Oregon Department of Environmental Quality

August 17-18, 2016Enter EQC Meeting Date mm dd, yyyy

Oregon Environmental Quality Commission Meeting

Rulemaking Action Item No. XX

**Clean Fuels Program Corrections 2016**

****This file contains the following documents:****

* **EQC Staff Report**
* **Draft rules – redline/strikethrough**
* **Draft rules – no markup**

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| DEQ recommendation to the EQC |

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

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| Overview |

## Short summary

DEQ proposes to amend Oregon Clean Fuels Program rules under division 253 of chapter 340 of the Oregon Administrative Rules (OAR). The proposed rule changes would correct a miscalculation of how the clean fuel standards and the carbon intensity values of two fuel pathways were calculated in the rules adopted by the EQC on Dec. 9, 2015.

The proposed rule changes would also correct spelling mistakes in the names of some pathway identifiers located in the look-up tables. In Table 3 OAR 340-253-8030, the following pathway identifiers are proposed to be changed (underlined for emphasis):

|  |  |
| --- | --- |
| Current pathway identifier | Proposed pathway identifier |
| ORETHC001 | ETHCOR001 |
| ORETHC002 | ETHCOR002 |
| ORETHS001 | ETHSOR001 |
| ORETHG001 | ETHGOR001 |
| ORETHM001 | ETHMOR001 |

In Table 4 OAR 340-253-8040, the following pathway identifiers are proposed to be changed (underlined for emphasis):

|  |  |
| --- | --- |
| Current pathway identifier | Proposed pathway identifier |
| ORBIOD001 | BIODOR001 |
| ORBIOD002 | BIODOR002 |
| ORBIOD003 | BIODOR003 |
| ORBIOD004 | BIODOR004 |
| ORBIOD005 | BIODOR005 |
| ORRNWD001 | RNWDOR001 |
| ORRNWD002 | RNWDOR002 |
| ORRNWD003 | RNWDOR003 |
| ORRNWD004 | RNWDOR004 |
| ORRNWD005 | RNWDOR005 |

## Brief history

The 2009 Oregon Legislature passed House Bill 2186 authorizing the Oregon Environmental Quality Commission to adopt rules to reduce lifecycle emissions of greenhouse gases from Oregon’s transportation fuels by 10 percent over a 10-year period. HB 2186 included a sunset provision under which the EQC’s authority was set to expire at the end of 2015 unless the legislature acted to repeal or extend the sunset.

The EQC adopted phase 1 rules on Dec. 7, 2012 that required Oregon transportation fuel producers and importers to register, keep records and report the volumes and carbon intensities of the transportation fuels they provide in Oregon.

The EQC adopted phase 2 rules on Jan. 7, 2015 that required Oregon transportation fuel producers and importers to reduce the average carbon intensity of fuels they provide in Oregon by 10 percent over a 10-year period.

The 2015 Oregon Legislature passed Senate Bill 324 that removed the December 31, 2015 sunset date in House Bill 2186 (2009) and further amended the Oregon Clean Fuels Program.

The EQC adopted updated rules on Dec. 9, 2015 to implement SB 324 (2015).

The EQC adopted temporary rules on April 21, 2016 to correct the miscalculation described above; this rulemaking will make those corrections permanent.

## Regulated parties

The Clean Fuels Program regulates Oregon producers and importers of transportation fuels.

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| Statement of Need |

## What need would the proposed rule address?

In February 2016, a regulated party contacted the Clean Fuels Program because calculations they had developed while planning for compliance with the clean fuel standards were not consistent with those adopted by the EQC on Dec. 9, 2015. Upon review, DEQ staff confirmed that the adopted rules omitted a necessary adjustment for the energy density of ethanol and biodiesel relative to the energy density of gasoline and diesel fuel.

1. The miscalculation results in the clean fuel standards being lower than they should be. Table 1 shows the current and proposed clean fuel standards after the miscalculation is corrected.

