



State of Oregon Department of Environmental Quality

Appendix of Proposed Rules

Office of Greenhouse Gas Programs

Climate 2023 Notice of Proposed Rulemaking

This is an appendix to the Notice of Proposed Rulemaking for the Office of Greenhouse Gas Programs' Climate 2023 Rulemaking published on August 22, 2023. The entirety of Divisions 12, 215, 271, and 272 are provided in this document to allow the reader to review both the proposed rule amendments as well as the rules that remain unchanged. Please note that Division 216 is not included here because this rulemaking is limited to three rule numbers which can be found in the Notice of Proposed Rulemaking.

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State of Oregon Department of Environmental Quality

Draft Rules – Division 12

Edits Highlighted

Oregon Administrative Rules Chapter 340

Division 12 ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0026

Policy

- (1) The goals of enforcement are to:
 - (a) Protect the public health and the environment;
 - (b) Obtain and maintain compliance with applicable environmental statutes and DEQ's rules, permits and orders;
 - (c) Deter future violators and violations; and
 - (d) Ensure an appropriate and consistent statewide enforcement program.
- (2) DEQ shall endeavor by conference, conciliation and persuasion to solicit compliance.
- (3) DEQ endeavors to address all alleged violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve the goals set forth in section (1) of this rule.
- (4) DEQ subjects violators who do not comply with an initial enforcement action to increasing levels of enforcement until they come into compliance.
- (5) DEQ endeavors to issue a formal enforcement action within six months from completion of the investigation of the violation.

Statutory/Other Authority: ORS 459.995, 466, 467, 468.020, 468.996, 468A & 468B

Statutes/Other Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880 - 895, 468.090 - 140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0028

Scope of Applicability

Amendments to OAR 340-012-0026 to 340-012-0170 shall only apply to formal enforcement actions issued by DEQ on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments.

Statutory/Other Authority: ORS 454, 459.995, 466, 467, 468.020 & 468.996

Statutes/Other Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880 - 895, 468.090 - 140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 21-1992, f. & cert. ef. 8-11-92, Renumbered from 340-012-0080

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0030

Definitions

All terms used in this division have the meaning given to the term in the appropriate substantive statute or rule or, in the absence of such definition, their common and ordinary meaning unless otherwise required by context or defined below:

- (1) "Alleged Violation" means any violation cited in a written notice issued by DEQ or other government agency.
- (2) "Class I Equivalent," which is used to determine the value of the "P" factor in the civil penalty formula, means two Class II violations, one Class II and two Class III violations, or three Class III violations.
- (3) "Commission" means the Environmental Quality Commission.
- (4) "Compliance" means meeting the requirements of the applicable statutes, and commission or DEQ rules, permits, permit attachments or orders.
- (5) "Conduct" means an act or omission.
- (6) "Director" means the director of DEQ or the director's authorized deputies or officers.
- (7) "DEQ" means the Department of Environmental Quality.
- (8) "Expedited Enforcement Offer" (EEO) means a written offer by DEQ to settle an alleged violation in accordance with the expedited procedure described in OAR 340-012-0170(2).
- (9) "Field Penalty" as used in this division, has the meaning given that term in OAR chapter 340, division 150.
- (10) "Final Order and Stipulated Penalty Demand Notice" means a written notice issued to a respondent by DEQ demanding payment of a stipulated penalty as required by the terms of an agreement entered into between the respondent and DEQ.
- (11) "Flagrant" or "flagrantly" means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

- (12) "Formal Enforcement Action" (FEA) means a proceeding initiated by DEQ that entitles a person to a contested case hearing or that settles such entitlement, including, but not limited to, Notices of Civil Penalty Assessment and Order, Final Order and Stipulated Penalty Demand Notices, department or commission orders originating with the Office of Compliance and Enforcement, Mutual Agreement and Orders, accepted Expedited Enforcement Offers, Field Penalties, and other consent orders.
- (13) "Intentional" means the respondent acted with a conscious objective to cause the result of the conduct.
- (14) "Magnitude of the Violation" means the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.
- (15) "Negligence" or "Negligent" means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.
- (16) "Notice of Civil Penalty Assessment and Order" means a notice provided under OAR 137-003-0505 to notify a person that DEQ has initiated a formal enforcement action that includes a financial penalty and may include an order to comply.
- (17) "Pre-Enforcement Notice" (PEN) means an informal written notice of an alleged violation that DEQ is considering for formal enforcement.
- (18) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the federal government and its agencies.
- (19) "Prior Significant Action" (PSA) means any violation cited in an FEA, with or without admission of a violation, that becomes final by payment of a civil penalty, by a final order of the commission or DEQ, or by judgment of a court.
- (20) "Reckless" or "Recklessly" means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.
- (21) "Residential Owner-Occupant" means the natural person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.
- (22) "Respondent" means the person named in a formal enforcement action (FEA).
- (23) "Systematic" means any violation that occurred or occurs on a regular basis.
- (24) "Violation" means a transgression of any statute, rule, order, license, permit, permit attachment, or any part thereof and includes both acts and omissions.
- (25) "Warning Letter" (WL) means an informal written notice of an alleged violation for which formal enforcement is not anticipated.
- (26) "Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Statutory/Other Authority: ORS 468.020 & 468.130

Statutes/Other Implemented: 459.995, 465.900, 468.090-140, 466.880 - 466.895, 468.996 - 468.997, 468A.990 -468A.992, 468B.220 & ORS 459.376

History:

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 14-2008, f. & cert. ef. 11-10-08

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 22-1984, f. & ef. 11-8-84

DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0038

Warning Letters, Pre-Enforcement Notices, and Notices of Permit Violation

(1) A Warning Letter (WL) may contain an opportunity to correct noncompliance as a means of avoiding formal enforcement. A WL generally will identify the alleged violation(s) found, what needs to be done to comply, and the consequences of further noncompliance. WLs will be issued under the direction of a manager or authorized representative. A person receiving a WL may provide information to DEQ to clarify the facts surrounding the alleged violation(s). If DEQ determines that the conduct identified in the WL did not occur, DEQ will withdraw or amend the WL, as appropriate, within 30 days. A WL is not an FEA and does not afford any person a right to a contested case hearing.

(2) A Pre-Enforcement Notice (PEN) generally will identify the alleged violations found, what needs to be done to comply, the consequences of further noncompliance, and the formal enforcement process that may occur. PENs will be issued under the direction of a manager or authorized representative. A person receiving a PEN may provide information to DEQ to clarify the facts surrounding the alleged violations. If DEQ determines that the conduct identified in the PEN did not occur, DEQ will withdraw or amend the PEN, as appropriate, within 30 days. Failure to send a PEN does not preclude DEQ from issuing an FEA. A PEN is not a formal enforcement action and does not afford any person a right to a contested case hearing.

(3) Notice of Permit Violation (NPV):

(a) Except as provided in subsection (3)(e) below, an NPV will be issued for the first occurrence of an alleged Class I violation of an air, water or solid waste permit issued by DEQ, and for repeated or continuing alleged Class II or Class III violations of an air, water, or solid waste permit issued by DEQ when a WL has failed to achieve compliance or satisfactory progress toward compliance.

(b) An NPV must be in writing, specify the violation and state that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to DEQ within five working days of receipt of the NPV:

(A) A written response from the permittee certifying that the permittee is complying with all terms and conditions of the permit from which the violation is cited. The response must include a description of the

information on which the permittee's certification relies sufficient to enable DEQ to determine that compliance has been achieved. The certification must be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency: either a principal executive officer or appropriate elected official.

(B) A written proposal, acceptable to DEQ, describing how the permittee will bring the facility into compliance with the permit. At a minimum, an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(ii) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permittee is in compliance with the permit; and

(iii) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered; or

(C) For a water quality permit violation, a written request to DEQ that DEQ follow procedures described in ORS 468B.032. Notwithstanding the requirement for a response to DEQ within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the NPV.

(c) If a compliance schedule approved by DEQ under paragraph (3)(b)(B) provides for a compliance period of more than six months, the compliance schedule must be incorporated into a final order that provides for stipulated penalties in the event of any failure to comply with the approved schedule. The stipulated penalties may be set at amounts equivalent to the base penalty amount appropriate for the underlying violation as set forth in OAR 340-012-0140;

(d) If the NPV is issued by a regional authority, the regional authority may require that the permittee submit information in addition to that described in subsection (3)(b).

(e) DEQ may assess a penalty without first issuing an NPV if:

(A) The violation is intentional;

(B) The water or air violation would not normally occur for five consecutive days;

(C) The permittee has received an NPV or an FEA with respect to any violation of the permit within the 36 months immediately preceding the alleged violation;

(D) The permittee is subject to the Oregon Title V operating permit program and violates any rule or standard adopted under ORS Chapter 468A or any permit or order issued under Chapter 468A; or

(E) The requirement to provide an NPV would disqualify a state program from federal approval or delegation. The permits and permit conditions to which this NPV exception applies include:

- (i) Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the federal Clean Air Act;
 - (ii) Water Pollution Control Facility (WPCF) permit or rule authorization conditions that implement the Underground Injection Control program under the federal Safe Drinking Water Act;
 - (iii) National Pollutant Discharge Elimination System (NPDES) Permit conditions; and
 - (iv) Municipal Landfill Solid Waste Disposal Permit conditions that implement Subtitle D of the federal Solid Waste Disposal Act.
- (f) For purposes of section (3), a permit renewal or modification does not result in the requirement that DEQ provide the permittee with an additional advance notice before formal enforcement if the permittee has received an NPV, or other FEA, with respect to the permit, within the 36 months immediately preceding the alleged violation.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.020

Statutes/Other Implemented: ORS 459.376, 468.090 - 468.140, 468A.990 & 468B.025

History:

[DEQ 14-2018, minor correction filed 03/28/2018, effective 03/28/2018](#)

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 14-2008, f. & cert. ef. 11-10-08

Renumbered from 340-012-0040, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 16-1985, f. & ef. 12-3-85

DEQ 22-1984, f. & ef. 11-8-84

DEQ 25-1979, f. & ef. 7-5-79

DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0041

Formal Enforcement Actions

(1) FEAs may require that the respondent take action within a specified timeframe or may assess civil penalties. DEQ may issue an NPV or FEA whether or not it has previously issued a WL or PEN related to the issue or violation. Unless specifically prohibited by statute or rule, DEQ may issue an FEA without first issuing an NPV.

(2) A Notice of Civil Penalty Assessment and Order may be issued for the occurrence of any class of violation that is not limited by the NPV requirement of OAR 340-012-0038(3).

(3) An Order may be in the form of a commission or department order, including any written order that has been consented to in writing by the parties thereto, including but not limited to, a Mutual Agreement and Order (MAO).

(4) A Final Order and Stipulated Penalty Demand Notice may be issued according to the terms of any written final order that has been consented to in writing by the parties thereto, including, but not limited to, a MAO.

(5) A pre-enforcement offer to settle may be made pursuant to DEQ's expedited enforcement procedures in OAR 340-012-0170(2) or Field Penalty procedures prescribed by OAR chapter 340, division 150.

(6) The enforcement actions described in sections (2) through (5) of this rule in no way limit DEQ or commission from seeking any other legal or equitable remedies, including revocation of any DEQ-issued license or permit, provided by ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, and 468B.

Statutory/Other Authority: ORS 454.625, 459.376, 465.400-410, 466.625, 467.030, 468.020, 468A.025, 468A.045 & 468B.035

Statutes/Other Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0045

Civil Penalty Determination Procedure

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

(1) BP is the base penalty and is determined by the following procedure:

(a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.

(b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.

(3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Statutory/Other Authority: ORS 468.020

Statutes/Other Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03
DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89
DEQ 22-1988, f. & cert. ef. 9-14-88
DEQ 22-1984, f. & ef. 11-8-84
DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0053

Classification of Violations that Apply to all Programs

(1) Class I:

- (a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit or permit attachment;
- (b) Submitting false, inaccurate or incomplete information to DEQ where the submittal masked a violation, caused environmental harm, or caused DEQ to misinterpret any substantive fact;
- (c) Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree); or
- (d) Using fraud or deceit to obtain DEQ approval, permit, permit attachment, certification, or license.

(2) Class II: Violating any otherwise unclassified requirement.

Statutory/Other Authority: ORS 468.020 & 468.130

Statutes/Other Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

History:

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 1-2014, f. & cert. ef. 1-6-14
DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0054

Air Quality Classification of Violations

(1) Class I:

- (a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
- (b) Constructing a new source, as defined in OAR 340-245-0020, without first obtaining a required Air Contaminant Discharge Permit that includes permit conditions required under OAR 340-245-0005 through 340-245-8050 or without complying with Cleaner Air Oregon rules under OAR 340-245-0005 through 340-245-8050;
- (c) Failing to conduct a source risk assessment, as required under OAR 340-245-0050;

- (d) Modifying a source in such a way as to require a permit modification under OAR 340-245-0005 through 340-245-8050, that would increase risk above permitted levels under OAR 340-245-0005 through 340-245-8050 without first obtaining such approval from DEQ;
- (e) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;
- (f) Operating an existing source, as defined in OAR 340-245-0020, after a submittal deadline under OAR 340-245-0030 without having submitted a complete application for a Toxic Air Contaminant Permit Addendum required under OAR 340-245-0005 through 340-245-8050;
- (g) Exceeding a Plant Site Emission Limit (PSEL);
- (h) Exceeding a risk limit, including a Source Risk Limit, applicable to a source under OAR 340-245-0100;
- (i) Failing to install control equipment or meet emission limits, operating limits, work practice requirements, or performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
- (j) Exceeding a hazardous air pollutant emission limitation;
- (k) Failing to comply with an Emergency Action Plan;
- (l) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established under New Source Review/Prevention of Significant Deterioration (NSR/PSD);
- (m) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;
- (n) Exceeding an emission limit or violating an operational limit, process limit, or work practice requirement that was established to limit risk or emissions to avoid exceeding an applicable Risk Action Level or other requirement under OAR 340-245-0005 through 340-245-8050;
- (o) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;
- (p) Failing to perform testing or monitoring, required by a permit, permit attachment, rule or order, that results in failure to show compliance with a Plant Site Emission Limit or with an emission limitation or a performance standard established under New Source Review/Prevention of Significant Deterioration, National Emission Standards for Hazardous Air Pollutants, New Source Performance Standards, Reasonably Available Control Technology, Best Available Control Technology, Maximum Achievable Control Technology, Typically Achievable Control Technology, Lowest Achievable Emission Rate, Toxics Best Available Control Technology, Toxics Lowest Achievable Emission Rate, or adopted under section 111(d) of the Federal Clean Air Act;
- (q) Causing emissions that are a hazard to public safety;
- (r) Violating a work practice requirement for asbestos abatement projects;

- (s) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;
- (t) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;
- (u) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
- (v) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (w) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);
- (x) Failing to install certified vapor recovery equipment;
- (y) Delivering for sale a noncompliant vehicle by a vehicle manufacturer in violation of Oregon Low Emission and Zero Emission Vehicle rules set forth in OAR 340 division 257;
- (z) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;
- (aa) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements, or to meet credit retirement and/or deficit requirements, under OAR 340 division 257;
- (bb) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257;
- (cc) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;
- (dd) Violating any of the clean fuel standards set forth in OAR 340-253-0100(6) and in Tables 1 and 2 of OAR 340-253-8010;
- (ee) Committing any action related to a credit transfer that is prohibited in OAR 340-253-1005(8);
- (ff) Inaccurate reporting that causes illegitimate credits to be generated in the Oregon Clean Fuels Program, OAR chapter 340, division 253, or that understates a registered party's true compliance obligation in deficits under such program;
- (gg) Misstating material information or providing false information when submitting an application for a carbon intensity score under OAR 340-253-0450, OAR 340-253-0460, or OAR 340-253-0470, or when submitting an application for advance credits under OAR 340-253-1100;
- (hh) Failing to timely submit a complete and accurate annual compliance report under OAR 340-253-0650;
- (ii) Failing to timely submit a complete and accurate emissions data report under OAR 340-215-0044 and OAR 340-215-0046;
- (jj) Submitting a verification statement to DEQ prepared by a person not approved by DEQ under OAR 340-272-0220 to perform verification services;
- (kk) Failing to timely submit a verification statement that meets the verification requirements under OAR 340-272-0100 and OAR 340-272-0495;

- (ll) Failing to submit a revised application or report to DEQ according to OAR 340-272-0435;
- (mm) Failing to complete re-verification according to OAR 340-272-0350(2);
- (nn) Failing to timely submit a Methane Generation Rate Report or Instantaneous Surface Monitoring Report according to OAR 340-239-0100;
- (oo) Failing to timely submit a Design Plan or Amended Design Plan in accordance with OAR 340-239-0110(1);
- (pp) Failing to timely install and operate a landfill gas collection and control system according to OAR 340-239-0110(1);
- (qq) Failing to operate a landfill gas collection and control system or conduct performance testing of a landfill gas control device according to the requirements in OAR 340-239-0110(2);
- (rr) Failing to conduct landfill wellhead sampling under OAR 340-239-0110(3);
- (ss) Failing to comply with a landfill compliance standard in OAR 340-239-0200;
- (tt) Failing to conduct monitoring or remonitoring in accordance with OAR 340-239-0600 that results in a failure to demonstrate compliance with a landfill compliance standard in OAR 340-239-0200 or the 200 ppmv threshold in OAR 340-239-0100(6)(b) or OAR 340-239-0400(2)(c);
- (uu) Failure to take corrective actions in accordance with OAR 340-239-0600(1);
- (vv) Failing to comply with a landfill gas collection and control system permanent shutdown and removal requirement in OAR 340-239-0400(1);
- (ww) Delivering for sale a new noncompliant on highway heavy duty engine, truck or trailer in violation of rules set forth under OAR 340 division 261;
- (xx) Failing to notify DEQ of changes in ownership or operational control or changes to related entities under OAR 340-271-0120;
- (yy) Owning or operating a covered entity, identified in OAR 340-271-0110, after a submittal deadline under OAR 340-271-0150(1)(a) or OAR 340-271-0330(1)(b) without having submitted a complete application for a Climate Protection Program permit or Climate Protection Program permit addendum required under OAR 340-271-0150;
- (zz) Emitting covered emissions from a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020, without having been issued a BAER order under OAR 340-271-0320 and a permit issued under OAR 340-271-0150(3)(c);
- (aaa) Failing to submit a BAER assessment, ~~or an~~ updated BAER assessment, [or a 5-year BAER report](#) according to OAR 340-271-0310;
- (bbb) Failing to comply with a BAER order issued under OAR 340-271-0320.
- (ccc) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions;
- (ddd) Failing to demonstrate compliance according to OAR 340-271-0450;

(eee) Failing to comply with the requirements for trading of compliance instruments under OAR 340-271-0500 or 340-271-0510;

(fff) Submitting false or inaccurate information on any application or submittal required under OAR chapter 340, division 271;

(ggg) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4); or

(hhh) Failing by a fuel producer to inform DEQ if its operational carbon intensity exceeds its certified carbon intensity as described in OAR 340-253-0450(9)(e)(D) when credits generated from those certified carbon intensity values generated illegitimate credits as described in OAR 340-253-1005(7). .

