

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

Department of Environmental Quality
Agency and Division

340
Administrative Rules Chapter Number

Update Phase One of the Clean Fuels Program

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Update Phase One of the Clean Fuels Program

Statutory Authority:

ORS 468.020, ORS 468A.270 Or. Laws 2009, ch. 754, § 6

Other Authority:

Statutes Implemented:

ORS 468A.270 Or. Laws 2009, ch. 754, § 6

Need for the Rule(s):

What need would this address?

Fuel producers and importers spend resources to meet recordkeeping and recording requirements under the current program rules. The rules contain definitions that might cause potential regulated and opt-in parties to misinterpret how and whether the Clean Fuels Program applies to them. In addition, the rules contain requirements for reporting and recordkeeping that are unnecessary for phase one of the program and create additional work for affected parties. There are no standards to comply with; therefore, keeping these records during the first phase of the Clean Fuels Program is unnecessary. In addition, the current rules require smaller companies to keep records of information that is difficult to obtain and insignificant to the current program.

How would the proposed rule address the need?

- o The proposed rules would provide clarity to help potential regulated and opt-in parties identify how and whether the program applies to them. For example, the proposed rules more accurately define the term "importers".
- o The proposed rules would reduce requirements for certain fuel importers. For example, the amendments would remove requirements for an initial importer to transfer the compliance obligation through the distribution chain; the initial importer would retain that obligation. Since DEQ uses information collected at this time to help make decisions at a statewide level, this simplified process is adequate at this phase of the program.
- o The proposed rules simplify recordkeeping requirements for some businesses by eliminating the requirement to obtain information related to a fuel's carbon intensity.
Current rules base recordkeeping requirements on the volume of fuel imported. Of the 62 importers and two Oregon producers of fuels subject to the program, 49 are large importers of more than 250,000 gallons per year and 13 are small importers of fewer than 250,000 gallons per year. Large importers report carbon intensity and small importers do not.
Instead of basing requirements on the volume of fuel imported, it is more appropriate to base them on the types of fuels imported, including finished fuels and blendstocks. Finished fuels are ready for use in a motor vehicle and blendstocks require blending with other blendstocks to produce a finished fuel. Importers of blendstocks have better access to the information used to calculate a fuel's carbon intensity because they deal more closely with producers and marketers of biofuels. Importers of finished fuels have more difficulty accessing this information.

Thirty-two companies import finished fuel that accounts for about 14 percent of Oregon's fuel. Seventeen companies import blendstocks that account for about 84 percent of all Oregon's fuel. The remaining companies are Oregon producers of ethanol and biodiesel.
Under the proposed rules, importers of finished fuels would only keep records of information that they already track, such as the type and volume of the fuel. DEQ would apply standard figures for those fuels' carbon intensity. Importers of blendstocks and Oregon producers would retain the most stringent recordkeeping requirements, thus maintaining the integrity of the most significant source of detailed data for the program.
- o The proposed rules add fuels that more accurately represent fuels available in Oregon. The proposed rules add new fuel pathways, which provide carbon intensities, for clear gasoline, gasoline blended with 10 percent ethanol, clear diesel fuel, diesel fuel blended with five percent

biodiesel and ethanol made from corn (dry mill, coal-fired.)

How will DEQ know the rule has addressed the need?

To determine whether the rulemaking met its objectives, DEQ would confirm, as part of ongoing outreach, whether regulated parties have a clearer understanding of the program and their obligations. DEQ expects a reduction in the number of businesses that request help interpreting the rules. In addition, DEQ expects information from regulated and opt-in parties about fuels imported, produced and distributed in Oregon would be more accurate.

Documents Relied Upon, and where they are available:

Applications for registration to the program

DEQ headquarters

811 SW Sixth Avenue

Portland OR 97204

Comments received during informal public review period during the temporary rulemaking

DEQ headquarters

Oregon Department of Employment Fourth quarter 2013 data

Employment Department

875 Union Street NE

Salem OR 97311

Fiscal and Economic Impact:

Since the Jan. 1, 2013 implementation of phase one of the Clean Fuels Program, importers and Oregon producers of transportation fuels have incurred costs to comply with phase one registration and recordkeeping requirements. These proposed rules would reduce the recordkeeping and reporting burden on some businesses. The temporary rules, effective from Jan. 1, 2014, through June 30, 2014, include these improvements. Failure to incorporate these improvements into permanent rules would reinstate the more burdensome requirements.