| Table 1  **Current and proposed clean fuel standards** | | | | | |
| --- | --- | --- | --- | --- | --- |
| Year | Reduction | Current Standards | | Proposed Standards | |
| Gasoline | Diesel | Gasoline | Diesel |
| 2015 | (baseline) | 97.80 | 99.48 | 98.62 | 99.64 |
| 2016 | 0.25% | 97.56 | 99.23 | 98.37 | 99.39 |
| 2017 | 0.50% | 97.31 | 98.98 | 98.13 | 99.14 |
| 2018 | 1.00% | 96.82 | 98.49 | 97.63 | 98.64 |
| 2019 | 1.50% | 96.33 | 97.99 | 97.14 | 98.15 |
| 2020 | 2.50% | 95.36 | 96.99 | 96.15 | 97.15 |
| 2021 | 3.50% | 94.38 | 96.00 | 95.17 | 96.15 |
| 2022 | 5.00% | 92.91 | 94.51 | 93.69 | 94.66 |
| 2023 | 6.50% | 91.44 | 93.01 | 92.21 | 93.16 |
| 2024 | 8.00% | 89.98 | 91.52 | 90.73 | 91.67 |
| 2025 | 10.00% | 88.02 | 89.53 | 88.76 | 89.68 |

1. The miscalculation also results in the carbon intensity values for E10 (gasoline blended with 10 percent ethanol) and B5 (diesel blended with 5 percent biodiesel) being lower than they should be. Table 2 shows the current and proposed carbon intensity values.

| Table 2  **Current and proposed clean fuel standards** | | |
| --- | --- | --- |
| Fuel type | Current carbon intensity value | Proposed carbon intensity value |
| E10 | 97.68 gCO2e/MJ | 98.54 gCO2e/MJ |
| B5 | 98.48 gCO2e/MJ | 99.64 gCO2e/MJ |

Adopting the proposed rules will permanently correct the miscalculations.

This affects the program in two important ways:

* Most importantly, the clean fuel standards and the carbon intensity values currently in rule are simply inaccurate and need to be corrected. Correcting the rule will ensure that reports submitted by regulated parties are accurate. DEQ has notified the regulated parties about this situation and will continue to do so to ensure proper reporting after this rulemaking is complete.
* The omission has created inaccuracies in the way deficits and credits are calculated and used to demonstrate compliance with the program.

## How would the proposed rule address the need?

Adopting the proposed rules will permanently correct the omission, ensuring that reports submitted by regulated parties are accurate.

## How will DEQ know the rule addressed the need?

DEQ will know that the need was addressed when quarterly reports are submitted and they are accurate.

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| Rules affected, authorities, supporting documents |

## Lead division

Environmental Solutions Division

Air Quality Planning Section

## Program or activity

Oregon Clean Fuels Program

## Chapter 340 action

|  |  |
| --- | --- |
| Repeal | OAR 340-253-8010(T), OAR 340-253-8020(T), OAR 340-253-8030(T), 340-253-8040(T) |
| Amend | OAR 340-253-8010, OAR 340-253-8020, OAR 340-253-8030, 340-253-8040 |

## Statutory authority

ORS 468.020, 468A.275

## Statute implemented

ORS 468A.275

## Legislation

## House Bill 2186 (2009) & Senate Bill 324 (2015)

Documents relied on for rulemaking

|  |  |
| --- | --- |
| Document title | Document location |
| Memo to explain the corrections to the clean fuels standards | <http://www.oregon.gov/deq/RulesandRegulations/Documents/cfBaseStand.pdf> |
| CFP Corrections temporary rulemaking materials, April 2016 | <http://www.oregon.gov/deq/EQC/Documents/2016/042116eqcItemN.pdf> |

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| Fee Analysis |

This rulemaking does not involve fees.

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| **Statement of fiscal and economic impact** |

## Fiscal and Economic Impact

Deficits are generated when the carbon intensity of a specific fuel exceeds the clean fuel standard in a given year. Credits are generated when the carbon intensity of a specific fuel is lower than the clean fuel standard in a given year. To be in compliance, a regulated party must balance the number of deficits and credits generated in a compliance period.

For this rulemaking, the fiscal and economic impacts relates to the change in the amount of deficits and credits that are generated as a result of the proposed rule changes. Table 3 compares how many credits are generated with the current clean fuel standards and the proposed standards for select fuels. Deficits are shown as negative credits.

| Table 3  **Changes in credits generated** | | | | | |
| --- | --- | --- | --- | --- | --- |
| Fuel type | CI (gCO2e/MJ) | 2016 Clean fuel standard (gCO2e/MJ) | | Deficits or Credits generated (gCO2e/MJ) | |
| Current | Proposed | Current | Proposed |
| Gasoline | 100.77 | 97.56 | 98.37 | - 3.21 | - 2.40 |
| Diesel | 101.65 | 99.23 | 99.39 | - 2.42 | - 2.26 |
| MW corn ethanol | 69.89 | 97.56 | 98.37 | + 27.67 | + 28.48 |
| NW soybean biodiesel | 58.25 | 99.23 | 99.39 | + 40.98 | + 41.14 |
| Electricity | 31.85 | 97.56 | 98.37 | + 65.71 | + 66.52 |
| Fossil CNG | 79.93 | 99.23 | 99.39 | + 19.30 | + 19.46 |

