



State of Oregon Department of Environmental Quality

Straw Proposal for Division 12 Changes

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The Clean Fuels Program is proposing a number of amendments to Division 12, which contains DEQ's enforcement rules. These amendments are meant to clarify the existing violations and insert new ones that were created as a result of last year's rulemaking monitoring.

Below is a redline of the proposed changes. Due to other rulemakings editing this division this year we are not yet numbering the new sections.

340-012-0054

(1) Class I Violations:

[...]

(x) Failing to comply with any of the clean fuel standards set forth in OAR 340-253-0100(6), OAR 340-253-8010 (Table 1) and OAR 340-253-8020 (Table 2)

(New Violation 1) Committing any action related to a credit transfer that is prohibited in OAR 340-253-1005(8)

(New Violation 2) Inaccurate reporting that causes illegitimate credits to be generated in the Oregon Clean Fuels Program or understates a regulated party's true compliance obligation denominated in deficits;

(New Violation 3) Making material misstatements or committing perjury when submitting an application for a carbon intensity score under OAR 340-253-0450.

[...]

(2) Class II Violations:

[...]

(p) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is a producer or importer of blendstocks, as defined in OAR 340-253-0040;

(q) Failing to register as an aggregator or submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c);

(r) Failing to keep records under OAR 340-253-0600 when the records relate to obtaining a carbon intensity under OAR 340-253-0450; or

(s) Failing to keep records related to obtaining a carbon intensity under OAR 340-253-0450; or

(t) Failing to submit an annual compliance report under OAR 340-253-0100(8).

[...]

(3) Class III Violations

(g) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is an importer of finished fuels, as defined in OAR 340-253-0040;

(h) Failing to keep records under OAR 340-253-0600, except as provided in subsection (2)(r); or

(i) Failing to submit quarterly progress reports under OAR 340-253-0100(7).

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows:

[...]

(k) Oregon Clean Fuels Program violations:

(A) Exceeding the clean fuel standards set forth in OAR 340-253-0100(6), 340-253-8010 (Table 1) and 340-253-8020 (Table 2) by not retiring sufficient credits against their deficits:

(i) Major — more than 15 percent of their total deficit obligation;

(ii) Moderate — more than 5 percent but less than 15 percent of their total deficit obligation;

(iii) Minor — 5 percent or less of their total deficit obligation.

340-012-0140

Determination of Base Penalty

(2) \$12,000 Penalty Matrix:

[...]

(R) Any violation of the Oregon Clean Fuels Program under OAR 340 division 253 by a person registered as an importer of blendstocks or any violation of [new Violation 1, New Violation 2, New Violation 3] by any participant in the Oregon Clean Fuels Program.

[...]

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

[...]

(L) Any violation of the Oregon Clean Fuels Program under OAR 340 division 253 by a person registered as a credit generator, an aggregator, or a registered fuel producer.

[...]

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

[...]

(Q) Any violation of the Oregon Clean Fuels Program under OAR 340 division 253 by a person registered as an importer of finished fuels.

[...]

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

- (i) Major — \$3,000;
 - (ii) Moderate — \$1,500;
 - (iii) Minor — \$750.
- (B) Class II:
- (i) Major — \$1,500;
 - (ii) Moderate — \$750;
 - (iii) Minor — \$375.
- (C) Class III: \$250.

340-012-0150

Determination of Economic Benefit

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the respondent's noncompliance. Except as provided in (3), the EB will be determined using the U.S. Environmental Protection Agency's BEN computer model. DEQ may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

(2) Upon request of the respondent, DEQ will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect the respondent's actual circumstance.

(3) For violations of the Clean Fuels Program in OAR 340-253, DEQ will determine economic benefit using the Credit Clearance Market maximum credit price as calculated under OAR 340-253-1040 with interest and other considerations as needed to properly capture the full economic benefit of the violation.

(4) DEQ need not calculate EB if DEQ makes a reasonable determination that the EB is de minimis or if there is insufficient information on which to make an estimate under this rule.

(5) DEQ may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045.

(6) DEQ's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, DEQ may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation.

Alternative formats

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.