(2) Class II:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP), ACDP attachment, or registration without first obtaining such permit or registration, unless otherwise classified;

(b) Violating the terms or conditions of a permit, permit attachment or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit or permit attachment modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit a complete ACDP annual report or permit attachment annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule, permit or permit attachment, unless otherwise classified;

(h) Failing to timely submit a complete permit application, ACDP attachment application, or permit renewal application;

(i) Failing to submit a timely and complete toxic air contaminant emissions inventory as required under OAR 340-245-0005 through 340-245-8050;

(j) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;

(k) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).

(l) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;

(m) Failing to provide timely, accurate or complete notification of an asbestos abatement project;

- (n) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;
- (o) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620;
- (p) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257;
- (q) Failing to receive Green-e certification for Renewable Energy Certificates used to generate incremental credits when required by OAR 340-253-0470;
- (r) Failing to register as an aggregator or submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c);
- (s) Failing to keep complete and accurate records under OAR 340-253-0600;
- (t) Failing to ensure that a registered party has the exclusive right to the environmental attributes that it has claimed for biomethane, biogas, or renewable electricity either directly as a fuel or indirectly as a feedstock under OAR chapter 340, division 253 by either the registered party, the fuel producer, and/or fuel pathway holder;
- (u) Failing to timely submit a complete and accurate quarterly report under OAR 340-253-0630;
- (v) Violating any requirement under OAR chapter 340, division 272, unless otherwise classified;
- (w) Violating any requirement under OAR chapter 340, division 239, unless otherwise classified;
- (x) Failing to comply with the reporting notification or warranty requirements for new engines, trucks, and trailers set forth in OAR chapter 340, division 261;
- (y) Violating any requirement under the Climate Protection Program, OAR chapter 340, division 271, unless otherwise classified;
- (z) Violating any condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150, unless otherwise classified;
- (aa) Failing to notify DEQ of a change of ownership or control of a registered party under OAR chapter 340, division 253; or

(3) Class III:

- (a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;
- (b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
- (c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;
- (d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified;
- (e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project;

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR Chapter 340, division 257;

(g) Making changes to a submitted quarterly or annual report under OAR Chapter 340, division 253 without DEQ approval under OAR 340-253-0650(4); or

(h) Failing to upload transactions to a quarterly report by the 45-day deadline under OAR 340-253-0630.

[Note: Tables and Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.045

Statutes/Other Implemented: ORS 468.020 & 468A.025

History:

[DEQ 16-2022, amend filed 09/23/2022, effective 09/23/2022](#)

[DEQ 11-2022, minor correction filed 08/09/2022, effective 08/09/2022](#)

[DEQ 27-2021, amend filed 12/16/2021, effective 12/16/2021](#)

[DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021](#)

[DEQ 16-2021, amend filed 10/04/2021, effective 10/04/2021](#)

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

DEQ 6-2006, f. & cert. ef. 6-29-06

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 22-1996, f. & cert. ef. 10-22-96

DEQ 21-1994, f. & cert. ef. 10-14-94

DEQ 13-1994, f. & cert. ef. 5-19-94

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 20-1993(Temp), f. & cert. ef. 11-4-93

DEQ 19-1993, f. & cert. ef. 11-4-93

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 2-1992, f. & cert. ef. 1-30-92

DEQ 31-1990, f. & cert. ef. 8-15-90

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 22-1984, f. & ef. 11-8-84

DEQ 5-1980, f. & ef. 1-28-80

DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0055

Water Quality Classification of Violations

(1) Class I:

- (a) Causing pollution of waters of the state;
- (b) Reducing the water quality of waters of the state below water quality standards;
- (c) Discharging any waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;
- (d) Operating a discharge source or conducting a disposal activity without first obtaining an individual permit or applying for coverage under a general permit for that discharge or disposal activity;
- (e) Failing to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters;
- (f) Failing to take appropriate action, as required by the municipal wastewater treatment works owner's DEQ-approved pretreatment-compliance oversight program, against an industrial discharger to the municipal treatment works who violates any pretreatment standard or requirement, if the violation impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment;
- (g) Making unauthorized changes, modifications, or alterations to a facility operating under a Water Pollution Control Facility (WPCF) or National Pollutant Discharge Elimination System (NPDES) permit;
- (h) Allowing operation or supervision of a wastewater treatment and collection system without proper certification, by the permittee and/or owner;
- (i) Applying biosolids or domestic septage to a parcel of land that does not have DEQ approval for land application;
- (j) Applying biosolids that do not meet the pollutant, pathogen or one of the vector attraction reduction requirements of 40 CFR 503.33(b)(1) through (10);
- (k) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:
 - (A) The discharge level (except for pH and bacteria) exceeds the limitation by 50 percent or more;
 - (B) The discharge is outside the permitted pH range by more than 2 pH units;
 - (C) The discharge exceeds a bacteria limit as a result of an inoperative disinfection system where there is no disinfection; or
 - (D) The discharge of recycled water exceeds a bacteria limit by more than five times the limit.
- (l) Violating a water quality based effluent limitation in an NPDES permit;
- (m) Violating a WPCF permit limitation in a designated groundwater management area if the exceedance is of a parameter for which the groundwater management area was established;
- (n) Failing to report an effluent limitation exceedance;
- (o) Failing to collect monitoring data required in Schedule B of the permit;
- (p) Contracting for operation or operating a prohibited Underground Injection Control (UIC) system other than a cesspool that only disposes of human waste;

(q) Operating an Underground Injection Control (UIC) system that causes a data verifiable violation of federal drinking water standards in an aquifer used as an underground source of drinking water; or

(r) Failing to substantially implement a stormwater plan in accordance with an NPDES permit.

(2) Class II:

(a) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge level (except for pH and bacteria) exceeds the limitation by 20 percent or more, but less than 50 percent, for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by 10 percent or more, but less than 50 percent, for all other limitations;

(B) The discharge is outside the permitted pH range by more than 1 pH unit but less than or equal to 2 pH units;

(C) The discharge exceeds a bacteria limit by a factor of five or more, unless otherwise classified; or

(D) The discharge of recycled water exceeds a bacteria limit by an amount equal to or less than five times the limit;

(b) Failing to timely submit a report or plan as required by rule, permit, or license, unless otherwise classified;

(c) Causing any wastes to be placed in a location where such wastes are likely to be carried into waters of the state by any means;

(d) Violating any management, monitoring, or operational plan established pursuant to a waste discharge permit, unless otherwise classified;

(e) Failing to timely submit or implement a Total Maximum Daily Load (TMDL) Implementation Plan, by a Designated Management Agency (DMA), as required by department order; or

(f) Failing to comply with the requirements in OAR 340-044-0018(1) to obtain authorization by rule to construct and operate an underground injection system.

(3) Class III:

(a) Failing to submit a complete discharge monitoring report;

(b) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge (except for pH and bacteria) exceeds the limitation by less than 20 percent for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by less than 10 percent for all other limitations;

(B) The discharge is outside the permitted pH range by 1 pH unit or less; or

(C) The discharge (except for recycled water) exceeds a bacteria limit by less than five times the limit;

(c) Failing to achieve a removal efficiency established in an NPDES or WPCF permit;

(d) Failing to register an Underground Injection Control (UIC) system, except for a UIC system prohibited by rule; or

(e) Failing to follow the owner's DEQ-approved pretreatment program procedures, where such failure did not result in any harm to the treatment works and was not a threat to the public health or the environment.

Statutory/Other Authority: ORS 468.020 & 468B.015

Statutes/Other Implemented: ORS 468.090 - 468.140, 468B.025, 468B.220 & 468B.305

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 17-1986, f. & ef. 9-18-86

DEQ 22-1984, f. & ef. 11-8-84

DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0060

Onsite Sewage Disposal Classification of Violations

(1) Class I:

(a) Performing sewage disposal services without a current license;

(b) Installing or causing to be installed an onsite wastewater treatment system or any part thereof, or repairing or causing to be repaired any part thereof, without first obtaining a permit;

(c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by DEQ;

(d) Owning, operating or using an onsite wastewater treatment system that is discharging sewage or effluent to the ground surface or into waters of the state; or

(e) Failing to comply with statute, rule, license, permit or order requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters.

(2) Class II:

(a) Failing to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit;

(c) Operating or using an onsite wastewater treatment system or part thereof without first obtaining a Certificate of Satisfactory Completion or WPCF permit;

(d) Advertising or representing oneself as being in the business of performing sewage disposal services without a current license;

- (e) Placing into service, reconnecting to or changing the use of an onsite wastewater treatment system in a manner that increases the projected daily sewage flow into the system without first obtaining an authorization notice, construction permit, alteration permit, repair permit or WPCF permit;
 - (f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a DEQ-approved system, unless failure results in sewage discharging to the ground surface or to waters of the state;
 - (g) Allowing, by a licensed sewage disposal business, an uncertified installer to supervise or be responsible for the construction or installation of a system or part thereof;
 - (h) Failing to submit an annual maintenance report by a service provider of alternative treatment technologies;
 - (i) Failing to report that a required operation and maintenance contract has been terminated, by a service provider of alternative treatment technologies;
 - (j) Exceeding an effluent limit concentration in a WPCF permit for discharge to a soil absorption system;
 - (k) Exceeding the maximum daily flow limits in a WPCF permit to an onsite system;
 - (l) Failing to collect monitoring data required in Schedule B of a WPCF permit;
 - (m) Making unauthorized changes, modifications, repairs or alterations to a facility operating under a WPCF permit;
 - (n) Violating any management, monitoring or operational plan established pursuant to a WPCF permit unless otherwise classified; or
 - (o) Failing to timely submit a report or plan as required by rule, permit or license unless otherwise classified.
- (3) Class III:
- (a) Failing to obtain an operation and maintenance contract from a certified service provider, by an owner of an alternative treatment technology, recirculating gravel filter or commercial sand filter; or
 - (b) Placing an existing onsite wastewater treatment system into service or changing the dwelling or type of commercial facility, without first obtaining an authorization notice, where the design flow of the system is not exceeded.

Statutory/Other Authority: ORS 454.050, 454.625 & 468.020

Statutes/Other Implemented: ORS 454.635, 454.645 & 468.090 - 468.140

History:

- DEQ 1-2014, f. & cert. ef. 1-6-14
- DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
- DEQ 3-2005, f. 2-10-05, cert. ef. 3-1-05
- DEQ 19-1998, f. & cert. ef. 10-12-98
- DEQ 21-1992, f. & cert. ef. 8-11-92
- DEQ 15-1990, f. & cert. ef. 3-30-90
- DEQ 4-1989, f. & cert. ef. 3-14-89
- DEQ 22-1988, f. & cert. ef. 9-14-88
- DEQ 22-1984, f. & ef. 11-8-84

DEQ 4-1981, f. & ef. 2-6-81
DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0065

Solid Waste Management Classification of Violations

(1) Class I:

- (a) Establishing or operating a disposal site without first obtaining a registration or permit;
- (b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to DEQ and obtaining DEQ approval;
- (c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by DEQ to receive that solid waste;
- (d) Violating a lagoon freeboard limit that results in the overflow of a sewage sludge or leachate lagoon;
- (e) Accepting for treatment, storage, or disposal at a solid waste disposal site, without approval from DEQ, waste defined as hazardous waste, waste from another state which is hazardous under the laws of that state, or wastes prohibited from disposal by statute, rule, permit, or order;
- (f) Failing to properly construct, maintain, or operate in good functional condition, groundwater, surface water, gas or leachate collection, containment, treatment, disposal or monitoring facilities in accordance with the facility permit, DEQ approved plans, or DEQ rules;
- (g) Failing to collect, analyze or report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or DEQ rules;
- (h) Mixing for disposal or disposing of recyclable material that has been properly prepared and source separated for recycling;
- (i) Failing to establish or maintain financial assurance as required by statute, rule, permit or order;
- (j) Failing to comply with the terms of a permit terminated due to a failure to submit a timely application for renewal; or
- (k) Operating a composting facility in a manner that causes a discharge to surface water of pollutants, leachate or stormwater when that discharge is not authorized by a NPDES permit.

(2) Class II:

- (a) Failing to accurately report the amount of solid waste disposed, by a permitted disposal site or a metropolitan service district;
- (b) Failing to timely or accurately report the weight and type of material recovered or processed from the solid waste stream;
- (c) Failing to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, or limitation of working face size;
- (d) Operating a Household Hazardous Waste (HHW) collection event or temporary site without first obtaining DEQ approval or without complying with an approved plan for a HHW collection event;

(e) Receiving or managing waste in violation of or without a DEQ-approved Special Waste Management Plan; or

(f) Unless otherwise specifically classified, operating a composting facility in a manner that fails to comply with the facility's registration, permit, DEQ-approved plans or DEQ rules.

(3) Class III:

(a) Failing to post required signs;

(b) Failing to control litter;

(c) Failing to notify DEQ of any name or address change; or

(d) Violating any labeling requirement under ORS 459A.675-685.

Statutory/Other Authority: ORS 459.045 & 468.020

Statutes/Other Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 6-2009, f. & cert. ef. 9-14-09

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 9-1996, f. & cert. ef. 7-10-96

DEQ 26-1994, f. & cert. ef. 11-2-94

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 22-1984, f. & ef. 11-8-84

DEQ 1-1982, f. & ef. 1-28-82

DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0066

Solid Waste Tire Management Classification of Violations

(1) Class I:

(a) Establishing or operating a waste tire storage site without first obtaining a permit;

(b) Disposing of waste tires or tire-derived products at an unauthorized site;

(c) Violating the fire safety requirements of a waste tire storage site permit;

(d) Hauling waste tires without first obtaining a waste tire carrier permit; or

(e) Failing to establish and maintain financial assurance as required by statute, rule, permit or order.

(2) Class II: Failing to maintain written records of waste tire generation, storage, collection, transportation, or disposal.

(3) Class III:

- (a) Failing to keep required records on use of vehicles;
- (b) Failing to post required signs;
- (c) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires; or
- (d) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permittee's waste tire carrier permit.

