15-year emissions-related warranty but requires PZEVs to have the same quality components as vehicles that are subject to the extended warranty.</i></p> <p><i>DEQ believes these modifications are permissible. First, the proposed Type III ZEV "travel provision" does not modify the standard; it only specifies when the requirement takes effect. Second, the extended PZEV warranty requirement is an implementation feature that is independent of how a vehicle is manufactured, distributed, or sold. The Clean Air Act provides opt-in states flexibility to modify the implementation of California standards as long as those states' regulations do not require the manufacture of a "third car."</i></p>
Comment AIAM AAM	<p>The ZEV credit bank requirements in Oregon's proposal are modeled on the requirements developed in New Jersey. The ZEV credit bank provisions applied in Maine, Connecticut, and Rhode Island are more closely identical to California's system and will facilitate the auto industry's understanding of and complying with Oregon's requirements.</p>
Response	<p><i>DEQ accepts that the ZEV credit bank provisions used in Maine, Connecticut, and Rhode Island are more workable for the industry and has modified the Oregon LEV proposal to incorporate more flexible features in Maine's regulations.</i></p>
Comment AIAM AAM	<p>The proposed Oregon LEV requires manufacturers to report the dates that PZEVs and ATPZEVs are delivered to Oregon together with the VINs of those vehicles. This is an unnecessary burden that provides no environmental benefit and should be removed.</p>
Response	<p><i>DEQ agrees and has removed the PZEV/ATPZEV VIN reporting requirement</i></p>

	<i>from the final proposal.</i>
Comment AIAM	The proposed program requires that ZEV credits be reported by September 1 for the preceding model year and not be adjusted further. That stringent requirement restricts manufacturers' ability to trade credits at a later date and is not identical to California's program. Oregon should change the proposal to be consistent with procedures described by California's Manufacturer's Advisory Correspondence.
Response	<i>DEQ recognizes that removing the prohibition against adjusting ZEV credit transactions after the September 1 reporting date will allow the industry more flexibility and be more consistent with California's practices. The final proposal is modified to reflect the industry's recommendation.</i>
Comment AIAM	The proposed requirement to submit VINs of all vehicles sold in 13 western states is not a requirement applied in other opt-in states. This provision will be very difficult for manufacturers to achieve and should be removed.
Response	<p><i>Most states that opt in to California's vehicle emissions standards rely on "registration denial" to ensure their state program is properly implemented and enforced. That is, new vehicles must demonstrate they are California-certified as a condition of being titled or registered. However, existing Oregon law prevents the Oregon Division of Drivers and Motor Vehicles (DMV) from withholding registration for that purpose. Therefore, DEQ plans to monitor compliance by comparing manufacturer-provided emissions information for individual vehicles with DMV data for vehicles actually registered in Oregon. For this approach to be effective, DEQ needs the VIN and emissions status of vehicles delivered to Oregon and surrounding areas. Accordingly, the proposed final rules retain this feature.</i></p> <p><i>DEQ recognizes, however, that this reporting requirement will not be needed if the Oregon legislature authorizes a registration denial program in the future. DEQ modified the final proposal to specify that the VIN reporting requirement will no longer apply if the legislature enacts changes that will allow DMV to deny registration or titling to noncompliant new vehicles. The proposed final rule was revised to also allow DEQ to reduce the number of states for which VINs are requested.</i></p>
Comment AIAM AAM	The requirement to automatically report the failure of emission-related components creates an administrative burden on manufacturers and will provide little benefit in verifying manufacturers' compliance with the program. This requirement should be changed to require reporting "upon request."
Response	<i>DEQ agrees that reporting the failure of emission-related components "upon request" will be adequate to administer its program. The proposed final rules are modified accordingly.</i>
Comment AIAM AAM	CARB Executive Orders recognizing vehicles that comply with California's requirements are available on the world-wide web. Oregon should use this means for determining which vehicles are California-compliant and remove

	the proposed requirement that manufacturers automatically submit hard copies of vehicle certification documents to DEQ.
