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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION
DEQ 19-2021
CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: EV Rebate 2021 – Temporary Rule

EFFECTIVE DATE: 01/01/2022 THROUGH 06/29/2022

AGENCY APPROVED DATE: 11/17/2021

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NEED FOR THE RULE(S):

What need is DEQ trying to address?

House Bill 2165 (2021) made changes to the OCVRP, specifically to the Charge Ahead Rebate program. DEQ needs to adjust its rules to account for these legislative changes to ensure successful on-going implementation of the program. The 2021 legislation will be going into effect on January 1, 2022, and applies to vehicles purchased or leased after that date. DEQ needs to have rules in place by that time to ensure that its rules are consistent with the amended legislation.

How would the proposed rule address the need?

DEQ's rules will be consistent with the amended legislation and implement the changes approved by the legislature. DEQ's rules will ensure all eligible Charge Ahead Rebate applicants are able to receive the increased rebate amount.

JUSTIFICATION OF TEMPORARY FILING:

Finding of serious prejudice

Failing to act promptly will result in serious prejudice to the public interest and to the interests of the parties concerned because it would result in a program that is inconsistent with requirements passed by the legislature earlier this year, which become effective on January 1, 2022.

Consequences of not taking immediate action

Not immediately amending the proposed rules would cause harm to the affected parties by prejudicing the interested parties identified in this document because it would result in potentially having low- and moderate-income households who qualify for Charge Ahead rebates receiving a smaller rebate amount than stipulated in the legislation. This would also cause harm to the public interest of providing strong incentives for individuals to purchase qualifying electric vehicles. Notably, a conflict between DEQ's rules and the legislation would create difficulty for DEQ in administering the program and create confusion among interested rebate applicants regarding program eligibility.

Affected parties

The members of the public or parties who would be harmed if EQC did not take this action are:

- Charge Ahead Rebate applicants;
- Low-income service providers who could now purchase a new or used eligible vehicle and receive a Charge Ahead Rebate;
- Automobile dealers that sell or lease new or used qualifying electric vehicles. Dealers could be affected by increased electric vehicle sales due to the higher Charge Ahead Rebate amount;
- Automobile manufacturers. The manufacturers could be affected by increased electric vehicle sales;
- Oregonians who are interested in purchasing hydrogen fuel-cell vehicles that were not previously eligible but may now qualify due to the higher MSRP cap;
- Other Oregonians interested in purchasing or leasing a qualifying vehicle under the OCVRP.

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 in the Justification section above, and because it would affect the public as a whole by undercutting DEQ's credibility to the public; absent temporary rules that adjust program requirements in response to the 2021 legislation, DEQ's rules would conflict with its authority to act under the legislation for the OCVRP.

How temporary rule would avoid or mitigate consequences

If EQC adopts the proposed temporary rule amendments, this will prevent the harm described above because it would clarify program requirements to implement the new legislation. The rules would allow DEQ to facilitate implementation of the 2021 legislation in a timely and transparent manner and allow more people to qualify for the Charge Ahead Rebate program. It also allows potential Charge Ahead Rebate purchasers to receive the increased rebate amount allowed under the legislation. The rule encourages higher adoption rates of zero-emission vehicles for low- and moderate-income households. It also helps reduce air pollution and moves the state towards its greenhouse gas reduction goals.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HOUSING IMPACT STATEMENT:

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. DEQ determined the proposed rules would have no effect on the development costs because they only affect purchasers of zero-emission vehicles and automobile dealers and manufacturers who sell or produce zero-emission vehicles.

NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Environmental Quality for a copy of this document.

RULES:

340-270-0010, 340-270-0020, 340-270-0030, 340-270-0400, 340-270-0420, 340-270-0430, 340-270-0500

AMEND: 340-270-0010

RULE TITLE: Overview

RULE SUMMARY: Adding ". The 2021 Oregon Legislature adopted House Bill 2165, 2021 Oregon Laws chapter 95, which changed existing requirements" to (2).

RULE TEXT:

(1) Purpose. The purpose of this division is to establish a rebate program and eligibility requirements for the purchase or lease of new or used zero-emission vehicles in Oregon.

(2) Background. The 2017 Oregon Legislature adopted House Bill 2017 that authorizes DEQ to establish a rebate program for zero-emission vehicles. The 2018 Oregon Legislature adopted House Bill 4059, which clarified and removed existing requirements. The 2019 Oregon Legislature adopted House Bill 2592, which clarified and removed existing requirements. The 2021 Oregon Legislature adopted House Bill 2165, 2021 Oregon Laws chapter 95, which changed existing requirements. OAR division 270 of chapter 340 implements those laws.