Statutory/Other Authority: ORS 459.785 & 468.020

Statutes/Other Implemented: ORS 459.705 - 459.790, 459.992 & 468.090 - 468.140

History:

- DEQ 1-2014, f. & cert. ef. 1-6-14
- DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
- DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05
- DEQ 19-1998, f. & cert. ef. 10-12-98
- DEQ 21-1992, f. & cert. ef. 8-11-92
- DEQ 15-1990, f. & cert. ef. 3-30-90
- DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0067

Underground Storage Tank (UST) Classification of Violations

- (1) Class I:
 - (a) Failing to investigate or confirm a suspected release;
 - (b) Failing to establish or maintain the required financial responsibility mechanism;
 - (c) Failing to obtain the appropriate general permit registration certificate before installing or operating an UST;
 - (d) Failing to install spill and overfill protection equipment that will prevent a release, or failing to demonstrate to DEQ that the equipment is properly functioning;
 - (e) Failing to install, operate or maintain a method or combination of methods for release detection such that the method can detect a release from any portion of the UST system;
 - (f) Failing to protect from corrosion any part of an UST system that routinely contains a regulated substance;
 - (g) Failing to permanently decommission an UST system;
 - (h) Failing to obtain approval from DEQ before installing or operating vapor or groundwater monitoring wells as part of a release detection method;
 - (i) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by DEQ;
 - (j) Failing to conduct testing or monitoring, or to keep records where the failure constitutes a significant operational compliance violation;
 - (k) Providing, offering or supervising tank services without the appropriate license; or

(l) Failing to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by DEQ.

(2) Class II:

(a) Continuing to use a method or methods of release detection after period allowed by rule has expired;

(b) Failing to have a trained UST system operator for an UST facility after March 1, 2004;

(c) Failing to apply for a modified general permit registration certificate;

(d) Failing to have an operation certificate for each compartment of a multi-chambered or multi-compartment UST when at least one compartment or chamber has an operation certificate;

(e) Installing, repairing, replacing or modifying an UST or UST equipment without providing the required notifications;

(f) Failing to decommission an UST in compliance with the statutes and rules adopted by DEQ, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;

(g) Providing tank services at an UST facility that does not have the appropriate general permit registration certificate;

(h) Failing to obtain the identification number and operation certificate number before depositing a regulated substance into an UST, by a distributor;

(i) Failing, by a distributor, to maintain a record of all USTs into which it deposited a regulated substance;

(j) Allowing tank services to be performed by a person not licensed by DEQ;

(k) Failing to submit checklists or reports for UST installation, modification or suspected release confirmation activities;

(l) Failing to complete an integrity assessment before adding corrosion protection;

(m) Failing by an owner or permittee to pass the appropriate national examination before performing tank services; or

(n) Failing to provide the identification number or operation certificate number to persons depositing a regulated substance into an UST.

(3) Class III: Failing to notify the new owner or permittee of DEQ's general permit registration requirements, by a person who sells an UST.

Statutory/Other Authority: ORS 466.720, 466.746, 466.882, 466.994 & 468.020

Statutes/Other Implemented: ORS 466.706 - 466.835, 466.994 & 468.090 - 468.140

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 6-2003, f. & cert. ef. 2-14-03

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 15-1991, f. & cert. ef. 8-14-91
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89
DEQ 22-1988, f. & cert. ef. 9-14-88
DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88

340-012-0068

Hazardous Waste Management and Disposal Classification of Violations

(1) Class I:

- (a) Failing to make or document a complete and accurate hazardous waste determination of a residue as required;
- (b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;
- (c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;
- (d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 C.F.R. 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;
- (e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest; (f) Transporting, or offering for transport, hazardous waste or hazardous waste to a facility not authorized or permitted to manage hazardous waste or hazardous waste pharmaceuticals;
- (f) Transporting, or offering for transport, hazardous waste or hazardous waste pharmaceuticals to a facility not authorized or permitted to manage hazardous waste or hazardous waste pharmaceuticals;
- (g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;
- (h) Illegally treating or disposing of a hazardous waste;
- (i) Failing to submit Land Disposal Restriction notifications;
- (j) Failing to have and maintain a closure plan or post closure plan for a TSD facility, reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals or for each regulated hazardous waste management unit, as defined in 40 C.F.R. 260.10, by the owner or operator of facility or unit;
- (k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;
- (l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 C.F.R. 264.147 or 40 C.F.R. 265.147, by an owner or operator of a TSD facility;
- (m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;

- (n) Failing to comply with the export requirements in 40 C.F.R. 262.52 for hazardous wastes, 40 C.F.R. 266.508(b) for non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, or 40 C.F.R. 266.509(d) for potentially creditable hazardous waste pharmaceuticals;
 - (o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;
 - (p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;
 - (q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment;
 - (r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, or hazardous waste pharmaceuticals, by any person having ownership or control over hazardous waste;
 - (s) Failing to submit an exception report for generators shipping hazardous waste, for healthcare facilities shipping non-creditable hazardous waste pharmaceuticals, or for reverse distributors shipping evaluated hazardous waste pharmaceuticals;
 - (t) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall;
 - (u) Failing to accurately determine generator status;
 - (v) Failing to notify or withdraw for healthcare facilities or reverse distributors;
 - (w) Failing to comply with the prohibition against sewerage hazardous waste pharmaceuticals;
 - (x) Transporting, or offering for transport, hazardous waste other than potentially creditable hazardous waste to a facility other than a reverse distributor;
 - (y) Failing to submit an unauthorized waste report;
 - (z) Accepting hazardous waste pharmaceuticals at a facility not authorized or permitted to manage the specific type of hazardous waste pharmaceuticals received; or
 - (aa) Failing to provide confirmation to the healthcare facility or reverse distributor that shipment of potentially creditable hazardous waste pharmaceuticals has arrived at its destination and is under the control of the reverse distributor.
- (2) Class II:
- (a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste;
 - (b) Failing to label tanks or containers used for accumulation or storage of hazardous waste with “hazardous waste,” hazards of the contents, waste codes, or “hazardous waste pharmaceutical”;
 - (c) Failing to post required emergency response information next to the telephone, by a small quantity generator;

- (d) Accumulating hazardous waste, non-creditable hazardous waste pharmaceuticals, potentially creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals more than thirty (30) days beyond the specified accumulation time frame;
- (e) Failing to submit a manifest discrepancy report;
- (f) Shipping hazardous waste on manifests that do not comply with DEQ rules;
- (g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a TSD facility or into a portion of a reverse distributor's facility where potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept;
- (h) Failing to conduct required inspections at hazardous waste generator or reverse distributor accumulation sites or at hazardous waste permitted storage areas;
- (i) Failing to prepare a contingency plan;
- (j) Failing to comply with the requirements of a groundwater monitoring program, unless otherwise classified;
- (k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;
- (l) Generating, treating, storing or disposing of hazardous waste, non-creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals, without complying with the Personnel Training requirements;
- (m) Failing to keep containers of hazardous waste, non-creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals closed, except when adding or removing wastes;
- (n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator, storage facility, health care facility, or reverse distributor;
- (o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;
- (p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;
- (q) Failing to obtain a hazardous waste EPA identification number when required;
- (r) Failing to comply with 40 C.F.R. 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;
- (s) Failing to comply with 40 C.F.R. 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified;
- (t) Failing to timely submit an annual report by a hazardous waste generator, TSD facility, reverse distributor, or hazardous waste recycling facility;
- (u) Failing to comply with recalled airbag recordkeeping, management, or disposal requirements, unless otherwise classified;

- (v) Failing to timely notify DEQ of LQG closure;
- (w) Failing to comply with episodic generation conditions, not otherwise classified; or
- (x) Failing to notify, keep records, or other requirements for consolidation of VSQG waste at LQG owned by the same person, by the LQG.

(3) Class III:

- (a) Accumulating hazardous waste, non-creditable hazardous waste pharmaceuticals, potentially creditable hazardous waste pharmaceuticals, or evaluated hazardous waste pharmaceuticals, up to thirty (30) days beyond the specified accumulation time frame;
- (b) Failing to maintain on site, a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or
- (c) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

Statutory/Other Authority: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020

Statutes/Other Implemented: ORS 466.635 - 466.680, 466.990 - 466.994 & 468.090 - 468.140

History:

[DEQ 20-2022, amend filed 11/21/2022, effective 01/01/2023](#)

[DEQ 20-2021, amend filed 11/18/2021, effective 01/01/2022](#)

[DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019](#)

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 13-2002, f. & cert. ef. 10-9-02

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 17-1986, f. & ef. 9-18-86

DEQ 9-1986, f. & ef. 5-1-86

DEQ 22-1984, f. & ef. 11-8-84

DEQ 1-1982, f. & ef. 1-28-82

340-012-0071

Polychlorinated Biphenyl (PCB) Classification of Violations

(1) Class I:

- (a) Treating, storing or disposing of PCBs anywhere other than a permitted PCB disposal facility or a location authorized by DEQ; or
- (b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit or DEQ authorization.

(2) Class II: Violating any other requirement related to the treatment, storage, generation or disposal of PCBs is classified under OAR 340-012-0053.

Statutory/Other Authority: ORS 459.995, 466.625, 467.030, 468.020 & 468.996

Statutes/Other Implemented: ORS 466.255, 466.265 - 466.270, 466.530 & 466.990 - 466.994

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

340-012-0072

Used Oil Management Classification of Violations

(1) Class I:

(a) Using used oil as a dust suppressant, pesticide, or otherwise spreading used oil directly in the environment;

(b) Burning a used oil mixture where the used oil mixture has less than 5,000 Btu/pound;

(c) Offering for sale used oil as specification used oil fuel when the used oil does not meet used oil fuel specifications;

(d) Selling off-specification used oil fuel to a facility not meeting the definition of an industrial boiler or furnace;

(e) Burning off-specification used oil in a device that does not meet the definition of an industrial boiler or furnace and is not otherwise exempt;

(f) Failing to make an on-specification used oil fuel determination when required, by a used oil generator, transporter, burner or processor;

(g) Storing or managing used oil in a surface impoundment;

(h) Failing to determine whether used oil exceeds the permissible halogen content, by a used oil transporter, burner or processor;

(i) Failing to perform required closure on a used oil tank or container, by a used oil processor or re-refiner;

(j) Failing to maintain required secondary containment at a used oil transfer facility or by a processor, burner, or marketer of used oil; or

(k) Failing to immediately clean up spills or releases or threatened spills or releases of used oil, by any person having ownership or control over the used oil.

(2) Class II:

(a) Failing to obtain a one-time written notification from a burner before shipping off-specification used oil fuel, by a used oil generator, transporter, processor or re-refiner;

- (b) Failing to develop, follow and maintain records of a written waste analysis plan, by a used oil processor;
 - (c) Failing to close or cover a used oil tank or container;
 - (d) Failing to timely submit annual used oil handling reports, by a used oil processor;
 - (e) Failing to label each container or tank used for the accumulation or storage of used oil on site, unless otherwise classified;
 - (f) Failing to keep a written operating record at the facility, by a used oil processor;
 - (g) Failing to prepare and maintain an up-to-date preparedness and prevention plan, by a used oil processor; or
 - (h) Transporting, processing, re-refining, burning or marketing used oil without first obtaining an EPA ID number.
- (3) Class III:
- (a) Failing to label one container or tank in which used oil was accumulated on site, if five or more tanks or containers are present;
 - (b) Failing to label up to two containers used for the accumulation or storage of used oil on site; or
 - (c) Failing to label a tank having less than 100 gallon capacity when used for the accumulation or storage of used oil on site.

Statutory/Other Authority: ORS 459.995, 468.020, 459A.590, 459A.595 & 468.996

Statutes/Other Implemented: ORS 459A.580 - 459A.585, 459A.590 & 468.090 - 468.140

History:

[DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019](#)

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DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 33-1990, f. & cert. ef. 8-15-90

340-012-0073

Environmental Cleanup Classification of Violations

(1) Violating any otherwise unclassified environmental cleanup-related requirements is addressed under OAR 340-012-0053.

(2) Class II: Failing to provide information under ORS 465.250.

Statutory/Other Authority: ORS 465.280, 465.400 - 465.410, 465.435 & 468.020

Statutes/Other Implemented: ORS 465.210 & 468.090 - 468.140

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89
DEQ 22-1988, f. & cert. ef. 9-14-88

340-012-0074

Underground Storage Tank (UST) Cleanup Classification of Violations

- (1) Class I:
 - (a) Failing to report a confirmed release from an UST;
 - (b) Failing to initiate or complete the investigation or cleanup, or to perform required monitoring, of a release from an UST;
 - (c) Failing to conduct free product removal;
 - (d) Failing to properly manage petroleum contaminated soil; or
 - (e) Failing to mitigate fire, explosion or vapor hazards.
- (2) Class II:
 - (a) Failing to report a suspected release from an UST;
 - (b) Failing to timely submit reports or other documentation from the investigation or cleanup of a release from an UST; or
 - (c) Failing to timely submit a corrective action plan or submitting an incomplete corrective action plan.

Statutory/Other Authority: ORS 466.746, 466.994 & 468.020

Statutes/Other Implemented: ORS 466.706 - 466.835 & 466.994

History:

DEQ 1-2014, f. & cert. ef. 1-6-14
DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0079

Heating Oil Tank (HOT) Classification of Violations

- (1) Class I:
 - (a) Failing to report a release from an HOT as required by OAR 340-163-0020(4) when the failure is discovered by DEQ;
 - (b) Failing to initiate and complete the investigation or cleanup of a release from an HOT;
 - (c) Failing to initiate and complete free product removal;
 - (d) Failing to certify that heating oil tank services were conducted in compliance with all applicable regulations, by a service provider;
 - (e) Failing, by a responsible party or service provider, to conduct corrective action after DEQ rejects a certified report; or

- (f) Providing or supervising HOT services without first obtaining the appropriate license.
- (2) Class II:
 - (a) Failing to submit a corrective action plan;
 - (b) Failing to properly decommission an HOT;
 - (c) Failing to hold and continuously maintain insurance as required by OAR 340-163-0050;
 - (d) Failing to have a supervisor present when performing HOT services;
 - (e) Failing to timely report a release from an HOT as required by 340-163-0020(4) when the failure is reported to DEQ by the responsible person or the service provider; or
 - (f) Offering to provide heating oil tank services without first obtaining the appropriate service provider license.

Statutory/Other Authority: ORS 466.746, 466.858 - 466.994 & 468.020

Statutes/Other Implemented: ORS 466.706, 466.858 - 466.882, 466.994 & 468.090 - 468.140

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0081

Oil and Hazardous Material Spill and Release Classification of Violations

- (1) Class I:
 - (a) Failing to immediately clean up spills or releases or threatened spills or releases of oil or hazardous materials, by any person having ownership or control over the oil or hazardous materials;
 - (b) Failing to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material; and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity or will exceed the reportable quantity within 24 hours;
 - (c) Spilling or releasing any oil or hazardous materials which enters waters of the state;
 - (d) Failing to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;
 - (e) Failing to immediately implement a required plan; or
 - (f) Failing to take immediate preventative, repair, corrective, or containment action in the event of a threatened spill or release.
- (2) Class II:
 - (a) Failing to submit a complete and detailed written report to DEQ of a spill of oil or hazardous material;
 - (b) Failing to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;

(c) Failing to coordinate with DEQ during the emergency response to a spill after being notified of DEQ's jurisdiction;

(d) Failing to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040;

(e) Failing to immediately manage any spill or release of oil or hazardous materials consistent with the National Incident Management System (NIMS);

(f) Improperly or without approval of DEQ, treating, diluting or disposing of spill, or spill-related waters or wastes; or

(g) Using chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous materials without prior DEQ approval.

(3) Class III:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to DEQ upon request; or

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records, and oil transfer procedures available to DEQ upon request.

Statutory/Other Authority: ORS 466.625 & 468.020

Statutes/Other Implemented: ORS 466.635 - 466.680, 466.992 & 468.090 - 468.140

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 7-2003, f. & cert. ef. 4-21-03

DEQ 1-2003, f. & cert. ef. 1-31-03

340-012-0082

Contingency Planning Classification of Violations

(1) Class I:

(a) Failing to immediately implement the oil spill prevention and emergency response contingency plan or other applicable contingency plan, after discovering a spill;

(b) Operating an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(c) Entering into the waters of the state, by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;

(d) Failing to implement prevention measures identified in the facility or covered vessel spill prevention plan that directly results in a spill;

(e) Failing to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(f) Failing to establish and maintain financial assurance as required by statute, rule or order; or

(g) Failing by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

(2) Class II:

(a) Failing to submit an oil spill prevention and emergency response contingency plan to DEQ at least 90 calendar days before beginning operations in Oregon, by any onshore or offshore facility or covered vessel;

(b) Failing to have available on site, a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(c) Failing, by a plan holder, to submit and implement required changes to a required vessel or facility contingency plan following conditional approval;

(d) Failing, by a covered vessel or facility contingency plan holder, to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan;

(e) Failing to submit spill prevention strategies as required; or

(f) Failing to obtain DEQ approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response.

(3) Class III:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to DEQ upon request;

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records and oil transfer procedures available to DEQ upon request;

(c) Failing to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

(d) Failing to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;

(e) Failing to notify DEQ within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or

(f) Failing to distribute amended page(s) of the plan changes to DEQ within thirty (30) calendar days of the amendment.