Response	<i>DEQ agrees that obtaining CARB Executive Orders on line will serve the agency's purposes in most cases. However, DEQ believes that individual manufacturers should be responsible for demonstrating whether their products are certified to California's vehicle emissions standards. In response, the proposed rules modify the requirement for automatically reporting CARB vehicle certifications to reporting "upon request."</i>
Comment AIAM AAM	Oregon's proposed rules require manufacturers to report a list of all Medium-Duty Vehicles and Medium-Duty Passenger Vehicles delivered to Oregon dealers. That provision copies a feature of Washington's regulations that is not needed in Oregon and should be dropped.
Response	<i>DEQ agrees. The requirement is removed from the final proposal.</i>
Comment AIAM AAM	The proposed fees on "indirect sources" are prohibited by state and federal law. California has no such fee, so the provision violates the Clean Air Act requirement that states "opting in" to California's regulations must adopt those regulations identically.
Response	<i>DEQ disagrees. The Clean Air Act prohibits states other than California from establishing standards relating to the control of emissions for motor vehicles. The indirect source fee is not a "standard relating to the control of emissions." It is not based on the amount or nature of emissions or the type of controls installed on any particular vehicle or class of vehicles. The fee is simply based on the volume of vehicles delivered for sale in Oregon by each manufacturer. DEQ will use revenues derived from the fee to implement the Oregon LEV program, including dealer outreach, technical assistance, and compliance verification. The use of the fee to administer the LEV program is not a means of "emission control" for purposes of the Clean Air Act (section 177).</i>
Comment AIAM AAM	Requiring manufacturers to pay a fee to get an indirect source permit is an unlawful restriction on vehicle sales under Clean Air Act section 177. In addition, the proposed indirect source permit fee violates CAA section 209's prohibition from setting any "condition precedent to the... sale" of a motor vehicle.
Response	<i>The final proposed rules are modified to resolve confusion on this point. Under the Oregon LEV program, an indirect source permit is not required as a "precondition" of vehicle sales. Each affected manufacturer will simply be required to obtain an annual DEQ permit, as are many other sources of air contamination in Oregon. An indirect source permit and required permit fee may "affect" sales of California-certified vehicles; they are not a "limit" on such sales. DEQ concludes that requiring an indirect source permit and fee is not a prohibited "limit" on the sale of California-compliant vehicles and is allowed under state and federal law.</i>

Comment AAM	Oregon's proposed definition of "indirect source" splits from the federal definition and may be unlawful.
Response	<i>The definition of indirect source is specific to the purposes of section 110(a)(5), which applies to EPA's authority to establish indirect source requirements. Nothing in the Clean Air Act prohibits a state from using its authority to adopt requirements for indirect sources as defined in section 110(a)(5)(C) or as otherwise defined by the state. ORS 468.065 authorizes the EQC to establish fees for permits issued pursuant to other statutory authority. ORS 468A.040 authorizes the EQC to adopt rules requiring permits for air contamination sources classified by type of air contamination source, or by area of the state.</i>
Comment AIAM AAM Ford	The GHG standards are de facto fuel economy standards which states are prevented from establishing by the federal Energy Policy Conservation Act (EPCA).
Response	<i>DEQ disagrees. DEQ agrees with California's position on this issue as expressed in ARB's Final Statement of Reasons for the Motor Vehicle GHG regulations. New California vehicle standards were developed specifically to regulate GHG emissions, not to increase fuel economy. The rules were specifically designed to offer flexibility in the way those reductions are achieved. Manufacturers can use a wide array of existing and emerging technologies to reduce emissions. It is true that many of those technologies may have a secondary benefit of increasing fuel economy. However, the sole purpose of California's GHG standards for new vehicles, and Oregon's adoption of those standards, is to regulate and reduce GHG emissions.</i>
Comment AAM	CARB's GHG regulations were developed using the assumption that GHG-compliant technologies will be deployed nationwide. DEQ should assess that assumption independently.
