Oregon Department of Environmental Quality

 June 15, 2016

 Notice of Proposed Rulemaking

**Clean Fuels Program Corrections Rulemaking**

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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. 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.

## 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.

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 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 Dec. 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.

## Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rules’ substantive goals while reducing the rules’ negative economic impact on business.

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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. It was discovered 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.

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| --- | --- | --- | --- |
| 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 |

Table 1. Current and proposed clean fuel standards

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.

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| --- | --- | --- |
| 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 |

Table 2. Current and proposed carbon intensity values

Adopting the proposed rules will 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 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

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| --- | --- |
| Amend | OAR 340-253-8010, OAR 340-253-8020, OAR 340-253-8030, OAR 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 ones for select fuels. Deficits are shown as negative credits.

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| --- | --- | --- | --- |
| 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 |

Table 3. Changes in credits generated

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 should also benefit as reduced compliance costs are passed on. But generators of credits might suffer economically, 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 should benefit as reduced compliance costs are passed on.

**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 should benefit as reduced compliance costs are passed on.

**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 should benefit as reduced compliance costs are passed on.

**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 should benefit as reduced compliance costs are passed on.

**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 should benefit as reduced compliance costs are passed on.

**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 should benefit as reduced compliance costs are passed on.

**a. 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.

**b. 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.

**c. 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.

**d. 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 |

## Advisory committee

DEQ appointed an advisory committee to assess the fiscal and economic impact of the proposed rule changes. As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant impact on small businesses and complies with ORS 183.540.

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the meeting summary dated June 1, 2016. The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

## Housing cost

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 the proposed rules only affect transportation fuels used in Oregon.

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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?

In designing the Clean Fuels Program, DEQ considered many alternatives contained in the proposed rule. Input from advisory committees in 2010, 2012, 2014, 2015 and 2016 and extensive outreach with affected stakeholders throughout the process informed the design of the Oregon Clean Fuels Program. Documentation is in the rulemaking record.

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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

## Background

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: [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 |
| Joshua Skov | University of Oregon |

## Meeting notifications

To notify people about the advisory committee’s activities, DEQ sent a GovDelivery bulletin, a free e-mail subscription service, on May 16, 2016 to the Oregon Clean Fuels subscribers to describe how to participate in the advisory committee process.

## 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.

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|  Public notice and hearings  |

## 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 Oregon Clean Fuels list through GovDelivery.
* 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

Public hearings

DEQ plans to hold 1 public hearing. The table below provides the details.

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

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| Hearing 1 |
| Date | **July 20, 2016** |
| Time | **1:00 pm** |
| Address Line 1 | **811 SW 6th Avenue** |
| Address Line 2 | Conference Room 10 |
| City | Portland |
| Presiding Officer | Elizabeth Elbel |
| Staff Presenter | Cory-Ann Wind |
| Call-in Phone Number | 888-278-0296 |
| Call-in Access Code | 8040259 |

How to comment on the proposed rules:

**Submit comment online**

Clean Fuels Program Corrections 2016 Rulemaking comment page: <http://www.oregon.gov/deq/RulesandRegulations/Pages/2016/Rcfperm2016.aspx>

**Note for public university students: Optional p**

ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

**By mail**

Oregon DEQ

Attn: Cory-Ann Wind

811 SW Sixth Avenue

Portland, OR 97204-1390

**At the hearing**

Close of public comment period

The comment period will close 4 p.m. on July 21, 2016.

Accessibility Information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR, 97204

To schedule a review of all websites and documents referenced in this announcement, call Cory-Ann Wind at 503-229-5388(800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.