Statutory/Other Authority: ORS 468B.350

Statutes/Other Implemented: ORS 468B.345

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

340-012-0083

Ballast Water Management Classification of Violations

(1) Class I:

- (a) Discharging ballast water in violation of OAR 340-143-0010;
- (b) Failing to report ballast water management information required by OAR 340-143-0020 or 340-143-0040(2) to DEQ;
- (c) Failing to develop and maintain a vessel-specific ballast water management plan in accordance with OAR 340-143-0020(5); or
- (d) Failing to make a ballast water log or record book available in accordance with OAR 340-143-0020(6)(b).

(2) Class II:

- (a) Failing to report ballast water management information to DEQ at least 24 hours before entering waters of the state in accordance with OAR 340-143-0020(1); or
- (b) Failing to maintain a complete ballast water log or record book in accordance with OAR 340-143-0020(6).

Statutory/Other Authority: ORS 783.600 - 783.992

Statutes/Other Implemented: ORS 783.620

History:

- DEQ 1-2014, f. & cert. ef. 1-6-14
- DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
- DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05
- DEQ 1-2003, f. & cert. ef. 1-31-03

340-012-0097

Dry Cleaning Classification of Violations

(1) Class I:

- (a) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, or boiler into waters of the state;
- (b) Failing to have a secondary containment system under and around each dry cleaning machine or each tank or container of stored solvent;
- (c) Failing to report a release outside of a containment system of more than one pound of dry cleaning solvent (approximately one cup of perchloroethylene) released in a 24-hour period;
- (d) Failing to timely repair the cause of a release within a containment system of dry cleaning solvent;
- (e) Failing to immediately clean up a release or repair the cause of a release outside of a containment system of dry cleaning solvents or waste water contaminated with solvent;
- (f) Illegally treating or disposing of hazardous waste generated at a dry cleaning facility;
- (g) Transporting, delivering or designating on a manifest, delivery of hazardous waste generated at a dry cleaning facility to a destination facility not authorized or permitted to manage hazardous waste;

(h) Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility; or

(i) Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator.

(2) Class II:

(a) Failing to place or store hazardous waste generated at a dry cleaning facility in properly labeled and closed containers;

(b) Accumulating hazardous waste beyond the specified accumulation time period;

(c) Failing, by a dry cleaning owner or operator, to prominently post the Oregon Emergency Response System telephone number so the number is immediately available to all employees of the dry cleaning facility;

(d) Failing to immediately clean up a release within a containment system of dry cleaning solvent or hazardous waste;

(e) Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations; or

(f) Failing to timely submit an annual report to DEQ, by a dry cleaning owner or operator.

(3) Class III: Failing to notify DEQ of change of ownership or operator or closure at a dry cleaning business or dry cleaning store.

Statutory/Other Authority: ORS 466.070 - 466.080, 466.625 & 468.020

Statutes/Other Implemented: ORS 466.635 - 466.680, 466.990, 466.994 & 468.090 - 468.140

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0130

Determination of Violation Magnitude

(1) The appropriate magnitude of each civil penalty is determined by first applying the selected magnitude in OAR 340-012-0135. If none is applicable, the magnitude is moderate unless evidence shows that the magnitude is major under paragraph (3) or minor under paragraph (4).

(2) The person against whom the violation is alleged has the opportunity and the burden to prove that a magnitude under paragraph (1), (3) or (4) of this rule is more probable than the alleged magnitude, regardless of whether the magnitude is alleged under OAR 340-012-0130 or 340-012-0135.

(3) The magnitude of the violation is major if DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, DEQ may consider any single factor to be conclusive.

(4) The magnitude of the violation is minor if DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation.

Statutory/Other Authority: ORS 468.020 & 468.130

Statutes/Other Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0135

Selected Magnitude Categories

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

(a) Opacity limit violations:

(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or

(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.

(c) Exceeding an emission limit established under New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.

(d) Exceeding an emission limit established under federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.

(e) Exceeding a cancer or noncancer risk limit that is equivalent to a Risk Action Level or a Source Risk Limit if the limit is a Risk Action Level established under OAR 340-245-0005 through 340-245-8050: Major, otherwise apply OAR 340-012-0130.

(f) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection will be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020.

(A) Major:

(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.

(B) Moderate:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or

(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.

(C) Minor:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.

(g) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(h) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(i) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(j) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information

upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(k) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major — Exceeding the limit by more than 10 percent; or

(B) Moderate — Exceeding the limit by 10 percent or less.

(l) Oregon Clean Fuels Program violations:

(A) Violating the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of OAR 340-253-8010: Major

(B) Failing to register under OAR 340-253-0100(1) and (4): Major;

(C) Failing to timely submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340, division 253: Major;

(D) Generating an illegitimate credit under OAR chapter 340, division 253: Major;

(E) Committing any action related to a credit transfer that is prohibited under OAR 340-253-1005(8): Major.

(m) Failing to timely submit a complete and accurate emissions data report under the Oregon Greenhouse Gas Reporting Program, OAR chapter 340, division 215, where the untimely, incomplete or inaccurate reporting impacts applicability, [distribution of compliance instruments](#), or any compliance obligation under the Climate Protection Program, OAR chapter 340, division 271: Major.

(n) Oregon Climate Protection Program violations:

(A) Failing to demonstrate compliance according to OAR 340-271-0450: Major.

(B) Failing to comply with a BAER order issued under OAR 340-271-0320: Major

(C) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions: Major.

(D) Failing to obtain a BAER order under OAR 340-271-0320 or a permit issued under OAR 340-271-0150(3)(c), for a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020: Major.

(2) Magnitudes for selected Water Quality violations will be determined as follows:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than CA_{acute} , where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CA_{acute} is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: $(BOD5)/D$ is more than 10, where BOD5 is the concentration of the five-day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

- (ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;
 - (iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;
 - (iv) Increased or decreased pH by one or more pH units from the standard; or
 - (v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.
- (B) Moderate:
- (i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;
 - (ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;
 - (iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;
 - (iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or
 - (v) Increased turbidity by more than 20 but less than 50 NTU over background.
- (C) Minor:
- (i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;
 - (ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;
 - (iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;
 - (iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or
 - (v) Increased turbidity by 20 NTU or less over background.
- (c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:
- (A) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;
 - (B) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;
 - (C) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or
 - (D) Resulted in a documented fish or wildlife kill.
- (3) Magnitudes for selected Solid Waste violations will be determined as follows:
- (a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:
 - (A) Major — The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor — The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:

(a) Failure to make a hazardous waste determination;

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment, storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.

(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.

(C) Minor: Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:

(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[NOTE: Tables & Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.065 & 468A.045

Statutes/Other Implemented: ORS 468.090 - 468.140 & 468A.060

History:

[DEQ 16-2022, amend filed 09/23/2022, effective 09/23/2022](#)

[DEQ 27-2021, amend filed 12/16/2021, effective 12/16/2021](#)

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 6-2006, f. & cert. ef. 6-29-06

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

- (I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.
- (J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.
- (K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.
- (L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.
- (M) Any violation of a hazardous waste statute, rule, permit or related order by:
- (i) A person that is a large quantity generator or hazardous waste transporter.
 - (ii) A person that has or should have a treatment, storage or disposal facility permit.
- (N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.
- (O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.
- (P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.
- (Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:
- (i) A person that has or should have a solid waste disposal permit.
 - (ii) A city with a population of 25,000 or more, as determined by the most recent national census.
- (R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,
- (S) Any violation classified under OAR 340-012-0054 (1) (dd), (ee), (ff), or (gg).
- (T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.
- (U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.
- (V) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.
- (W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.

(X) Any violation of the Climate Protection Program rules under OAR chapter 340, division 271.

(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:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 unless the violation is otherwise classified in this rule.

(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

(N) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.

(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:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(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.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

- (C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.
- (D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.
- (E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.
- (F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.
- (G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.
- (H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.
- (I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.
- (J) Any violation of a statute, rule or order relating to the opportunity to recycle.
- (K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.
- (L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.
- (M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.
- (b) The base penalty values for the \$1,000 penalty matrix are as follows:
- (A) Class I:
- (i) Major — \$1,000;
 - (ii) Moderate — \$500;
 - (iii) Minor — \$250.
- (B) Class II:
- (i) Major — \$500;
 - (ii) Moderate — \$250;
 - (iii) Minor — \$125.
- (C) Class III: \$100.

Statutory/Other Authority: ORS 468.020 & 468.090 - 468.140

Statutes/Other Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

History:

[DEQ 16-2022, amend filed 09/23/2022, effective 09/23/2022](#)

[DEQ 4-2022, amend filed 03/16/2022, effective 03/16/2022](#)
[DEQ 27-2021, amend filed 12/16/2021, effective 12/16/2021](#)
[DEQ 20-2021, amend filed 11/18/2021, effective 01/01/2022](#)
[DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021](#)
[DEQ 16-2021, amend filed 10/04/2021, effective 10/04/2021](#)
[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)
[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)
[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)
DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16
DEQ 1-2014, f. & cert. ef. 1-6-14
DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11
DEQ 6-2006, f. & cert. ef. 6-29-06
DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05
DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 9-1996, f. & cert. ef. 7-10-96
DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 33-1990, f. & cert. ef. 8-15-90
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0145

Determination of Aggravating or Mitigating Factors

- (1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.
- (2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first formal enforcement action (FEA) in which it is cited is issued.
 - (a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:
 - (A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.
 - (B) 1 if the PSAs included one Class II violation or two Class III violations; or
 - (C) 2 if the PSAs included one Class I violation or Class I equivalent.
 - (D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.
 - (b) The value of "P" will not exceed 10.
 - (c) If any of the PSAs were issued under ORS 468.996, the final value of "P" will be 10.
 - (d) In determining the value of "P," DEQ will:
 - (A) Reduce the value of "P" by:

(i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.

(ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.

(B) Include the PSAs:

(i) At all facilities owned or operated by the same respondent within the state of Oregon; and

(ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.

(e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.

(f) PSAs that are more than ten years old are not included in determining the value of "P."

(3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:

(a) -2 if the respondent corrected all prior violations cited as PSAs.

(b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or

(c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

(d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.

(4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding that supports each are as follows:

(a) 0 if there was only one occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

(b) 2 if there were more than one but less than seven occurrences of the violation.

(c) 3 if there were from seven to 28 occurrences of the violation.

(d) 4 if there were more than 28 occurrences of the violation.

(e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:

- (a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).
- (b) 2 if the respondent had constructive knowledge (reasonably should have known) of the requirement.
- (c) 4 if the respondent's conduct was negligent.
- (d) 8 if the respondent's conduct was reckless or the respondent acted or failed to act intentionally with actual knowledge of the requirement.
- (e) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:

- (a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.
- (b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.
- (c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.
- (d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.
- (e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.
- (f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.
- (g) 2 if the respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

Statutory/Other Authority: ORS 468.020 & 468.130

Statutes/Other Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 994, 468.090 - 140 & 468B.450

History:

[DEQ 185-2018, minor correction filed 04/16/2018, effective 04/16/2018](#)

[DEQ 19-2018, minor correction filed 03/29/2018, effective 03/29/2018](#)

[DEQ 15-2018, minor correction filed 03/28/2018, effective 03/28/2018](#)

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

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 Chapter 340, division 253, DEQ will determine economic benefit according to subsections (a),(b), or (c), with interest and other considerations as needed to properly capture the full economic benefit of the violation.

(a) the actual purchase or sale price of the credits, or the implied value of the credits in a fuel transaction, when a transaction has been completed, if DEQ has sufficient information to determine it; or

(b) the average price of credits purchased or sold in the Clean Fuels Program market as published by DEQ for the time period relevant to the violation; or

(c) the Credit Clearance Market maximum credit price as calculated under OAR 340-253-1040, where a transaction has not been completed or DEQ has insufficient information to determine the price of the credits.

(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.

Statutory/Other Authority: ORS 468.020 & 468.090 - 468.140

Statutes/Other Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.210, 466.990, 466.994, 467.050, 467.990, 468.090 - 468.140 & 468.996

History:

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0155

Additional or Alternate Civil Penalties

(1) DEQ may assess additional civil penalties for the following violations as specified below:

(a) DEQ may assess a civil penalty of up to \$250,000 to any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or

creates the imminent likelihood for an extreme hazard to public health or that causes extensive damage to the environment. When determining the civil penalty to be assessed under this subsection, the director will use the procedures set out below:

(A) The following base penalties apply:

- (i) \$100,000 if the violation was caused intentionally;
- (ii) \$150,000 if the violation was caused recklessly;
- (iii) \$200,000 if the violation was caused flagrantly.

(B) The civil penalty is calculated using the following formula: $BP + [(.1 \times BP) (P + H + O + C)] + EB$.

(b) Any person who intentionally or negligently causes or permits the discharge of oil or hazardous materials into waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous materials into waters of the state will incur a civil penalty not to exceed \$100,000 dollars for each violation. The amount of the penalty is determined as follows:

(A) The class and magnitude of the violation are determined according to OAR 340-012-0045, then the base penalty is determined according to OAR 340-012-0140.

(B) The multiplier for the base penalty is determined by adding the following values:

- (i) 2 points if the violation was caused negligently; or 3 points if the violation was caused recklessly; or 4 points if the violation was caused intentionally with actual knowledge that a violation would occur; and
- (ii) 1 point if the oil or hazardous material is or contains any constituent listed as a “hazardous substance” in 40 CFR 302; or 2 points if the oil or hazardous material is or contains any constituent listed as an “extremely hazardous substance” under 40 CFR 355; and
- (iii) 2 points if the volume of the oil or hazardous material spilled, lost to the environment, or not cleaned up exceeds 1,000 gallons; and
- (iv) 1 point if the violation impacted an area of particular environmental value where oil or hazardous materials could pose a greater threat than in other non-sensitive areas, for example, sensitive environments such as those listed in OAR 340-122-0115(50), drinking water sources, and cultural sites.

(C) The base penalty from paragraph (A) is multiplied by the sum of the points from paragraph (B) to determine the adjusted base penalty. The civil penalty formula in OAR 340-012-0045 is applied using the adjusted base penalty for the BP factor.

(c) Any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the applicable penalty matrix in 340-012-0140(2) and the civil penalty formula contained in 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted. will incur a civil penalty

according to the schedule set forth in ORS 496.705 for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in ORS 496.705 that are property of the state.

(e) DEQ may assess a civil penalty of \$500 to any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050.

(2) Civil penalties for certain violations are subject to the following maximums in lieu of the maximum daily penalty provided in OAR 340-012-160(4):

(a) DEQ may assess a civil penalty of up to \$1,000 for each day of violation to any person that fails to comply with the prohibitions on the sale or distribution of cleaning agents containing phosphorus in ORS 468B.130.

(b) DEQ may assess a civil penalty of up to \$500 for each violation of each day to any person that fails to comply with Toxics Use Reduction and Hazardous Waste Reduction Act requirements of ORS 465.003 to 465.034.

(c) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.420 to 459.426. Each battery that is improperly disposed of is a separate violation, and each day an establishment fails to post the notice required by ORS 459.426 is a separate violation.

(d) DEQ may assess a civil penalty of up to \$500 for each violation of the requirement to provide the opportunity to recycle as required by ORS 459A.005.

(3) DEQ may assess the civil penalties below in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) DEQ will assess a Field Penalty as specified under OAR 340-150-0250 unless DEQ determines that an owner, operator or permittee is not eligible for the Field Penalty.

(b) DEQ may assess Expedited Enforcement Offers as specified under OAR 340-012-0170(2).

Statutory/Other Authority: ORS 465, 466, 468.020, 468.130, 468.996 & 783.992

Statutes/Other Implemented: ORS 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 14-2008, f. & cert. ef. 11-10-08

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 9-2000, f. & cert. ef. 7-21-00

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

340-012-0160

DEQ Discretion Regarding Penalty Assessment

(1) In addition to the authority described in section (4) below, DEQ has the discretion to increase a base penalty determined under OAR 340-012-0140 to that derived using the next highest penalty matrix. Factors that may be taken into consideration in increasing a base penalty include the respondent's

compliance history, the likelihood of future violations, the degree of environmental or human health impact, the deterrence impact and other similar factors.

(2) In determining a civil penalty, the director may reduce any penalty by any amount the director deems appropriate if the respondent has voluntarily disclosed the violation to DEQ. In deciding whether a violation has been voluntarily disclosed, the director may take into account any considerations the director deems appropriate, including whether the violation was:

- (a) Discovered through an environmental auditing program or a systematic compliance program;
- (b) Voluntarily discovered;
- (c) Promptly disclosed;
- (d) Discovered and disclosed independent of the government or a third party;
- (e) Corrected and remedied;
- (f) Prevented from recurring;
- (g) Not repeated;
- (h) Not the cause of significant harm to human health or the environment; and
- (i) Disclosed and corrected in a cooperative manner.