Response	<i>This issue was raised during California's rule development, and CARB distinctly disagreed. CARB indicated that the 1.7 million new vehicles sold annually in California in addition to vehicles subject to voluntary or mandatory GHG reduction agreements in Europe, Canada, Japan and other opt-in states would be sufficient to generate high-volume production of GHG-reduction technologies. Therefore, GHG reducing technologies should be widely available to auto manufacturers.</i>
Comment AAM	The auto industry's voluntary agreement with the Canadian government to reduce GHGs 25% by 2010 does not indicate that the CARB goals are feasible.
Response	<i>The proposed Oregon LEV program is based on California motor vehicle emission requirements and expectations for GHG reducing technologies available in the United States. It does not rely on the auto industry's voluntary agreement with the Canadian government.</i>
Comment	The alternate compliance provisions provided in the proposed rules (such as

AAM & GM	using lower-GHG fuels) are not realistic and exist in name only.
Response	<i>Alternate compliance provisions such as using ethanol in lieu of petroleum provide flexibility and allow the possibility of achieving GHG emission reductions more efficiently than establishing limiting tailpipe emission limits alone. If the economics of fuel production change in the future, these alternate compliance provisions could provide benefits. If the alternate compliance provisions are never used, they will have imposed no regulatory burden.</i>
Comment AAM	DEQ needs to explain if plug-in hybrids will be a significant part of the way manufacturers comply and what those costs will be.
Response	<i>The use of plug-in hybrid vehicles is one of several ATPZEV technologies available to the auto industry for earning credit to meet ZEV targets. The proposed Oregon LEV program gives manufacturers broad flexibility in selecting which technologies they will actually apply. DEQ's Fiscal and Economic Impact Statement (Attachment F) illustrates one likely scenario for meeting the ZEV requirements, with a fleet mix of true ZEVs, PZEVs, and ATPZEV vehicles. Again, manufacturers have broad flexibility to meet the ZEV requirement and can use plug-in hybrid vehicles at their discretion as one option to meet their ZEV fleet mix.</i>
Comment AIAM, Ford, AAM	Any GHG emission reductions achieved by these rules will have no demonstrable effect on climate change in Oregon.
Response	<i>The Governor's 2004 Advisory Group on Global Warming concluded that global climate change will have a severe affect on Oregon's environment, citizens and economy. The proposed regulations are the result of a cooperative effort of western states to act jointly to reduce GHG emissions. This joint action is consistent with measures being taken around the world to reduce the harmful consequences of climate change by controlling GHG emissions. The Governor's Advisory Group recommended adopting California's vehicle emission standards as one of the most effective and efficient ways to reduce Oregon's contribution to the problem of global climate change.</i>
Comment AAM	Compliance with CARB GHG requirements will reduce vehicle weight and therefore compromise vehicle safety.
Response	<i>The proposed rules do not require weight reduction or vehicle downsizing, and GHG emissions limits were developed with the expectation that vehicle manufacturers would continue to offer their current mix of vehicles. DEQ anticipates that manufacturers will be able to comply with the proposed Oregon LEV requirements while maintaining or even improving vehicle performance levels sought by consumers. Any manufacturer that chooses to reduce vehicle weight will still be required to comply with all federal vehicle safety standards.</i>
Comment	EPA has not granted California a waiver for their GHG regulations under

AAM AIAM	Clean Air Act section 209. In addition, EPA has determined that the Clean Air Act does not allow control of GHG from motor vehicles. Therefore, Oregon cannot opt in to California's GHG requirements under Clean Air Act section 177.