(3) Administration. DEQ administers this division in all areas in the state of Oregon, including the areas of the state subject to the jurisdiction of the Lane County Regional Air Protection Agency.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9

AMEND: 340-270-0020

RULE TITLE: Effective Dates

RULE SUMMARY: Removing division expiration date and adding legislation implemented.

RULE TEXT:

(1) The rebates for eligible new light-duty zero-emission vehicles and eligible plug-in hybrid electric vehicles took effect on January 1, 2018.

(2) The rebates for the Charge Ahead Program took effect on January 1, 2018 for light duty zero emission vehicles. The rebates for the Charge Ahead Program take effect on September 29, 2019 for plug-in hybrid electric vehicles.

(3) The rebates for eligible neighborhood electric vehicles and eligible zero-emission motorcycles took effect on January 1, 2019.

(4) The effective dates of the program are contingent on appropriate funding.

STATUTORY/OTHER AUTHORITY: 2017 Or. Law Ch. 750 Sec. 148-157, ORS 468.020, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

AMEND: 340-270-0030

RULE TITLE: Definitions and Abbreviations

RULE SUMMARY: Adding definitions to meeting requirements of legislation.

RULE TEXT:

- (1) "Area median income" means the median income for the metropolitan statistical area in which a household is located or, if the household is not located within a metropolitan statistical area, for the metropolitan statistical area in closest proximity to the location of the household, as determined by the Housing and Community Services Department, adjusted for household size.
- (2) "Charge Ahead rebate" means a rebate for the purchase or lease of a new or used light-duty zero-emission vehicle with an electrochemical storage capacity or a plug-in hybrid electric vehicle issued through the Charge Ahead Program.
- (3) "DEQ" is the Oregon Department of Environmental Quality or a contractor selected by DEQ.
- (4) "Eligible vehicle" means a motor vehicle that:
 - (a) Qualifies as a:
 - (A) Light-duty zero-emission vehicle with an electrochemical energy storage capacity;
 - (B) Plug-in hybrid electric vehicle;
 - (C) Neighborhood electric vehicle; or
 - (D) Zero-emission motorcycle;
 - (b) Is new, or has been previously used only as a dealership floor model or test-drive vehicle;
 - (c) Has not previously been registered in Oregon;
 - (d) Is constructed entirely from new parts that have never been the subject of a retail sale;
 - (e) For motor vehicles as defined in OAR 340-270-0030(7)(d)(A) and (C), and for a motor vehicle as defined in OAR 340-270-0030(7)(d)(B) that was purchased or leased prior to January 1, 2022, has a base manufacturer's suggested retail price of less than \$50,000;
 - (f) For a motor vehicle as defined in 340-270-0030(7)(d)(B), that was purchased or leased on or after January 1, 2022, has a base manufacturer's suggested retail price of less than \$60,000;
 - (g) Is covered by a manufacturer's express warranty on the vehicle drive train, including the applicable energy storage system or battery pack, for at least 24 months from the purchase or lease date; and
 - (h) Is certified by the manufacturer to comply with all applicable federal safety standards issued by the National Highway Traffic Safety Administration for new motor vehicles and new motor vehicle equipment.
- (5) "Household" means an individual living alone, a family with or without children, or a group of individuals who are living together as one economic unit. For all motor vehicles with a purchase or lease date before the effective date of these rules, DEQ will apply the definition of household that most benefits the applicant, with this new definition of household applying retroactively if it is in the benefit of the applicant. For all motor vehicles with a purchase or lease date on or after the effective date of these rules, DEQ will apply this new definition of household.
- (6) "Lease date" means the day that the lease agreement is signed.
- (7) "Light-duty zero-emission vehicle" means a motor vehicle that:
 - (a) Has a gross vehicle weight rating of 8,500 pounds or less;
 - (b) Is capable of travelling at a speed of 55 miles per hour or more;
 - (c) Has at least three wheels; and
 - (d) Is powered:
 - (A) Primarily by an electric battery and may or may not use a flywheel energy storage device or a capacitor that also stores energy to assist in vehicle operation;
 - (B) By polymer electrolyte membrane fuel cells or proton exchange membrane fuel cells that use hydrogen fuel and oxygen from the air to produce electricity; or
 - (C) Primarily by a zero-emission energy storage device that provides enough power for the vehicle to travel 75 miles or more using only electricity and may or may not use a backup alternative power unit that does not operate until the

energy storage device is fully depleted.

(8) "Low-income service provider" means an organization that provides health, dental, social, financial, energy conservation or other assistive services to low or moderate income households in Oregon. Providers must be registered as a 501(c)(3) organization based in Oregon at the time the eligible vehicle is purchased or leased.

(9) "Low income household" means an individual or a household with income less than or equal to 50 percent of the area median income.

(10) "Moderate income household" means an individual or a household with income less than or equal to 80 percent of the area median income.