(3) For the violation of spilling oil or hazardous materials into waters of the state, if the respondent exceeds relevant DEQ regulations pertaining to spill preparation and takes all other reasonably expected precautions to prevent spills and be prepared for spill response, DEQ may reduce the penalty for the spill by 10%. Depending on circumstances, such precautions may include, without limitation, employee safety training, company policies designed to reduce spill risks, availability of spill response equipment or staff, or use of alternative non-toxic oils.

(4) Regardless of any other penalty amount listed in this division, the director has the discretion to increase the penalty to \$25,000 per violation per day of violation based upon the facts and circumstances of the individual case.

(5) DEQ may issue separate civil penalties to each potentially liable person for any violation or violations, regardless of whether the violations arise out of the same facts or circumstances, given compliance objectives, including the level of deterrence needed.

Statutory/Other Authority: ORS 468.020 & 468.130

Statutes/Other Implemented: ORS 183.745, 459.376, 459.995, 465.900, 465.992, 466.990, 466.994, 468.090-468.140, 468.996 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0162

Inability to Pay the Penalty

(1) After a penalty is assessed, DEQ may reduce a penalty based on the respondent's inability to pay the full penalty amount. In order to do so, DEQ must receive information regarding the respondent's financial condition on a form required by DEQ along with any additional documentation requested by DEQ.

(2) If the respondent is currently unable to pay the full penalty amount, the first option is to place the respondent on a payment schedule with interest. DEQ may reduce the penalty only after determining that the respondent is unable to meet a payment schedule of a length DEQ determines is reasonable.

(3) In considering the respondent's ability to pay a civil penalty, DEQ may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the respondent, DEQ will provide the respondent 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;

(4) DEQ, at its discretion, may refuse to reduce an assessed civil penalty. In exercising this discretion, DEQ may take into consideration any factor related to the violations or the respondent, including but not limited to the respondent's mental state, whether the respondent has corrected the violation or taken efforts to ensure the violation will not be repeated, whether the respondent's financial condition poses a serious concern regarding the respondent's ability to remain in compliance, the respondent's future ability to pay, and the respondent's real property or other assets.

Statutory/Other Authority: ORS 468.020 & 468.130

Statutes/Other Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.220 - 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0165

Stipulated Penalties

Nothing in OAR chapter 340, division 12 affects the ability of the commission or DEQ to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Judgment or any other order or agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

Statutory/Other Authority: ORS 454.625, 459.995, 468.020 & 468.996

Statutes/Other Implemented: ORS 183.090 & 183.415

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

Renumbered from 340-012-0048, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0170

Compromise or Settlement of Civil Penalty by DEQ

(1) DEQ may compromise or settle a civil penalty assessed in a formal enforcement action at any amount that DEQ deems appropriate. In determining whether a penalty should be compromised or settled, DEQ may take into account the following:

(a) New information obtained through further investigation or provided by the respondent that relates to the penalty determination factors contained in OAR 340-012-0045;

- (b) The effect of compromise or settlement on deterrence;
- (c) Whether the respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
- (d) Whether the respondent has had any previous penalties which have been compromised or settled;
- (e) Whether the respondent has the ability to pay the civil penalty as determined by OAR 340-012-0162;
- (f) Whether the compromise or settlement would be consistent with DEQ's goal of protecting human health and the environment; and
- (g) The relative strength or weakness of DEQ's evidence.

(2) Expedited Enforcement Offers:

- (a) DEQ may pursue informal disposition of any alleged violation by making an expedited enforcement offer.
- (b) The decision as to whether to make an expedited enforcement offer with respect to any alleged violation is within DEQ's sole discretion, except as otherwise provided in this section (2).
- (c) In determining whether to make an expedited enforcement offer, DEQ must consider the amount of the economic benefit gained by the alleged violator as a result of the noncompliance; whether the alleged violator has been the subject of a formal enforcement action or been issued a warning letter or pre-enforcement notice for the same or similar violations; whether the alleged violation is isolated or ongoing; and the mental state of the alleged violator.
- (d) DEQ will not make an expedited enforcement offer to settle a Class I violation that has been repeated within the previous three years or to settle a violation that would be a major magnitude violation under OAR 340-012-0130(3) regardless of whether a selected magnitude under 340-012-0135 applies.
- (e) The penalty amount for an alleged violation cited in an expedited enforcement offer will be 40% of the moderate base penalty listed in OAR 340-012-0140 under the applicable matrix and the applicable classification.
- (f) Participation in the expedited enforcement program is voluntary. An alleged violator to whom DEQ makes an expedited enforcement offer is under no obligation to accept the offer.
- (g) A person to whom an expedited enforcement offer is made has 30 calendar days from the date of the offer to accept the offer by paying the total amount stipulated in the expedited enforcement offer, or by making a payment toward the total amount if DEQ has approved a payment plan. The expedited enforcement offer payment and acceptance are deemed submitted when received by DEQ.
- (h) By submitting payment to DEQ of the total amount stipulated in the expedited enforcement offer or a payment toward the total amount if DEQ has approved a payment plan, the alleged violator accepts the expedited enforcement offer, consents to the issuance of a final order of the commission which may include a compliance schedule, and agrees to waive any right to appeal or seek administrative or judicial review of the expedited enforcement offer, the final order, or any violation cited therein.
- (i) Expedited enforcement offers incorporated into final orders of the commission will be treated as prior significant actions in accordance with OAR 340-012-0145.

(j) DEQ may initiate a formal enforcement action for any violation not settled by acceptance of the expedited enforcement offer.

Statutory/Other Authority: ORS 459, 466, 467, 468.020 & 468.130, 183.415 & 183.745

Statutes/Other Implemented: ORS 468.130-140, 183.415, 183.470, 183.745, 459.376, 459.995, 465.900, 466.990, 466.994, 468.035, 468.090 - 140 & 468B.220

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 14-2008, f. & cert. ef. 11-10-08

Renumbered from 340-012-0047, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88, Renumbered from 340-012-0075

DEQ 22-1984, f. & ef. 11-8-84

DEQ 78, f. 9-6-74, ef. 9-25-74



State of Oregon Department of Environmental Quality

Draft Rules – Division 215

Edits Highlighted

Division 215

OREGON GREENHOUSE GAS REPORTING PROGRAM

340-215-0010

Purpose and Scope

(1) This division establishes greenhouse gas registering, reporting, and other requirements for operators of certain facilities that emit greenhouse gases, fuel suppliers, and electricity suppliers.

(2) Subject to the requirements in this division and OAR 340-200-0010(3), the EQC designates LRAPA to implement the rules in this division within its area of jurisdiction.

(3) This division incorporates the provisions of title 40, Code of Federal Regulations (C.F.R.), part 98 that are specifically referenced in rules within the division. These provisions are a portion of the U.S. Environmental Protection Agency (EPA) Final Rule on Mandatory Reporting of Greenhouse Gases. Unless otherwise specified, references in this division to 40 C.F.R. part 98 are to those requirements promulgated by EPA and published in the Federal Register on December 9, 2016. Unless otherwise specifically provided, for the provisions of 40 C.F.R. part 98 (the “federal rules”) that are incorporated by reference in this division:

(a) Wherever the term “Administrator” is used in the federal rules, the term “Director of DEQ” will be substituted;

(b) Wherever the term “EPA” is used in the federal rules, the term “Oregon Department of Environmental Quality” or “DEQ” will be substituted; and

(c) Where any incorporated provisions of 40 C.F.R. part 98 are in conflict with requirements in this division, the requirements in this division shall take precedence and are the provisions that reporting entities must follow.

Statutory/Other Authority: ORS 468.020, 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

DEQ 12-2015, f. & cert. ef. 12-10-15

DEQ 11-2011, f. & cert. ef. 7-21-11

DEQ 12-2010, f. & cert. ef. 10-27-10
DEQ 13-2008, f. & cert. ef. 10-31-08

340-215-0020

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

~~(1) “Air contamination source” has the meaning given the term in ORS 468A.005.~~

(2) “Asset-controlling supplier” or “ACS” means a person that owns or operates inter-connected electricity generating facilities or has exclusive rights to claim electricity from these facilities even though it does not own them, and that has been designated by DEQ as an asset-controlling supplier under OAR 340-215-0120(7) and received a DEQ-published emission factor. Asset controlling suppliers are specified sources.

~~(3) “Barrel” means a volume equal to 42 U.S. gallons.~~

(4) “Biogas” means gas that is produced from the breakdown of biomass in the absence of oxygen, including anaerobic digestion, anaerobic decomposition, and thermochemical decomposition.

(5) “Biogenic CO₂ emissions” means carbon dioxide emissions generated as the result of biomass or biomass-derived fuel combustion or oxidation.

(6) “Biomass” means non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including products, byproducts, residues, and waste from agriculture, forestry, and related industries, as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic matter.

(7) “Biomass fuels” or “biofuels” or “biomass-derived fuels” means fuels derived from biomass.

~~(8) “Biomethane” or “Renewable Natural Gas” means refined biogas, or another synthetic stream of methane produced from biomass feedstock renewable resources, that has been upgraded to meet pipeline quality standards or transportation fuel grade requirements, such that it may blend with, or substitute for, natural gas. a near pure methane content product. Biomethane can be directly injected into natural gas pipelines or combusted in natural gas-fueled vehicles.~~

(8) “Book and Claim” refers to the accounting methodology where the environmental attributes of an energy source are detached from the physical molecules when they are commingled into a common transportation and distribution system for that form of energy.

The detached attributes are then assigned by the owner to the same form and amount of energy when it is used. For the purposes of this division, the common transportation and distribution system must be connected to Oregon.

(9) “Bulk transfer/terminal system” means a fuel distribution system consisting of one or more of refineries, pipelines, vessels, and terminals. Fuel storage and blending facilities that are not fed by pipeline or vessel are considered outside the bulk transfer system.

(10) “Busbar” means a power conduit of a facility with electricity generating units that serves as the starting point for the electricity transmission system.

(11) “Carbon dioxide supplier” means a facility with production process units or production wells that capture, extract, or produce CO₂ for on-site use, commercial application, or for purposes of supplying CO₂ to another entity or facility, or that capture the CO₂ stream in order to utilize it for geologic sequestration, where capture refers to the initial separation and removal of CO₂ from a manufacturing process or any other process. The definition does not include transportation, distribution, purification, compression, or processing of CO₂.

~~(11)~~ (12) “Cease to operate” for the purposes of this division means the ~~air contamination source~~ regulated entity did not operate any GHG –emitting processes for an entire year. Continued operation of space heaters and water heaters as necessary until operations are restarted in a subsequent year does not preclude a source from meeting this definition.

~~(12)~~ (13) “C.F.R.” means Code of Federal Regulations and unless otherwise expressly identified refers to the December 9, 2016 edition.

~~(13)~~ (14) “Cogeneration unit” means a unit that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential or simultaneous use of the original fuel energy and waste heat recovery.

(15) “Compressed natural gas” or “CNG” means natural gas stored inside a pressure vessel at a pressure greater than the ambient atmospheric pressure outside of the vessel, (though not to the point of liquefaction), typically to pressures ranging from 2900 to 3600 pounds per square inch.

~~(14)~~ (16) “Consumer-owned utility” means a people’s utility district organized under ORS Chapter 261, a municipal utility organized under ORS Chapter 225 or an electric cooperative organized under ORS Chapter 62.

~~(15)~~ (17) “Data year” means the calendar year in which emissions occurred.

~~(16)~~ (18) “Designated representative” means the person responsible for certifying, signing, and submitting a greenhouse gas emissions data report, and any registration or report required to be submitted under this division, on behalf of a regulated entity. For owners or operators of Oregon Title V Operating Permits the designated representative is the responsible official and certification must be consistent with OAR 340-218-0040(5).

(1719) “Direct emissions” means emissions from an ~~air contamination~~ stationary source, including but not limited to fuel combustion activities, process related emissions, and fugitive emissions.

~~(18) “Distillate fuel oil” means one of the petroleum fractions produced in conventional distillation operations and from crackers and hydrotreating process units. The generic term distillate fuel oil includes kerosene, kerosene type jet fuel, diesel fuels (Diesel Fuels No. 1, No. 2, and No. 4), and fuel oils (Fuel Oils No. 1, No. 2, and No. 4).~~

(1920) “EIA” means the Energy Information Administration. The Energy Information Administration (EIA) is a statistical agency of the United States Department of Energy.

(2021) “Electricity generating unit” means any combination of physically connected generator(s), reactor(s), boiler(s), combustion turbine(s), or other prime mover(s) operated together to produce electric power.

(2122) “Electricity service supplier” has the meaning given that term in ORS 757.600.

(2223) “Electricity supplier” means persons that import, sell, allocate, or distribute electricity to end users in the state, including but not limited to the following types of entities:

- (a) Investor-owned utilities;
- (b) Electricity service suppliers; and
- (c) Consumer-owned utilities.

(2324) “Emissions data report” means the report prepared and submitted to DEQ that provides the information required to be reported under this division. The emissions data report is for the year prior to the year in which the report is due, also known as the data year.

(25) “Export” means to transport fuel from locations within Oregon to locations outside of the state, by any means of transport, other than in the fuel tank of a vehicle for the purpose of propelling the vehicle.

(2426) “Fuel supplier” means a supplier of petroleum products, liquid petroleum gas, biomass-derived fuels, or natural gas including operators of interstate pipelines, or liquefied natural gas.

(2527) “Fluorinated heat transfer fluids” is a fluorinated GHG that has the meaning given to that term in 40 C.F.R. 98.98.

(28) “Environmental Attribute,” for the purposes of reporting biogas, biomethane, and hydrogen under this division, means the formal recognition of the biomass-derived attributes or that the use of the fuel results in lower greenhouse gas emissions. Such formal recognition may include verified emission reductions, voluntary emission reductions, offsets, allowances,

credits, avoided compliance costs, emission rights and authorizations under any law or regulation, or any other comparable emission registry, trading system, or reporting or reduction program for greenhouse gas emissions that is established, certified, maintained, or recognized by any international, governmental, or nongovernmental agency.

(~~26~~29) "Global warming potential" or "GWP" means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of carbon dioxide (the reference gas). The GWPs used for emissions calculation and reporting are specified in 40 C.F.R. part 98, subpart A, Table A-1-Global Warming Potentials as published in the Code of Federal Regulations referenced in this division.

(~~30~~27) "Greenhouse gas" or "GHG" means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated greenhouse gases or fluorinated GHG as defined in 40 C.F.R. part 98.

(~~31~~) "Gross generation" or "gross power generated" means the total electrical output of the generating facility or unit, expressed in megawatt hours (MWh) per year.

(~~28~~32) "Higher heat value" or "HHV" means the high or gross heat content of the fuel with the heat of vaporization included. The water vapor is assumed to be in a liquid state.

(~~29~~33) "Hydrofluorocarbons" (HFCs) means gaseous chemical compounds containing only hydrogen, carbon, and fluorine atoms.

(~~34~~) "Hydrogen" means diatomic molecular hydrogen.

(~~30~~35) To "Import" means owning electricity or fuel from locations outside of Oregon at the time electricity is brought into this state through transmission equipment or at the time fuel is brought into this state by any means of transport, other than fuel brought into this state in the fuel tank of a vehicle used to propel the vehicle.

(~~31~~36) "Importer" means:

(a) Any person, company, or organization of record that for any reason brings a product into Oregon from outside of the state; or

(b) With respect to any biomethane, the person who owns the biomethane when it is either physically transported into Oregon or when it is contractually delivered for use in Oregon through a book and claim accounting methodology.;

(~~32~~37) "In-state producer" means:

(a) With respect to any liquid fuel, the person who makes the fuel in Oregon; or

(b) With respect to any gaseous biomass-derived fuel~~biomethane~~, the person who refines, treats, or otherwise ~~processes biogas into biomethane~~produces the fuel in Oregon; or

(c) With respect to any natural gas, the person who owns or operates one or more wells producing natural gas in Oregon.

~~(3338)~~ “Interstate pipeline” means a natural gas pipeline delivering natural gas across state boundaries for use in Oregon and that is subject to rate regulation by the Federal Energy Regulatory Commission (FERC).

~~(3439)~~ “Investor-owned utility” means a utility that sells electricity and that a corporation with shareholders operates.

~~(3540)~~ “Large natural gas end users” means any end user receiving greater than or equal to 460,000 Mscf during the previous year.

(41) “Liquefied natural gas” or “LNG” means natural gas that is liquefied.

~~(4236)~~ “Local distribution company” or “LDC” means a legal entity that owns or operates distribution pipelines and that physically delivers natural gas to end users in the state. This includes public utility gas corporations and intrastate pipelines engaged in the retail sale, delivery, or both of natural gas. This excludes interstate pipelines.

~~(3743)~~ “Multi-jurisdictional utility” means a utility that is an electricity retail provider to customers in a service territory that is at least partially located in Oregon and at least one other state.

~~(3844)~~ “Metric ton,” “tonne,” “metric tonne,” or “MT” means a common international measurement for mass, equivalent to 2204.6 pounds or 1.1 short tons.