## Statement of Cost of Compliance

For importers of fuels that generate deficits, this rulemaking will reduce the number of deficits generated for those fuels. For importers and producers of fuels that generate credits, this rulemaking will increase the number of credits generated by those fuels. In both cases, the proposed rules will make it easier, and thus less costly, for regulated parties to comply with the clean fuel standards. Fuel consumers could also benefit if the savings from reduced compliance costs are passed on to consumers. Generators of credits might see a slight drop in revenues as more credits will be generated for the same amount of alternative fuels provided and fewer credits will be needed by regulated parties to meet the standards, hence the value of the credits might decrease.

Oregon Department of Environmental Quality

### Direct Impacts

The proposed rule changes would not impact DEQ’s cost to implement the Clean Fuels Program.

### Indirect Impacts

DEQ is a fuel consumer. Fuel consumers could benefit if the savings from reduced compliance costs are passed on to consumers.

State and federal agencies

### Direct Impacts

The proposed rule changes do not impose direct fiscal or economic effects on state or federal agencies, unless the agency imports or provides transportation fuels.

### Indirect Impacts

State and federal agencies are fuel consumers. Fuel consumers could benefit if the savings from reduced compliance costs are passed on to consumers.

## Local governments

### Direct Impacts

The proposed rule changes do not impose direct fiscal or economic effects on local governments, unless the government imports or provides transportation fuels.

### Indirect Impacts

Local governments are fuel consumers. Fuel consumers could benefit if the savings from reduced compliance costs are passed on to consumers.

## Public

### Direct Impacts

The proposed rule changes do not impose direct fiscal or economic effects on the public.

### Indirect Impacts

Members of the public are fuel consumers. Fuel consumers could benefit if the savings from reduced compliance costs are passed on to consumers.

## Large businesses - businesses with more than 50 employees

There are approximately 42 large businesses registered with the Clean Fuels Program as a regulated party or a credit generator. The proposed rule changes do not impact the number or type of large businesses subject to the program.

### Direct Impacts

For importers of fuels that generate deficits, this rulemaking will reduce the number of deficits generated for those fuels. For importers and producers of fuels that generate credits, this rulemaking will increase the number of credits generated by those fuels. In both cases, the proposed rules will make it easier, and thus less costly, for businesses to comply with the clean fuel standards. This could also mean that businesses that generate credits might see a slight drop in revenues.

### Indirect Impacts

Large businesses are fuel consumers. Fuel consumers could benefit if the savings from reduced compliance costs are passed on to consumers.

## Small businesses – businesses with 50 or fewer employees

There are approximately 54 small businesses registered with the program as a regulated party or a credit generator. The proposed rule changes do not impact the number or type of small businesses subject to the program.

### Direct Impacts

For importers of fuels that generate deficits, this rulemaking will reduce the number of deficits generated for those fuels. For importers and producers of fuels that generate credits, this rulemaking will increase the number of credits generated by those fuels. In both cases, the proposed rules will make it easier, and thus less costly, for businesses to comply with the clean fuel standards. This could also mean that businesses that generate credits might see a slight drop in revenues.

### Indirect Impacts

Small businesses are fuel consumers. Fuel consumers could benefit if the savings from reduced compliance costs are passed on to consumers.

## Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

There are currently 54 small businesses registered with the program, primarily fuel providers and distributors and biofuel producers.

1. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The proposed rule changes would not affect these costs.

## Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The proposed rule changes would not affect these costs.

## Describe how DEQ involved small businesses in developing this proposed rule.

DEQ convened a 10-member advisory committee that included small businesses to discuss the proposed rule changes.

## Documents relied on for fiscal and economic impact

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| Document title | Document location |
| CFP Corrections temporary rulemaking materials, April 2016 | <http://www.oregon.gov/deq/EQC/Documents/2016/042116eqcItemN.pdf> |

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| Federal relationship |

## Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules are “in addition to federal requirements” since there are no federal regulations that require the reduction in the average lifecycle content of greenhouse gases in transportation fuels. The proposed rules protect the environment and residents of Oregon by reducing greenhouse gas emissions.

What alternatives did DEQ consider if any?

The alternative to this proposed rule was to continue using inaccurate carbon intensity values. DEQ did not consider this as a viable alternative in implementing the Clean Fuels Program.