(11) "Motor vehicle" has the meaning given that term in ORS 801.360.

(12) "Neighborhood electric vehicle" means a motor vehicle that:

(a) Is powered using an electric battery;

(b) Has a gross vehicle weight not exceeding 3,000 pounds;

(c) Is capable of traveling at a speed of up to 25 mph; and

(d) Has at least four wheels.

(e) DEQ will require certification to zero-emission standards in California Code of Regulations Title 13, section 1962.2 to show a vehicle meets these specifications.

(13) "Person" means a person as defined in ORS 174.100 or a public body as defined in ORS 174.109.

(14) "Plug-in hybrid electric vehicle" means a motor vehicle that:

(a) Has zero evaporative emissions from its fuel system when operating as an electric vehicle;

(b) Has an onboard electrical energy storage device with useful capacity of 10 or more miles of urban dynamometer driving schedule range, as described by the United States Environmental Protection Agency in 40 CFR 600.116-12, on electricity alone;

(c) Is equipped with an onboard charger;

(d) Is rechargeable from an external connection to an off-board electrical source;

(e) Meets the super ultra-low emission vehicle standards for exhaust emissions, as certified to standards in California Code of Regulations, Title 13, section 1961(a)(4) (2003);

(f) Has a warranty of at least 15 years and 150,000 miles on emission control components;

(g) Is capable of travelling at a speed of 55 miles per hour or more;

(h) Has an on-board internal combustion engine; and

(i) Has at least three wheels.

(15) "Purchase date" means the day that the purchase and sales agreement is signed.

(16) "Qualifying household" means a household with income that does not exceed 400 percent of federal poverty guidelines.

(17) "Used electric vehicle" means a light-duty zero-emission or plug-in hybrid electric vehicle that:

(a) Would have been eligible for the standard rebate at the time of its original sale or lease had the rebate program in OAR 340-270-0010 to -0500 existed or;

(b) Is a direct model predecessor of an eligible vehicle as defined in OAR 340-270-0030(4)(a)(A).

(18) "Vehicle dealer" means:

(a) A person engaged in business in this state that has been issued a vehicle dealer certificate under ORS 822.020; or

(b) A person engaged in business in another state that would be subject to ORS 822.005 if the person engaged in business in this state.

(c) It does not include a person who:

(A) Conducts an event that lasts less than 7 consecutive days, for which the public is charged admission and at which otherwise eligible vehicles are sold at auction; or

(B) Sells an otherwise eligible vehicle at auction at an event as described in (A).

(19) "Zero-emission motorcycle" means a motor vehicle that:

(a) Has zero evaporative emissions from its fuel system;

- (b) Is capable of attaining a speed of 55 miles per hour or more;
- (c) Is designed to travel on two wheels; and
- (d) Is powered by electricity.
- (e) DEQ will require documentation of the following as proof that a motorcycle meets these specifications:
 - (A) Successful completion of the most current California Zero-Emission Motorcycle Evaluation Procedure, as defined in California's Implementation Manual for the Clean Vehicle Rebate Project; and
 - (B) Issuance of a "pass" determination and verification that the vehicle meets the specified range and acceleration requirements by the California Air Resources Board.
- (20) "Zero-emission vehicle" means a motor vehicle that that is certified to zero-emission standards in California Code of Regulations, Title 13, section 1962.2.

[NOTE: View a PDF of California Implementation Manual by clicking on "Tables" link below.]

STATUTORY/OTHER AUTHORITY: ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, , 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9

NOTE: Attachments referenced are not included in this document. You may view the attachments at the following link:
<https://secure.sos.state.or.us/oard/view.action?ruleNumber=340-270-0030>

AMEND: 340-270-0400

RULE TITLE: Charge Ahead Program

RULE SUMMARY: Adding (2)(b) for vehicles purchased or leased after Jan. 1, 2022.

RULE TEXT:

(1) OAR 340-270-0400 through -0430 establish the requirements for the Charge Ahead Program.

(2) The Charge Ahead Program will provide rebates only for the purchase or lease of new or used vehicles that meet the requirements of OAR 340-270-0410 if the purchaser;

(a) For the vehicles purchased or leased prior to January 1, 2022, is from a low or moderate-income household during the year the vehicle was purchased or leased; or

(b) For vehicles purchased or leased on or after January 1, 2022, is from a qualifying household or is a low-income service provider during the year the vehicle was purchased or leased.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9

AMEND: 340-270-0420

RULE TITLE: Amount of Charge Ahead Program Rebate

RULE SUMMARY: Adding (1)(b) For vehicles purchased or leased on or after January 1, 2022, \$5,000 per vehicle

RULE TEXT:

(1) The amount of the Charge Ahead rebate is:

(a) For vehicles purchased or leased prior to January 1, 2022, \$2,500 per vehicle or

(b) For vehicles purchased or leased on or after January 1, 2022, \$5,000 per vehicle.