~~(3945)~~ “MMBtu” means million British thermal units.

~~(4046)~~ “Mscf” means one thousand standard cubic feet.

(47) “Natural gas” means a naturally occurring mixture derived from anthropogenic or fossil sources of gaseous hydrocarbons and other compounds consisting primarily of methane. For the purposes of this division the term includes natural gas in all gaseous and liquid forms.

~~(4148)~~ “Natural gas marketer” means a person that arranges for the purchasing or selling of natural gas but that does not own physical assets in Oregon used in the supply of natural gas such as pipelines.

~~(4249)~~ “Natural gas supplier” means any person that imports, sells, produces, or distributes natural gas to end users in Oregon.

(50) “Net generation” or “net power generated” means the gross generation minus station service or unit service power requirements, expressed in megawatt hours (MWh) per year. In the case of cogeneration, this value is intended to include internal consumption of electricity for the purposes of a production process, as well as power put on the grid.

~~(4351)~~ “Perfluorocarbons” (PFCs) means gaseous chemical compounds containing only carbon and fluorine atoms.

~~(4452)~~ “Position holder” means any person that has an ownership interest in a specific amount of fuel in the inventory of a terminal as reflected in the records of the terminal operator or a terminal operator that owns fuel in its terminal. This does not include inventory held outside of a terminal, retail establishments, or other fuel suppliers not holding inventory at a fuel terminal.

~~(4553)~~ “Power contract” as used for the purposes of documenting specified versus unspecified sources of electricity means a written document, including associated verbal or electronic records if included as part of the written power contract, arranging for the procurement of electricity. A power contract for a specified source is a contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier’s system that is designated at the time the transaction is executed. Power contracts may be, but are not limited to, power purchase agreements, enabling agreements, electricity transactions, and tariff provisions, without regard to duration, or written agreements to import or export on behalf of another person.

~~(4654)~~ “Pre-charged equipment” has the meaning in 40 C.F.R. 98.438.

~~(4755)~~ “Preference sales” means power distributed by Bonneville Power Administration to Oregon consumer-owned utilities, other than “surplus” power as that term is defined in 16 U.S.C. 839c(f) (2017).

~~(4856)~~ “Rack” means a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer.

~~(4957)~~ “Regulated entity” means any person subject to requirements to register and report under this division, as identified in OAR 340-215-0030.

~~(5058)~~ “Related entity” means any direct or indirect parent company, direct or indirect subsidiary, ~~or~~ company that shares ownership of a direct or indirect subsidiary, or company under full or partial common ownership or control.

~~(5159)~~ “Retail sales” means electricity sold to retail end users.

~~(5260)~~ “Shut down” means that the regulated entity has evidence that all industrial operations of a regulated entity are permanently shut down, including but not limited to, decommissioning and cancelling air permits. Permanent shutdown may include continued

operations of space heaters and water heaters as necessary to support decommissioning activities.

(~~53~~61) “Specified source of electricity” or “specified source” means a facility or unit which is allowed to be claimed as the source of electricity delivered. The regulated entity must have either full or partial ownership in the facility or unit, or a written power contract to procure electricity generated by that facility or unit. Specified facilities or units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by DEQ.

(~~54~~62) “Terminal” means a fuel storage and distribution facility that is supplied by pipeline or vessel, or a facility is collocated where the fuel is produced and stored, and from which fuel may be removed at a rack. In-state fuel production facilities that have distribution equipment that allow them to distribute directly to retail sites or end users meet the definition of a terminal.

(~~55~~63) “Thermal energy” means the thermal output produced by a combustion source used directly as part of a manufacturing process, industrial or commercial process, or heating or cooling application, but not used to produce electricity.

(~~56~~64) “Transmission loss correction factor” or “TL” means the correction to account for transmission losses between the busbar and receipt, which is either known if measured at the busbar, or is the default factor equal to 1.02.

(~~57~~65) “Unspecified source of electricity” or “unspecified source” means a source of electricity that is not a specified source at the time of entry into the transaction to procure the electricity. For the purposes of this division, electricity imported, sold, allocated, or distributed to end users in this state through an energy imbalance market or other centralized market administered by a market operator is considered to be an unspecified source.

(~~58~~66) “Verification” means a systematic and documented process for evaluation of an emissions data report as conducted by DEQ or in accordance with OAR chapter 340, division 272.

(~~59~~67) “Year” means calendar year.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 5-2019, amend filed 01/24/2019, effective 01/24/2019](#)

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DEQ 12-2015, f. & cert. ef. 12-10-15

DEQ 11-2011, f. & cert. ef. 7-21-11

DEQ 12-2010, f. & cert. ef. 10-27-10

DEQ 13-2008, f. & cert. ef. 10-31-08

340-215-0030

Applicability

(1) This division applies to all persons identified in sections (2) through (6) of this rule, except as provided in OAR 340-215-0032 and 340-215-0034.

(2) ~~Air contamination~~ Stationary sources and electric power system facilities. Any person that owns or operates a source listed in subsections (a) through (c) must register and report in compliance with this division, if the source's direct GHG emissions meet or exceed 2,500 MT CO₂e during the previous year. Once a source's direct GHG emissions meet or exceed 2,500 MT CO₂e during a year, the person that owns or operates the source must annually register and report in each subsequent year, regardless of the amount of the source's direct GHG emissions in future years, except as provided in OAR 340-215-0032 and OAR 340-215-0034.

(a) Any source required to obtain a Title V Operating Permit.

(b) Any source required to obtain an Air Contaminant Discharge Permit.

(c) The following sources not otherwise listed in subsection (a) or (b):

(A) Solid waste disposal facilities required to obtain a permit issued under OAR chapter 340, divisions 93 through 96, excluding facilities that meet all of the following conditions:

(i) ~~both D~~ did not accept waste during the previous year; and

(ii) ~~A~~ are not required to report greenhouse gas emissions to EPA under 40 C.F.R. part 98;
and

(iii) Are not required to report methane generation rates under OAR chapter 340, division 239.

(B) Wastewater treatment facilities required to obtain an individual National Pollutant Discharge Elimination System permit issued under OAR chapter 340, division 45; and

(C) Electric power system facilities as defined in 40 C.F.R. part 98 subpart DD located in Oregon and owned or operated by investor-owned utilities.

(3) Fuel suppliers and in-state producers.

(a) Except as provided in subsection (b), the following persons that import, sell, or distribute fuel for use in the state, must register and report in compliance with this division:

(A) Any dealer, as that term is defined in ORS 319.010 that is subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax under OAR chapter 735, division 170;

(B) Any seller, as that term is defined in ORS 319.520, that is subject to the Oregon Use Fuel Tax under OAR chapter 735, division 176;

(C) Any person that produces, imports, sells, or distributes at least 5,500 gallons of gasoline, distillate fuel oil, biofuels, or aircraft fuel during a year for use in the state and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax under OAR chapter 735, divisions 170 and 176; and

(D) Any person that imports propane for use in the state if the person's total imports brought into the state are equal to or more than 10,500 gallons of propane in a year.

(b) Persons listed in paragraphs (3)(a)(B) and (C) are not required to register and report fuel that is separately reported under this division by dealers described in paragraph (3)(a)(A).

(4) Natural gas suppliers. Any person, including but not limited to local distribution companies, interstate pipelines, and owners or operators of facilities, that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state, must register and report in compliance with this division.

(5) Electricity suppliers. All investor-owned utilities, multi-jurisdictional utilities, electricity service suppliers, consumer-owned utilities, and other persons that import, sell, allocate, or distribute electricity to end users in the state must register and report in compliance with this division.

(6) Petroleum and natural gas systems. Any person that owns or operates a facility physically located in Oregon that contains petroleum and natural gas systems industry segments listed in 40 C.F.R. 98.230(a)(1) through (10) must register and report in compliance with this division, as applicable under subsections (a) through (e):

(a) For a facility, as defined in 40 C.F.R. 98.6 that contains the industry segments listed in 40 C.F.R. 98.230(1), (3), (4), (5), (6) or (7), if the facility's greenhouse gas emissions meet or exceed 2,500 MT CO₂e per year;

(b) For a facility with respect to onshore petroleum and natural gas production as defined in 40 C.F.R. 98.238, if emission sources specified in 40 C.F.R. 98.232(c) meet or exceed 2,500 MT CO₂e per year;

(c) For a facility with respect to natural gas distribution as defined in 40 C.F.R. 98.238, if emission sources specified in 40 C.F.R. 98.232(i) meet or exceed 2,500 MT CO₂e per year;

(d) For a facility with respect to onshore petroleum and natural gas gathering and boosting as defined in 40 C.F.R. 98.238, if emission sources specified in 40 C.F.R. 98.232(j) meet or exceed 2,500 MT CO₂e per year;

(e) For a facility with respect to the onshore natural gas transmission pipeline segment as defined in 40 C.F.R. 98.238, if emission sources specified in 40 C.F.R. 98.232(m) meet or exceed 2,500 MT CO₂e per year.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 5-2019, amend filed 01/24/2019, effective 01/24/2019](#)

DEQ 12-2015, f. & cert. ef. 12-10-15

DEQ 11-2011, f. & cert. ef. 7-21-11

DEQ 12-2010, f. & cert. ef. 10-27-10

DEQ 13-2008, f. & cert. ef. 10-31-08

340-215-0032

Deferrals and Exemptions

DEQ may defer or exempt specific processes, categories of sources, or specific types of greenhouse gas emissions, from this division's requirements if DEQ determines that adequate reporting protocols are not available or that other extenuating circumstances make reporting unfeasible.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-215-0034

Changes in Ownership and Cessation of Reporting Requirements

(1) Cessation of reporting for reduced emissions.

(a) A regulated entity is no longer required to report if the regulated entity retains records as required in subsection (b), makes the report required in subsection (c), and if any of the following are applicable:

(A) Direct total reported emissions for ~~air contamination~~stationary sources required to register and report under OAR 340-215-0030(2) are less than 2,500 MT CO₂e per year for a consecutive three year period. If total reported emissions for an ~~air contamination~~stationary source meets or exceeds 2,500 MT CO₂e in any year after the reporting cessation requirements have been met, persons that own or operate the ~~air contamination~~stationary source must resume reporting as required under this division;

(B) Fuel suppliers, including natural gas suppliers, and in-state producers that cease to supply fuel in Oregon after submitting an emissions data report for the year in which they ceased to supply fuel in Oregon, provided that:

(i) Fuel suppliers and in-state producers that cease to have a reporting obligation due to a change in ownership or that cease to do business in Oregon ~~sale or relinquishment of a permanent inventory position at a terminal~~ must continue to report emissions from the reportable fuel transactions that occurred prior up to the date of to the change in ownership or up to the date the business ceases to operate in the state ~~and within the calendar year prior to the change~~; and

(ii) If a fuel supplier or in-state producer supplies fuel in Oregon in any year after the reporting cessation requirements have been met, the fuel supplier must resume reporting as required under this division;

(C) Electricity suppliers that cease to supply electricity in Oregon, after submitting an emissions data report for the year in which they ceased to supply electricity in Oregon. If an electricity supplier provides electricity in Oregon in any year after the reporting cessation requirements have been met, the electricity supplier must resume reporting as required under this division.

(b) Persons that cease reporting under this section and are no longer subject to reporting under this division must retain the records required under OAR 340-215-0042 for a period of five years following the last year that they were subject to reporting, including all production information, fuel use records, emission calculations and other records used to document greenhouse gas emissions. Persons meeting cessation requirements specified in paragraph (1)(a)(A) must retain records for each of the three consecutive years that the person does not meet or exceed the emission threshold for a period of five years following the last year they met the cessation requirements; and

(c) Persons that meet the applicable cessation of reporting requirements of this section must notify DEQ in writing of their reason(s) for ceasing to report no later than the applicable reporting deadline for the year.

(2) Cessation of reporting ~~for~~ when a stationary source is permanently shut down ~~air contamination sources~~. If the operations of an ~~air contamination~~ stationary source are changed such that all applicable greenhouse gas emitting processes and operations permanently cease to operate or are shut down, then:

(a) The person that owns or operates the ~~air contamination~~ stationary source must submit an emissions data report for the year in which the source's greenhouse gas emitting processes and operations ceased to operate;

(b) The person that owns or operates the ~~air contamination~~ stationary source must submit a written notification to DEQ that announces the cessation of reporting and certifies to the cessation of all greenhouse gas emitting processes and operations no later than the reporting deadline of the year following the cessation of operations or permanent shutdown; and

(c) This section does not apply to seasonal operational cessations, other temporary cessation of operations, or solid waste disposal facilities that are required to report under 40 C.F.R. part 98.

(3) Changes in ownership or operational control. If a regulated entity undergoes a change of ownership or operational control, the following requirements apply regarding reporting and providing notice to DEQ:

(a) The new person that owns or operates the regulated entity must notify DEQ in writing of the ownership or operational control change within 30 calendar days of the ownership or operation control change, including providing the following information:

(A) The name of the previous owner or operator;

(B) The name of the new owner or operator;

(C) The date of ownership or operator change;

(D) and The name of a new designated representative;

(E) The name of persons managing data and records required to be reported by this division; and

(F) Any changes to information reported in compliance with OAR 340-215-0040(6).

(b) Reporting responsibilities. ~~Except as specified in paragraph (B) below and OAR 340-215-0034(1)(a)(B)(i),~~ The person that owns or operates the regulated entity at the time of a reporting deadline specified in this division has the responsibility for complying with the requirements of this division, and:

(A) Except as specified in ~~OAR 340-215-0034(3)(b)~~ paragraph (B), ~~If~~ if an ownership change takes place during the year, reported data must not be split or subdivided for the year, based on ownership. A single annual emissions data report must be submitted by the person that owns or operates the regulated entity at the time of the applicable reporting deadline ~~current owner or operator~~; and

(B) If an ownership change to a fuel supplier or in-state producer takes place during the year, reported data may be subdivided for the year in compliance with OAR 340-215-0034(1)(a)(B)(i) provided that the person that owns or operates the regulated entity at the time of the applicable reporting deadline ensures that all the requirements of this division are met by the prior owner or operator.

~~(B) Fuel suppliers that cease to have emissions subject to reporting under this division as a result of an ownership change that affects supplier operations retain the responsibility for complying with the requirements of this division.~~

(4) Any person specified in OAR 340-215-0030 that has ceased reporting under this rule must resume reporting for any future year during which any of the greenhouse gas emitting processes or operations resume operation and are subject to reporting as required by this division.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-215-0040

Greenhouse Gas Registration and Reporting Requirements

(1) Each registration or emissions data report submitted by a regulated entity according to this division must contain certification by a designated representative of the truth, accuracy, and completeness of the submission. This certification and any other certification required under this division must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The certification must contain the following statement: “Based on information and belief formed after reasonable inquiry, I certify under penalty of perjury that the statements and information submitted are true, accurate and complete.”

(2) DEQ may require a regulated entity to submit or make available additional information if the materials submitted with the emissions data report are not sufficient to determine or verify greenhouse gas emissions and related information. Regulated entities must provide within 14 [calendar](#) days of notification, unless a different schedule is approved by DEQ, any and all information that DEQ requires for the purposes of assessing applicability, verifying or investigating either or both actual and suspected sources of greenhouse gas emissions, and to ascertain compliance and noncompliance with rules in this division.

(3) Calculating total greenhouse gas emissions. Total carbon dioxide equivalent emissions (CO₂e) must be calculated as the sum of the CO₂, CO₂ from biomass-derived fuels, CH₄, N₂O, and each fluorinated GHG required to be reported in an emissions data report in compliance with this division using equation A-1 in 40 C.F.R. 98.2.

(4) Alternative calculation methods. Regulated entities may petition DEQ to use calculation methods other than those specified in this division. Regulated entities must receive written DEQ approval to use alternative calculation methods prior to reporting.

(5) Third-party verification of emissions data reports. Regulated entities must comply with the requirements of OAR chapter 340, division 272 for third-party verification of emissions data reports, as applicable.

(6) [Fuel suppliers and in-state producers](#) ~~Regulated entities~~ must report legal names and addresses of all related entities subject to [this division annually by the reporting deadline](#)

specified in OAR 340-215-0046(1)(c)~~any Oregon DEQ regulations and, if known, indicate which related entity may also be a regulated entity reporting under this division.~~

(7) A regulated entity may only use book and claim accounting to report contractual deliveries of biomethane or hydrogen injected into a pipeline when:

(a) The pipeline is part of the natural gas transmission and distribution network connected to Oregon; and

(b) No person has used or claimed the environmental attributes of such biomethane or hydrogen in any other program or jurisdiction with the exception of:

(A) The federal Renewable Fuel Standard Program, any reporting required under OAR chapter 340, division 253, or the program under OAR chapter 340, division 271; or

(B) With DEQ written approval, any other program or jurisdiction where DEQ has confirmed that the claim on the environmental attributes can be made for the same use and volume of biomethane or its derivatives as is being claimed under this division.