Response	<p><i>Nothing in section 209 of the Clean Air Act prohibits a state from adopting California's GHG standards before EPA grants a waiver. Section 177 of the Act says that states may only "adopt and enforce... California standards for which a waiver has been granted" by EPA under section 209.</i></p> <p><i>A state may adopt California's vehicle emission standards before EPA grants a waiver as long as it does not attempt to enforce the standards before the waiver is actually obtained. DEQ will spend the phase-in years of the program 2007-2009 conducting dealer and manufacturer outreach, and would not enforce program requirements until the 2009 model year. Legal issues surrounding EPA's waiver may be resolved by that time. If ultimately EPA's waiver is not granted, DEQ may not be able to enforce the GHG portion of the Oregon LEV program until legal issues are resolved.</i></p>
Comment AAM	<p>The Oregon LEV program will have the unintended economic effect of restricted vehicle choice. These effects are detailed in Appendix A of the Alliance of Auto Manufacturers' comments developed by Sierra Research. The appendix includes four studies indicating that CARB's economic analysis of the GHG standards "ignored the opportunity costs of a mandated increase in fuel economy standards" and thereby understates the costs of the regulation. They assert that many consumers will lose the "opportunity to purchase a vehicle which may be less fuel efficient but has other features that a consumer desires more than enhanced fuel efficiency."</p> <p>The Alliance states that the Congressional Budget Office study indicated it was necessary to consider that higher vehicle prices associated with CAFÉ standards would result in a loss of well being for consumers who would not purchase new vehicles at higher prices. They also concluded that a 46 cent per gallon gasoline tax would achieve a 10% reduction in fuel use at a lower cost than increased CAFÉ standards. That conclusion is due in large part to the immediacy of the effect of a gasoline tax in inducing a shift in consumption patterns.</p> <p>The remaining studies primarily examine the opportunity cost of consumers having vehicles that would have greater fuel efficiency instead of more performance, weight, towing capacity, and other attributes that consumers might prefer. The studies indicate that typical engineering analyses underestimate these costs and including them would make costs exceed the benefits. They also note that the rebound effect of increased fuel efficiency can produce greater travel and increased emissions.</p>
Response	<i>CARB developed their LEV standards in consultation with auto industry professionals to ensure that the characteristics of the existing fleet could be maintained, without loss of choice or vehicle attributes that consumers may prefer. CARB considered fleet turnover characteristics as well as the</i>

	<p><i>rebound effect and concluded those effects would be minor. DEQ reviewed CARB's analyses and finds their conclusions convincing, and has used CARB's analysis as the basis for expectations for implementing Oregon LEV.</i></p> <p><i>DEQ does not have authority to tax gasoline and that approach to reducing GHGs was not recommended by the Governor's Global Warming Advisory Group.</i></p>
Comment AAM	The proposed regulation is excessively burdensome on interstate commerce "in relation to [its] putative benefits." Therefore the proposal is invalid under the Dormant Commerce Clause of the Constitution and cannot be adopted.
Response	<p><i>CARB addressed this issue in the Final Statement of Reasons for the GHG rulemaking. DEQ reviewed CARB's response and agrees with its conclusion that there is no violation of the dormant Commerce Clause "either because the Clean Air Act exempts these regulations from Dormant Commerce Clause analysis, or because under deferential review of public health and environmental regulations, the benefits here clearly outweigh the burdens under Pike balancing test." (citing Pike v. Church, 397 U.S. 137 (1970)).</i></p> <p><i>CARB also noted that White v. Massachusetts Council of Construction Employers, Inc., 460 U.S. 204 (1983) held that state or local government action that is specifically authorized by Congress is not subject to the Commerce Clause even if it interferes with interstate commerce. CARB further noted that California courts recognize that Clean Air Act section 209(b) qualifies the California vehicle emission program for the Commerce Clause exemption. People ex.rel. State Air Resources Board v. Wilmshurst (App3 Dist. 1999) and Jordan v. Department of Motor Vehicles, (1999)75 Cal.App. 4th 449, 461.</i></p>
	Four Comments Addressed as a Group:
Comment GM	The proposed regulations impose stringent requirements on the largest manufacturers but allow delayed or less stringent requirements for mid-sized and smaller auto makers, including international companies such as Volkswagen and BMW.