(2) A Charge Ahead rebate may be combined with a standard rebate under OAR 340-270-0110 if the applicant meets the requirements in OAR 340-270-0100.

(3) DEQ will set the rebate amounts annually. If DEQ determines that the rebate amounts should be adjusted, DEQ will engage in rulemaking to adjust the rebate amounts.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9

AMEND: 340-270-0430

RULE TITLE: Requirements for Charge Ahead Program Rebates

RULE SUMMARY: Adding requirements for vehicles leased or purchased after Jan. 1, 2022.

RULE TEXT:

(1) A person may only apply for a rebate if the person:

(a) Owns or leases a vehicle that meets the requirements established in OAR 340-270-0410;

(b) If leasing a vehicle, has a minimum lease term of 24 months;

(c) Intends to retain the registration of the eligible vehicle for a minimum of 24 consecutive months after the purchase or lease date; and

(d) Is an Oregon resident.

(2) To qualify for a Charge Ahead rebate, an applicant must:

(a) Apply using a form approved by DEQ;

(b) Provide information and documentation sufficient to allow DEQ to verify that the applicant purchased or leased a vehicle that meets the requirements established in OAR 340-270-0410;

(c) Provide sufficient information to allow DEQ to determine that:

(A) For vehicles purchased or leased prior to January 1, 2022, the applicant is a member of a low or moderate-income household during the year the vehicle was purchased or leased. DEQ will rely on documentation of an applicant's household income from the year the vehicle was purchased or leased or, if that information is unavailable or inadequate, from a previous year. DEQ will rely on the most recent area median income determinations of the Housing and Community Services Department available at the time of application; or

(B) For vehicles purchased or leased on or after January 1, 2022, that either:

(i) The applicant is a member of a qualifying household during the year the vehicle was purchased or leased. DEQ will rely on documentation of an applicant's household income from the year the vehicle was purchased or leased or, if that information is unavailable or inadequate, from a previous year. DEQ will rely on the most recent federal poverty level determinations of the U.S. Department of Health and Human Services available at the time of application; or

(ii) The applicant is a low income service provider during the year the vehicle was purchased or leased. The applicant must provide documentation to DEQ to demonstrate that it provides services to low and moderate income individuals, households, or both. DEQ will exercise its discretion to determine whether that the applicant has provided sufficient information to demonstrate that it meets this requirement.

(d) Purchase or lease an eligible vehicle from a vehicle dealer or an original equipment manufacturer, that does not have licensed franchised new automobile dealers in Oregon;

(e) Provide proof of registration of the vehicle that meets the requirements established in OAR 340-270-0410 in Oregon;

(f) Submit an application within 6 months after the vehicle purchase or lease date;

(g) Provide any additional information and documentation requested by DEQ that is necessary to ascertain that the applicant qualifies for a rebate;

(h) Provide information requested by DEQ that DEQ determines is necessary to ascertain that the person is not buying, selling, or leasing vehicles in a manner that circumvents the intent of the Charge Ahead Program, including an attestation that the person has not in the past owned or leased the vehicle for which a rebate is sought; and

(i) Participate in ongoing research efforts and surveys regarding the program.

(3) Recipients may assign the rebate to a vehicle dealer, or to an original equipment manufacturer that does not have licensed franchised new automobile dealers in Oregon. The limit established in subsection (5) of this rule does not apply to vehicle dealers or automobile manufacturers who receive rebate assignments pursuant to this section.

(4) Recipients may not make or allow any modifications to the vehicle's emission-control systems, hardware, or software calibrations, or the vehicle's hybrid system.

(5) The application review process established by OAR 230-270-0200 will apply to applications for Charge Ahead

rebates.

(6) The vehicle ownership requirements established by OAR 230-270-0300 will apply to Charge Ahead Rebates.

(7) DEQ will conduct community outreach to low income households, moderate-income households and community-based organizations, in order to:

(a) Solicit feedback on program implementation; and

(b) Take steps to ensure the program is promoted effectively.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

AMEND: 340-270-0500

RULE TITLE: Allocation of Rebate Funding

RULE SUMMARY: Changing minimum rebate allocation from 10% to 20%.

RULE TEXT:

DEQ will allocate at least 20 percent of available moneys deposited per biennium into the Zero-Emission Incentive Fund for rebates under the Charge Ahead Program.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37

STATUTES/OTHER IMPLEMENTED: 2017 Or. Law Ch. 750 Sec. 148-157, House Bill 4059 (2018), Sec. 18-21, House Bill 2592 (2019), Sec. 35-37, 2021 Or. Laws, Ch. 95, §§ 4a, 5, 6, 8 and 9