~~to report when:~~

~~(a)The pipeline; and~~

~~(b)No person has used or claimed of such biomethane or hydrogen~~

Statutory/Other Authority: ORS 468A.050

Statutes/Other Implemented: ORS 468 & 468A

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DEQ 12-2010, f. & cert. ef. 10-27-10

DEQ 13-2008, f. & cert. ef. 10-31-08

340-215-0042

Recordkeeping Requirements

(1) Each regulated entity subject to the requirements under OAR chapter 340, division 272 must retain all records as required by this rule, and any records or other materials maintained under any applicable requirements of 40 C.F.R. part 98, in paper or electronic format, or both, for a period of at least seven years.

(2) Each regulated entity not subject to the requirements under OAR chapter 340, division 272 must retain all records as required by this rule, and any records or other materials

maintained under any applicable requirements of 40 C.F.R. part 98, in paper or electronic format, or both, for a period of at least five years.

(3) Each regulated entity must retain records sufficient to document and allow for verification of each emissions data report submitted to DEQ and make such information available for verification upon request. This includes, but is not limited to the following:

(a) A list of all units, operations, processes, and activities for which GHG emission were calculated, as applicable;

(b) The data and information used to calculate emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to the following:

(A) The GHG emissions calculations and methods used;

(B) Analytical results for the development of site-specific emissions factors;

(C) The results of any analyses for high heat value, carbon content, and other fuel or feedstock parameters conducted or as required under 40 C.F.R. part 98, if applicable; and

(D) Any facility operating data or process information used for the GHG emission calculations;

(c) Records of supporting documentation required by or used to prepare the emissions data report, including but not limited to underlying monitoring and metering data, invoices of receipts or deliveries, fuel use records, production information, sales transaction data, electricity or fuel transaction data, calibration records, and any other relevant information;

(d) Any annual emissions data report(s) submitted to DEQ, including any revised emissions data report(s);

(e) Documentation to support any revision(s) made to any emissions data report(s);

(f) Records of supporting documentation and calculations for any missing data computations according to 40 C.F.R. part 98, or otherwise. Retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment;

(g) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data to calculate emissions reported under this division; ~~and~~

(h) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data to calculate emissions reported under this division; ~~and~~;

(i) The GHG data monitoring plan required under OAR 340-215-0042(11).

(4) Regulated entities reporting biomass-derived fuels or hydrogen, as required under OAR 340-215-0044(5), must retain supporting documentation that authenticates the purchase quantity and quality of the hydrogen or gaseous or liquid biomass-derived fuel between parties. This supporting documentation:

(a) May include, but is not limited to, documentation from each upstream party, invoices, bills of lading, shipping reports, balancing reports, storage reports, in-kind nomination reports, allocation, contracts confirming the source of fuel supplied in the state, attestations, information on the environmental attributes associated with the sale or use of the fuel, renewable thermal credit records, or any combination therein; and

(b) When reporting biogas, biomethane, or hydrogen, must include attestations from each upstream party collectively demonstrating that no other upstream party can make a claim on environmental attributes that are being reported under this division. The quantity of energy covered by the environmental attributes must match or exceed the energy of fuel reported under this division.

(5) When reporting direct delivery of biogas, biomethane, or hydrogen in Oregon regulated entities must retain documentation that shows the fuel type and quantity directly delivered from the point of origin to the point of use in Oregon.

(6) When reporting contractual deliveries of biomethane or hydrogen using book and claim accounting the regulated entity must retain and make available:

(a) Records demonstrating the specific quantity of gas claimed was injected into a pipeline that is part of the natural gas transmission and distribution network connected to Oregon in the current data year and link those environmental attributes to a corresponding quantity of gas withdrawn for use in Oregon;

(b) Records demonstrating the quality of the fuel reported;

(c) Records documenting the fuel production facility, the facility's production and purification process, facility location and feedstock(s). This may include, but is not limited to, documentation of feedstock production and schemata of the production method;

(d) Records demonstrating the full lifecycle carbon intensity of the reported fuel including all records supporting the estimation of the reported carbon intensity value required under OAR 340-215-0044(5)(b)(I);

(e) If using an electronic tracking system approved by DEQ for book and claim accounting, records demonstrating the retirement of all environmental attributes of that fuel that are being reported under this division. The quantity of energy covered by the environmental attributes must match or exceed the energy of fuel reported under this division; ~~and~~

(f) Records demonstrating that the retired or claimed environmental attribute was generated from gas injected into the pipeline within the same reporting data year; and

(g) Any records used in the reporting of information required under OAR 340-215-0044(5)

~~(b) Must be made available to DEQ for verification upon request.~~

~~(57) Each regulated entity that is an in-state producer or fuel supplier, including a natural gas supplier, must retain records for exported products. Records must ~~to~~ demonstrate delivery to a final destination outside Oregon, indicate the amount delivered, type of fuel delivered, delivery date and identify the state the fuel was delivered to. This may include, but is not limited to, product transfer documents, bills of lading, invoices, contracts, meter tickets, and rail inventory sheets. ~~Documentation must be made available for verification upon request.~~~~

~~(68) Each regulated entity that is an electricity supplier must retain documentation supporting claims of specified sources of electricity. Supporting documentation must be made available for verification upon request~~

~~(79) Electricity suppliers that sell wholesale electricity must maintain records for each sale of specified or unspecified source sales. Documentation must be made available for verification upon request.~~

~~(810) Each person designated by DEQ as an asset-controlling supplier must retain documentation to confirm that the power sold by the supplier originated from the supplier's fleet of facilities and either that the fleet is under the supplier's operational control or that the supplier has exclusive rights to market electricity for the fleet or facility. Documentation must be made available for verification upon request.~~

~~(911) Regulated entities subject to 40 C.F.R. part 98 federal requirements and any entity subject to the requirements under OAR chapter 340, division 272, except electricity suppliers, must complete and retain the a written GHG data monitoring plan as required by that meets the requirements of 40 C.F.R. part 98.3(g)(5). The GHG data monitoring plan must be made available for verification upon request. Electricity suppliers subject to OAR chapter 340, division 272 must complete and retain a written GHG data monitoring plan with the following information:~~

~~(a) Information to allow the verification team to develop a general understanding of entity boundaries, operations, and electricity transactions;~~

~~(b) Reference to management policies or practices applicable to reporting under this division;~~

~~(c) List of key personnel involved in compiling data and preparing the emissions data report;~~

~~(d) Documentation of training practices and policies applicable to reporting under this division for electricity suppliers;~~

~~(e) Query data to determine the quantity of electricity (MWh) reported and query description;~~

(f) Reference to other independent or internal data management systems and records, including written power contracts and associated verbal or electronic records, full or partial ownership, invoices, and settlements data used to document whether reported transactions are specified or unspecified;

(g) Description of steps taken and calculations made to aggregate data into reporting categories;

(h) Records of preventive and corrective actions taken to address verifier and DEQ findings of past nonconformances and material misstatements;

(i) Log of emissions data report modifications; and

(j) A written description of an internal audit program that includes emissions data report review and documents ongoing efforts to improve the GHG data management.

(12) Regulated entities must make all records required to be created and retained under this division, including all required documentation described in this division, available for review and verification upon written request by DEQ within 14 calendar days of notification, unless a different schedule is approved by DEQ.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020

340-215-0044

Emissions Data Reports

(1) Regulated entities must monitor emissions and submit emissions data reports to DEQ following the requirements specified in this division. Individual emissions data reports are identified as follows:

(a) An individual emissions data report must be submitted by and for each ~~air contamination source~~ stationary source and electric power system facility required to register and report under OAR 340-215-0030(2) ~~for each individual permitted source or facility identified under that section;~~

(b) An individual emissions data report including emissions from all electric power system facilities located in Oregon must be submitted by an investor-owned utility required to register and report under OAR 340-215-0030(2)(c)(C);

(c) An individual emissions data report must be submitted by each fuel supplier and in-state producer required to register and report under OAR 340-215-0030(3);

(d) An individual emissions data report must be submitted by each natural gas supplier and in-state producer required to register and report under OAR 340-215-0030(4);

(e) An individual emissions data report must be submitted by each electricity supplier required to register and report under OAR 340-215-0030(5) and by any third-party that reports on behalf of a consumer-owner utility. A third-party reporting on behalf of a consumer-owned utility must also include all information described under OAR 340-215-0120(4) and (5), as applicable;

(f) An individual emissions data report submitted by each asset-controlling supplier seeking designation by DEQ must include all information described under OAR 340-215-0120(7); [and](#)

(g) An individual emissions data report must be submitted by the owner or operator of a facility containing petroleum and natural gas systems required to register and report under OAR 340-215-0030(6) and must include all emissions and related information described in OAR 340-215-0125.;

(2) [When monitoring emissions and submitting emissions data reports](#), ~~R~~regulated entities must:

(a) Utilize registration and reporting tools approved and issued by DEQ for all certifications and submissions;

(b) Submit and certify completed registration and emissions data reports. A separate emissions data report must be submitted for each ~~sector~~ [emission data report type identified in OAR 340-215-0044](#) [this rule, as applicable](#), and for each individual ~~air contamination source~~ [stationary source](#), and must include all data and information as required by OAR 340-215-0105 through OAR 340-215-0125, as applicable; and

(c) Submit and certify any revisions to emissions data reports. If a regulated entity identifies an error in a submission, or is notified of such an error, the regulated entity must submit a revision to correct the error within 45 [calendar](#) days of discovery. Regulated entities subject to the requirements under OAR chapter 340, division 272 must submit revisions in compliance with division 272.

(3) Emissions data reports submitted to DEQ must include the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code;

(b) Year and months covered by the report;

(c) Date of submittal;

(d) All information required by this division to calculate and report greenhouse gas emissions;

(e) Annual emissions of each greenhouse gas, as required under this division; and

(f) A certification from the designated representative as required under OAR 340-215-0040(1).

(4) Increases or decreases in emissions. ~~In addition to the requirements of section (3), if~~ a regulated entity subject to OAR 340-215-0105 submits an emissions data report that indicates emissions equaled or exceeded 25,000 MT CO₂e during the previous year, then the regulated entity must include the following information in the emissions data report:

(a) Whether a change in operations or status resulted in an increase or decrease of more than five percent in emissions of greenhouse gases in relation to the previous data year; and

(b) If there is an increase or decrease of more than five percent in emissions of greenhouse gases in relation to the previous year, the regulated entity must provide a brief narrative description of what caused the increase or decrease in emissions. Include in this description any changes ~~in air contamination source~~ to the regulated entity's permit status.

(5) When Rreporting biomass-derived fuels ~~or~~ and hydrogen, the following requirements also apply:-

(a) In addition to the requirements of section (3), a regulated entity reporting biomass-derived fuels or hydrogen must retain records as required by OAR 340-215-0042, and separately identify, calculate, and report:

(A) aAll direct emissions of biogenic CO₂ resulting from the combustion of biomass-derived fuels, ~~as provided in this section.;~~ and

(B) All direct emissions of biogenic CO₂ resulting from the oxidation of biomass-derived fuels;

(b) When reporting fuels where biomass and fossil feedstocks are processed in the same facility to produce the fuel, persons may request DEQ approval of a methodology for the attribution of the biogenic feedstock to determine the amount of the final reported product that may be reported as biogenic. Regulated entities must receive written DEQ approval to use the attribution methodology prior to reporting:-

~~(b)~~ (c) When reporting ~~fuel combustion and~~ emissions from gaseous ~~or liquid~~ biomass-derived fuels or use of hydrogen, report the following information for each contracted delivery:

(A) The type and quality of the gas, including the high heating value of the claimed gas;

(~~AB~~) Name and address of all intermediary and directthe vendor(s) from which the fuel is purchased;

(~~BC~~) Name, address, and facility type ~~of the facility~~ from which the fuel wasis produced; ~~and~~

(~~CD~~) Annual amount contractually delivered, disaggregated by each vendor, in MMBtu for biomethane, kilograms for hydrogen and standard cubic feet for other gaseous fuels, ~~and gallons for liquid fuels.~~

(E) Feedstock(s) used to produce the gas;

(F) Method(s) used to produce the gas;

(G) Month and year in which the gas was produced;

(H) Method of delivery to Oregon;

(I) The lifecycle carbon intensity, as defined in OAR chapter 340, division 253, of the pathway for the contractually delivered biomethane or hydrogen. Lifecycle carbon intensity values must be estimated using the methodology and tools described in OAR chapter 340, division 253. Upon request from a regulated entity showing good cause to use a different method than one described in OAR chapter 340, division 253, DEQ may approve another methodology;

(J) Based on the quantity of biomethane or hydrogen reported using book and claim accounting, the amount of natural gas use displaced in Oregon (MMBtu);

(K) Name and air permit source identification number for the final end user of the gas in Oregon, if applicable; and

(L) Records demonstrating that no other party can make a claim on environmental attributes that are being reported under this division. The quantity of energy covered by the environmental attributes must match or exceed the volume of fuel reported under this division. Records must demonstrate that the retired renewable thermal credits or claimed environmental attributes were generated within the same reporting data year; and

(d) Regulated entities reporting contractual deliveries of gas using book and claim accounting must also:

(A) Report the specific type and volume of gas claimed as injected into a natural gas pipeline and delivered to Oregon in the reporting data year;

(B) Report the point of injection into a pipeline connected to Oregon;

(C) If using an electronic tracking system approved by DEQ for book and claim accounting, the regulated entity must submit records showing the retirement of all environmental attributes of the gas that are being reported under this division; and

(e) Retain and make available sufficient records to allow for verification of all reporting requirements in this section, including but not limited to those described in OAR 340-215-0040(7) and OAR 340-215-0042.

(6) Regulated entities subject to the requirements of 40 C.F.R. 98.3(i) must meet those requirements for data used in developing emissions data reports.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020

340-215-0046

Reporting Deadlines

(1) Reporting deadlines.

(a) ~~Air contamination~~ Stationary sources and electric power system facilities required to register and report under OAR 340-215-0030(2) must register and submit annual emissions data reports to DEQ under OAR 340-215-0044 by the due date for the annual report for non-greenhouse gas emissions specified in the source's Title V Operating Permit or Air Contaminant Discharge Permit, or by March 31 of each year, whichever is later.

(b) The following regulated entities must register and submit annual emissions data reports to DEQ by March 31 of each year:

(A) Natural gas suppliers required to register and report under OAR 340-215-0030(4); and

(B) Petroleum and natural gas systems required to register and report under OAR 340-215-0030(6);⁵

(c) Fuel suppliers and in-state producers required to register and report under OAR 340-215-0030(3) must ~~submit annual registration~~ register and submit an annual emissions data reports to DEQ by April 30 of each year;⁵

(d) Electricity suppliers required to register and report under OAR 340-215-0030(5) must ~~submit an annual registration~~ register and submit an annual emissions data report to DEQ by June 1 of each year;⁵

(2) Electricity suppliers required to register and report under OAR 340-215-0030(5) must retain documentation supporting claims of each specified source of electricity as required by

OAR 340-215-0042(6) beginning in 2022 for data year 2021, and in each year thereafter (i.e., those persons do not have to report that information in reports submitted in 2021).~~;~~ ~~and~~

(3) Regulated entities reporting GHG emissions from biomass-derived fuels or hydrogen may request DEQ approval for exemptions from any of the requirements of OAR 340-215-0042(4) through (7) and OAR 340-215-0044(5) for the 2023 data year. DEQ will not approve exemptions that would impact the quantification of emissions reported under this division. DEQ will consider requests for exemptions based on the regulated entity's inability to implement necessary changes in time to comply with those requirements. Regulated entities must submit requests for exemptions under this section no later than February 1, 2024, and must receive written DEQ approval of exemptions prior to filing 2023 data year reports required under this division. Starting in 2025 for data year 2024, and each year thereafter, regulated entities must report and retain records as described in OAR 340-215-0042(4) through (7) and OAR 340-215-0044(5), as applicable, and DEQ will not approve any exemptions to those requirements.

~~GHG emissions from.~~

(34) DEQ may extend the reporting deadlines ~~or~~ and effective dates described in this rule as DEQ deems necessary and will issue notice of any extensions.~~;~~ ~~and~~

(5) If a reporting deadline described in this rule occurs on a Saturday, Sunday, or an Oregon state holiday, the deadline is extended to the following business day.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020

340-215-0060

Greenhouse Gas Reporting Fees

(1) Any person required to register and report under OAR 340-215-0030(2)(a) must submit greenhouse gas reporting fees to DEQ as specified in OAR 340-220-0050(3) and 340-220-0110(6).

(2) Any person required to register and report under OAR 340-215-0030(2)(b) must submit greenhouse gas reporting fees to DEQ as specified in OAR 340-216-8020 part 2.