The original 2012 rulemaking implemented Jan. 1, 2013, included an analysis of fiscal and economic impacts of registration and reporting. The analysis considered how increased costs of fuel to offset the cost of program compliance would affect state agencies, local governments, the public and businesses. The analysis concluded that across the roughly two billion gallons of gasoline and diesel fuel sold per year in Oregon, the cost to the consumer would be 2/100th of one penny per gallon if those costs were passed on to consumers. This rulemaking would not increase and may decrease costs to consumers slightly.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

1. State agencies

Direct Impacts The proposed rules would not affect state agencies directly. The proposed rules would decrease reporting and recordkeeping requirements for importers and Oregon producers of transportation fuels.

Indirect Impacts If these regulated parties were to reduce the cost of fuel to reflect any cost savings associated with these decreased requirements, there could be an economic benefit to state agencies.

2. DEQ

The proposed rules would not affect DEQ directly or indirectly. This proposal would not change ongoing technical assistance and DEQ would continue to implement phase one of the program using existing staff.

3. Local governments

Direct Impacts The proposed rules would not affect local governments directly.

Indirect Impacts Any indirect impacts would be identical to impacts on state agencies described above.

4. Public

Direct Impacts The proposed rules would not affect the public directly.

Indirect Impacts Any indirect impacts would be identical to impacts on state agencies described above.

5. Large businesses - businesses with more than 50 employees

There are 64 Oregon producers or importers registered with the Oregon Clean Fuels Program. Current employment data indicates 26 are large businesses. Of these 26 large businesses, 10 are importers of finished fuels who are most affected by the proposed rules. The

remaining 16 are importers of blendstocks who are relatively unaffected by the proposed rules. No Oregon producers are large businesses.

Direct Impacts The proposed rules would have an estimated direct fiscal and economic affect on large businesses that import finished fuels identical to how the proposed rules would affect small businesses described below.

The estimated direct fiscal and economic affect of the proposed rules on large businesses that import blendstocks remain relatively unchanged.

Indirect Impacts Any indirect impacts would be identical to impacts on state agencies described above.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

DEQ compared the 64 businesses registered with the Clean Fuels Program to current employment data with to determine how many people the business employs. Thirty-eight are small businesses. Of those 38, two are Oregon producers of fuels, nine are small importers of finished fuels, 24 are large importers of finished fuels and three are importers of blendstocks. The importers are primarily fuel distributors and bulk fuel storage facilities.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed rules would reduce labor and administration required for recordkeeping and reporting.

Recordkeeping requirements distinguish between importers based on the types and volumes of fuel supplied. The proposed rules have the most significantly affect on large importers of finished fuels by reducing the recordkeeping requirements for them; thereby, lowering recordkeeping costs. DEQ did not have specific information to determine how much the proposed rules would reduce recordkeeping costs.

The proposed rules do not have a significant impact on Oregon producers, importers of blendstocks or small importers of finished fuels.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed rules do not include requirements that would require new or different equipment or supplies. The proposed rules would reduce labor and administration costs for recordkeeping and reporting, though DEQ does not have specific information to estimate cost savings.

How were small businesses involved in the development of this rule?

DEQ worked directly with each of the 64 businesses subject to the Clean Fuels Program during the initial outreach and registration process in 2013, many are small businesses. Through surveys, e-mails, workshops and individual conversations, DEQ worked closely with businesses to identify alternatives to the previous recordkeeping and reporting requirements to reduce costs to regulated parties while still providing DEQ with the information it needs for program development. DEQ shared the proposed rules with affected businesses and key stakeholders in fall 2013 during development of the temporary rules.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

DEQ did not appoint an advisory committee to discuss the fiscal and economic impact statement because the proposed rules reduce compliance requirements, and therefore should reduce costs to comply.

FILED
3-14-14 1:16 PM
ARCHIVES DIVISION
SECRETARY OF STATE

04-21-2014 5:00 p.m. Maggie Vandehey maggie.vandehey@state.or.us
Last Day (m/d/yyyy) and Time Printed Name Email Address
for public comment