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| Land Use |

## Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

* The statewide land use planning goals specifically refer to the rule or program, or
* The rule or program is reasonably expected to have significant effects on:
  + Resources, objectives or areas identified in the statewide planning goals, or
  + Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

## Goal Title

5 Open Spaces, Scenic and Historic Areas, and Natural Resources

6 Air, Water and Land Resources Quality

9 Ocean Resources

11 Public Facilities and Services

16 Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

* Nonpoint source discharge water quality program – Goal 16
* Water quality and sewage disposal systems – Goal 16
* Water quality permits and oil spill regulations – Goal 19

## Determination

DEQ determined that these proposed rules do not affectland use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.

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| Stakeholder and public involvement |

## Advisory committee

DEQ convened the Clean Fuels Program Corrections 2016 Rulemaking advisory committee which met on June 1, 2016. The committee included importers of various transportation fuels; large and small businesses that may be regulated parties; the general public; and conservation organizations with members that may be impacted by the program. The committee’s web page is located at: [Clean Fuels Program Corrections Advisory Committee](http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/Acfperm2016.aspx).

The committee members were:

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| --- | --- |
| Name | Representing |
| Ralph Poole | Campo & Poole Distributing |
| Micah Berry | Chevron |
| Todd Campbell | Clean Energy Fuels |
| Jana Gastellum | Oregon Environmental Council |
| Jessica Hoffman | RPMG |
| Connor Nix | Shell Oil Products US |
| Miles Heller | Tesoro |
| Elizabeth Hepp | Valero |
| Frank Holmes | Western States Petroleum Association |

## Meeting notifications

To notify people about the advisory committee’s activities, DEQ:

* Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
  + On May 16, 2016 DEQ sent a one-time notice to DEQ Public Notices, Oregon Clean Fuels Program, and Rulemaking subscribers to describe how to sign up for advisory committee meeting notices, and
  + People who signed up for the advisory committee bulletin.
* Added advisory committee announcements to DEQ’s calendar of public meetings at [DEQ Calendar](http://oregon.gov/deq/Pages/Events.aspx).

## Committee discussions

The committee discussed the recommendations described under the Statement of Fiscal and Economic Impact section above.

## EQC prior involvement

DEQ shared information about this rulemaking in an email from Stephanie Caldera to the EQC dated February 29, 2016.

DEQ also shared information about this rulemaking on April 21, 2016 when it proposed temporary rule changes.

## Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on June 15, 2016 by:

* Filing notice with the Oregon Secretary of State for publication in the Oregon Bulletin on July 1, 2016
* Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking; located at: [Clean Fuels Program Corrections 2016 Rulemaking](http://www.oregon.gov/deq/RulesandRegulations/Pages/2016/Rcfperm2016.aspx)
* Emailing 2,529 interested parties on the following DEQ lists through GovDelivery:
  + Oregon Clean Fuels Program
* Emailing the following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
* Senator Chris Edwards, Chair, Senate Environment and Natural Resources Committee
* Representative Jessica Vega-Pederson, Chair, House Energy and Environment Committee
* Senator Lee Beyer
* Emailing advisory committee members
* Posting on the DEQ event calendar: [DEQ Calendar](http://oregon.gov/deq/Pages/Events.aspx)

## Public hearings

DEQ held one public hearing.

Meeting location: DEQ HQ Offices

811 SW 6th Avenue

Portland, OR 97204

Meeting date and time: July 20, 2016 10:00 a.m.

Presiding Officer: Emil Hnidey, Air Quality Rules Coordinator

The presiding officer convened the hearing at 10:00 a.m. and summarized the procedures for the hearing.

No one attended the hearing in person or on the phone. No comments were received.

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| Implementation |

Notification

If approved by the EQC, the proposed rules would become effective on August 19, 2016. DEQ would notify affected parties via email using the Clean Fuels Program GovDelivery list. DEQ will update its webpage to reflect the current information. DEQ will publish the adopted rules in the Oregon Bulletin.

Reporting Systems

DEQ will modify the CFP Online System to incorporate these rule changes.

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| Five-year review ORS 183.405 |

**Requirement**

Oregon law requires DEQ to review newrules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

## **Exemption from five-year rule review**

The Administrative Procedures Act, ORS 183.405(4), exempts the following proposed rules from the five-year review because the proposed rules would amend an existing rule:

OAR 340-253-8010, OAR 340-253-8020, OAR 340-253-8030, OAR 340-253-8040