Comment AIAM AAM GM	The proposed rules require that auto makers with 10% ownership of another auto manufacturer be grouped together to determine the manufacturer size category under which the companies are regulated. This may impose burdens on manufacturers that are beyond their control.
Comment AIAM AAM	GHG emissions pose a global problem and are properly addressed through international commitments. The adoption of GHG regulations by individual states is preempted by the foreign affairs power and the Supremacy Clause of the U.S. Constitution.
Comment AIAM AAM	CARB's GHG regulations are based on many errors and analytical mistakes. Some of the errors are so serious that they are being challenged in court. DEQ needs to conduct an independent

GM	assessment of CARB's evaluations.
Response to Four Preceding Comments	<p><i>The preceding four comments were raised during CARB's rulemaking process and DEQ agrees with CARB's detailed responses. In brief, CARB provides less stringent requirements and a more generous phase in schedule for smaller auto manufacturers (such as Morgan of England), in recognition of their limited resources and ability to integrate the latest GHG reduction technologies into their products quickly. However, some small auto makers are partially owned by large auto manufacturers. CARB believes partial ownership by a large auto maker should provide the small manufacturer the resources necessary to meet the requirements for large manufacturers.</i></p> <p><i>CARB believes its analysis of the LEV regulations is sound, and disagrees with the auto industry on the points above. Oregon finds CARB's analysis convincing and believes GHG reduction should be pursued at both the international, national, and local level. These and other disagreements between the auto industry and CARB will likely be resolved through the courts in the coming years. Depending on the outcome, CARB may have to revise its regulations. If this occurs, opt-in states would simply adopt any changes or revert to federal vehicle standards.</i></p>
Comment GM	General Motors (GM) strongly opposes Oregon's adoption of the proposed regulations and supports the comments submitted by the Alliance of Auto Manufacturers.
Response	<i>DEQ acknowledges GM's opposition to the proposal and the company's support of the Alliance's comments.</i>
Comment GM	Oregon can adopt California's motor vehicle emission standards for NMOG without the GHG standards.
Response	<i>The primary purpose of the proposed rules is to reduce the emission of GHGs in Oregon. DEQ believes that adopting the LEV standards (that reduce emissions of Non Methane Organic Gases or NMOG) without also adopting the GHG requirements could require the manufacture of a "third car," which is prohibited under Clean Air Act section 177.</i>
	Three Comments Addressed as a Group:
Comment	The proposed GHG standards are unfair to manufacturers whose vehicles have the heaviest average weights.
Comment GM	The test method for GHG emissions is based on worst-case conditions that overestimate GHG emissions. Acquiring a representative sample will require the testing of hundreds of vehicle configurations.
Comment GM	The proposed regulations make no realistic provision for the continued availability of commercial vehicles. The exemption for light duty work trucks is so narrow as to be essentially meaningless. The

	vast majority of trucks under 8501 lbs. Gross Vehicle Weight Rating (GVWR) do not receive any relief under the GHG emission requirements.
Response to Comments	<i>DEQ accepts CARB's explanation that the GHG fleet-average emission limits were developed to allow manufacturers with the heaviest fleets to comply without having to reduce vehicle size or performance. DEQ notes that the GHG standards were developed to be both technically feasible and cost effective for a wide range of vehicle models and classes.</i>
Comment AIAM, Ford	The Association of International Automobile Manufacturers (AIAM) and Ford Motor Company oppose adoption of the proposed rules.
Response	<i>DEQ acknowledges the comment.</i>
Comment AIAM	Customer acceptance of GHG vehicle technologies was not considered by CARB in developing these regulations. For example, customers who prefer a V-8 engine will not be satisfied with a turbocharged V-6.
Response	<i>DEQ disagrees. In developing the GHG requirements CARB addressed this concern as described in their response to comment (Final Statement of Reasons). DEQ accepts CARB's explanation that they accounted for the use of engines that are both larger and smaller than average in their analysis and agrees with the conclusion that manufacturers will be able to continue to sell V8 engines to their customers who prefer larger engines.</i>