Statutory/Other Authority: ORS 468.020 & 468A.050

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 12-2015, f. & cert. ef. 12-10-15

DEQ 5-2012, f. & cert. ef. 7-2-12

DEQ 14-2011, f. & cert. ef. 7-21-11

DEQ 11-2011, f. & cert. ef. 7-21-11
DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11
DEQ 12-2010, f. & cert. ef. 10-27-10

340-215-0105

Requirements for ~~Air Contamination~~ Stationary Sources and Electric Power System Facilities

Regulated entities required to register and report to DEQ under OAR 340-215-0030(2) must:

(1) Unless otherwise specified in this rule, ~~Calculate~~ calculate and ~~all~~ report all greenhouse gas GHG emissions for which there are using quantification methodologies described in 40 C.F.R. part 98 subparts C through UU or in this division, using methodologies described in such rules. and report Such reports must include all data and information described in such rules. 40 C.F.R. part 98 subparts C through UU, as applicable, unless otherwise specified in this rule. Emissions data reports submitted to DEQ must include all emissions with calculation methodology in 40 C.F.R. part 98 subparts C through UU or listed in this division. This division, however, describes the reporting applicability requirements and the applicability provisions of 40 C.F.R. part 98 subparts C through UU shall not be used. Such reports but may exclude emissions from categorically insignificant activities as defined in OAR 340-200-0020. If categorically insignificant activities cannot be separated from other activities, entities may report aggregate emissions that include categorically insignificant activities. In addition;

(a) Regulated entities that are in-state producers may exclude data and information described in 40 C.F.R. part 98 subpart MM and NN from an individual emissions data report described in OAR 340-215-0044(1)(a) but must comply with OAR 340-215-0110 and OAR 340-215-0115, as applicable; and

(b) Regulated entities that are carbon dioxide suppliers must report data and information described in 40 C.F.R. part 98 subpart PP;

(2) As applicable, separately report fuel types, quantities, and emissions from fuel combustion reported utilizing 40 C.F.R. part 98, subpart H - Cement Production, subpart W - Petroleum and Natural Gas Systems, and subpart AA - Pulp and Paper Manufacturing quantification methodology;

(3) Provide supplemental documentation, including data inputs for equations to describe how emissions are calculated. Data inputs include but are not limited to fuel throughput, emission factors, and production volumes or product usage used to calculate emissions;

(4) For ~~air contamination~~ stationary sources and electric power system facilities that include electricity generating units, cogeneration units, or both that meet the applicability requirements of section OAR 340-215-0030(2), follow the requirements of subparts C and D of 40 C.F.R. part 98, as applicable, in reporting emissions and other data from electricity

generating and cogeneration. In addition, such regulated entities must report the following information:

(a) Information for each facility as defined in 40 C.F.R. 98.6, including separately for each facility under the same air ~~contamination source~~ quality permit: name, address, and contact person and phone number;

(b) If applicable, report facility identification numbers assigned by the U.S. Energy Information Administration, California Air Resources Board and Federal Energy Regulatory Commission's Public Utility Regulatory Policies Act of 1978 ("PURPA") Qualifying Facility program;

(c) Report net and gross electricity generated in megawatt-hours; and

(d) Regulated entities that own or operate a cogeneration unit must report the thermal energy in MMBtu generated by a combustion source that is used directly as part of a manufacturing, industrial or commercial process, or as part of as heating or cooling application, separately for the following categories: generated thermal energy provided to end users outside the ~~air~~ contamination stationary source facility boundary and generated thermal energy for on-site industrial applications not related to electricity generation;

(5) An investor-owned utility that owns or operates electric power system facilities as defined in 40 C.F.R. part 98 subpart DD in Oregon must report emissions utilizing calculation methodologies in 40 C.F.R. part 98 subpart DD and must submit an emissions data report including all emissions from electric transmission and distribution equipment and servicing inventory physically located in Oregon for the previous year;

(6) For in-state producers of goods containing fluorinated greenhouse gases in pre-charged equipment or closed-cell foams, report the mass of each fluorinated greenhouse gas in all goods produced in a year and comply with 40 C.F.R. part 98 subpart QQ in reporting emissions to DEQ as modified below:

(a) Report total mass in metric tons of each fluorinated greenhouse gas contained within pre-charged equipment or closed cell foams;

(b) For each type of pre-charged equipment with a unique combination of charge size and charge type, report the identity of the fluorinated greenhouse gas used as a refrigerant or electrical insulator, charge size, holding charge, where applicable and number produced;

(c) For closed-cell foams the identity of the fluorinated greenhouse gas in the foam, the density of the fluorinated GHG in the foam (kilograms of fluorinated greenhouse gas per cubic feet), and the volume of foam produced (~~cubic feet~~ tons) for each type of closed-cell foam with a unique combination of F-GHG density and identity; ~~and~~

(d) Calculate greenhouse gas emissions from foam blowing operations using the following equation. When the blowing agent is a blend of gases, emissions must be calculated

separately for each constituent of the blowing agent used during the foam **manufacture** manufacturing process:-

$$FCO2e = \sum \{[(TFP \times (ATi + ASi) \times BAFi) + (FP \times BAFi \times MFLi)] \times GWPi\} \times 0.907185$$

$$CO2e = \sum \{[(Qi \times FYLEi) + (Qi \times ALi \times (Y - 1)) + (Qi \times Li)] \times GWPi\} / 2204.62$$

For the purposes of the calculation in this subsection (d), the following definitions apply:

“FCO2e” means annual total mass of fluorinated greenhouse gas emissions of carbon dioxide equivalent (metric tons);

“TFP” means total amount of foam produced (tons);

“ATi” means average percent blowing agent, i, in trim (tons);

“ASi” means average percent blowing agent, i, in scrap (tons);

“BAFi” means percent of blowing agent, i, constituent in foam (tons);

“FP” means finished product (tons);

“MFLi” means mass fraction loss from off gassing curve for blowing agent, i, approved by DEQ (tons/year);

“GWPi” means global warming potential for each constituent of the blowing agent found in table A-1 of 40 C.F.R. part 98; and

“0.907185” is applied to convert tons to metric tons; and;

~~“Qi” means quantity of blowing agent, i, (in pounds) used to manufacture the foam;~~

~~“FYLEi” means first year loss emission factor associated with the foam application;~~

~~“ALi” means annual loss emission factor associated with the foam application;~~

~~“Y” means number of years remaining in the project;~~

~~“Li” means quantity of blowing agent, i, released during product output including all processes (such as foam shaping, grinding, trimming, and shaving) leading to product formation;~~

~~“2204.62” is applied to convert pounds to metric tons conversion; and~~

~~“GWPI” means GWP for each GHG from table A-1 of 40 C.F.R. part 98;~~

(e) Regulated entities that use fluorinated gasses described in table A-1 of 40 C.F.R. part 98 as blowing agents in foam blowing operations may request DEQ approval of alternate emissions calculation methods for this operation, process, or activity as described in OAR 340-215-0040(4). Regulated entities must receive written DEQ approval to use the petitioned emissions calculation methods prior to reporting;:

(7) Calculate and report emissions of biogenic CO₂ that originate from biomass-derived fuels separately from other greenhouse gas emissions. Report and retain information described in OAR 340-215-0042(4) and OAR 340-215-0044(5), as applicable, and uUse the following procedures when calculating emissions from biomass-derived fuels that are intermixed with fossil fuels:

(a) When calculating emissions from the combustion of municipal solid waste (MSW) or any other fuel for which the biomass fraction is not known, follow the procedures specified in 40 C.F.R. 98.33(e)(3) to specify a biomass fraction;

(b) When calculating emissions from a ~~biomethane~~ biomass-derived gas, reported using book and claim accounting, and natural gas mixture ~~as described in 40 C.F.R. 98.33(a)(2)~~ calculate emissions based on contractual deliveries of ~~biomethane~~the biomass-derived gas, with the remainder of emissions being from natural gas, calculated according to the applicable methodology in 40 C.F.R. part 98; and

~~(c) When calculating emissions from a biomethane and natural gas mixture as described in 40 C.F.R. 98.33(a)(4) using a continuous emission monitoring system (CEMS), or when calculating those emissions according to Subpart D of 40 C.F.R. part 98, calculate the biomethane emissions as described above, with the remainder of emission being from natural gas;~~

~~(c)~~ (d) When calculating emissions from a biogas and natural gas mixture using 40 C.F.R. 98.33(a)(4) or the carbon content method described in 40 C.F.R. 98.33(a)(3) or when calculating those emissions according to subpart D of 40 C.F.R. part 98, calculate biogas emissions using a carbon content method as described in 40 C.F.R. 98.33(a)(3), with the remainder of emissions being from natural gas;:

(8) When reporting hydrogen using book and claim accounting, report the energy, volume, and the total emissions that would have resulted from the full combustion or oxidation of the displaced gaseous fuel using the following procedures:

(a) When reporting hydrogen that displaces a gaseous fuel that is combusted, calculate and report the equivalent energy and volume of the gaseous fuel. Report the emissions that would have resulted from the full combustion of that fuel using applicable methodology in 40 C.F.R. part 98; and

(b) When reporting hydrogen that displaces a gaseous fuel or feedstock that is used in a non-combustion process, calculate and report the amount of fuel or feedstock that is displaced by the reported amount of hydrogen. A stationary source must receive prior written DEQ approval to use its calculation methods to determine the amount of displaced fuel or feedstock it reports. Report the emissions that would have resulted from the non-combustion use of the fuel that was displaced using applicable methodology in 40 C.F.R. part 98.

(98) When reporting emissions from the combustion of natural gas, report the name(s) of the supplier(s) of natural gas to the facility, including information identifying the seller of natural gas, natural gas customer account, and the annual MMBtu delivered to each account according to billing statements (10 therms = 1 MMBtu); and

(109) Report the air permit numbers and NAICS codes according to 40 C.F.R. 98.3(c)(10).

Statutory/Other Authority: ORS 468A.050

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020

340-215-0110

Requirements for Fuel Suppliers and In-State Producers

Fuel suppliers and in-state producers including but not limited to gasoline, distillate fuel oil, propane, and aircraft fuel dealers required to register and report under OAR 340-215-0030(3), but not including natural gas suppliers, must:

(1) Report all quantities of fuel disbursed ~~for use~~ in the state by fuel type, regardless of whether the fuel is intended for transportation or non-transportation use and regardless of whether the fuel is subject to state or federal fuel taxes. Such reports must include the fuel type and quantity imported, sold, or distributed ~~for use~~ in this state during the previous year and quantities must be reported in standard cubic feet for gaseous fuels and gallons for liquid fuels. In addition:

(a) Fuel suppliers and in-state producers who report ~~renewable~~-biomass-derived fuels must provide supporting documentation as required under OAR 340-215-0044(5); and

(b) Meeting the requirements of this division does not replace the requirements that must be met in order to satisfy the requirements of OAR chapter 340, division 253 for any given fuel supplier subject to the Oregon Clean Fuels Program (CFP);

(2) For reporting of regulated fuels as defined under OAR chapter 340, division 253, comply with OAR chapter 340 division 253 and submit quarterly and annual reports. In annual reports, persons dealing in regulated fuels as defined by OAR 340-253-0200(2) may further report fuel volumes by individual fuel type as defined in 40 C.F.R. part 98 subpart MM. If

volumes are not reported by individual fuel type, default emission factors defined in 40 C.F.R. part 98 subpart MM must be used for emissions calculation purposes;

(3) For reporting all other fuels not reported as regulated fuels under section (32) including, but not limited to, importers and producers of opt-in fuels and small importers of finished fuels as defined by OAR 340-253-0040(86), report fuel imported or produced in the state during the previous year by fuel type as defined in 40 C.F.R. part 98 subpart MM. Report as follows:

(a) For fuel imported outside of the bulk system rReport the type and quantity in temperature corrected (net) gallons of fuel the fuel supplier held title to or owned at the time the fuel is brought into Oregon from out of state or produced in Oregon that is delivered directly to intermediate storage, retail, or end users. Exclude fuel imported outside of the bulk system and delivered to a terminal storage facility in Oregon;

(b) Oregon position holders must rReport the type and quantity in temperature corrected (net) gallons of fuel owned and dispersed from terminals in Oregon as reflected in the records of the terminal operator~~a position holder. This applies to the fuel supplier owning the fuel at the loading rack as it is being dispensed~~Exclude fuel that is transferred;

(A) From one terminal storage facility in Oregon to another terminal storage facility in Oregon; and

(B) Between entities within the terminal. Regulated entities must only report fuel that is owned as it is disbursed from the terminal;

(c) If formulations are unknown for a given quantity of gasoline, report that quantity of gasoline using the fuel type “Gasoline formulation unknown.” If distillate or residual fuel oil numbers are unknown for a given quantity of distillate fuel oil, report that quantity using the fuel type “Diesel type unknown;” and

(d) Regulated entities must eExclude ~~fuel for which a final destination outside of Oregon can be demonstrated; and;~~ gallons that the regulated entity imported or dispensed as a position holder in Oregon and that were subsequently exported out of state. Exported volumes must be excluded based on documentation that meets the requirements of this division, as typically provided in a bill of lading or product transfer document. Regulated entities must report all volumes of fuel imported or dispensed from a position holder in Oregon that are not documented as exported;

(4)(a) Fuel suppliers exporting fuel dispensed from a terminal in Oregon (each an “exporter”) must notify the position holder owning title to that fuel as it was dispensed if the product transfer documents issued at the terminal do not accurately reflect the state where the fuel was ultimately delivered. The notification must:

(A) Occur 30 calendar days prior to the reporting deadline; and

(B) Include fuel types, volumes and delivery destination, based on documentation;

(b) For fuel that was (i) delivered from the terminal to an intermediate storage location and then exported after being dispensed from intermediate storage, (ii) commingled with the same type of fuel, and (iii) purchased from multiple position holders, the exporter must inform position holders of the exports using the following method: The exporter must calculate the total exports from that intermediate storage tank by calendar quarter and fully tabulate which position holders it purchased fuel from and that was delivered to intermediate storage for that quarter. The exporter must then apportion the exported gallons to the position holders based on the percentage of fuel that the exporter purchased from each of the position holders in the calendar quarter. The entity exporting the fuel must provide written documentation to the position holder that it used this method to apportion the exports. Documentation must be made available to DEQ and the impacted position holder within 14 calendar days of a request from either DEQ or the position holder; and;

(54) For all fuel suppliers and in-state producers, calculate and report the CO₂, CO₂ from biomass-derived fuels, CH₄, N₂O, and CO₂e emissions in metric tons that would result from the complete combustion or oxidation of the annual quantity of fuel imported, sold, or distributed for use in this state. In such reports, GHG emissions must be calculated as follows:

(a) Utilize emission quantification methodology prescribed in 40 C.F.R. part 98 subpart MM and equation MM-1 as specified in 40 C.F.R. 98.393(a)(1) to calculate the CO₂ emissions and CO₂ from biomass-derived fuels that would result from the complete combustion of the fuel reported under this division;

(b) Calculate CH₄ and N₂O emissions using equation C-8 and Table C-2 as required in 40 C.F.R. 98.33(c)(1); and

(c) Utilize a DEQ assigned emission factor for fuel and emission types not listed in 40 C.F.R. part 98.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-215-0115

Requirements for Natural Gas Suppliers and In-State Producers

Natural gas suppliers and in-state producers required to register and report under OAR 340-215-0030(4) must:

(1) Report the information required including the volume (Mscf), energy (MMBtu), type of natural gas, [biomethane or hydrogen](#) and associated emissions for all gas imported, sold, [produced](#) or distributed for use in the state for the previous year, and:

(a) If the regulated entity has developed reporter-specific emission factors or high heating values, then report the following:

(A) Information used to develop the reporter-specific emission factor(s) and/or higher heating value(s);

(B) The developed emission factor(s); and

(C) The developed higher heating value(s);

(b) For the purposes of this section large natural gas end users are end users receiving greater than or equal to 460,000 Mscf of natural gas during the year; ~~and~~

(c) Report biomethane [contractually delivered to Oregon](#) as specified under OAR 340-215-0044(5); ~~and~~

[\(d\) Natural gas suppliers contractually delivering hydrogen to end users in Oregon must also report information as specified under OAR 340-215-0044\(5\);](#)

(2) For local distribution companies, calculate and report greenhouse gas emissions using quantification methodologies and report data and information described in 40 C.F.R part 98 subpart NN for suppliers of natural gas and natural gas liquids, as applicable, unless otherwise specified in this rule including the following:

(a) In addition to submitting all information needed to meet the requirements of 40 C.F.R. 98.406(b)(1) through (b)(7), report the annual MMBtu of natural gas associated with the volumes reported;

(b) Report the amount of natural gas delivered to each large natural gas end user separately in the state including customer information required in 40 C.F.R. 98.406(b)(12), and source identification number if available; and

(c) Report identifying information for each natural gas marketer contracting use of the distribution system during the year including company name; ~~and~~ address;

(3) For interstate pipeline owners and operators, report the total amount of natural gas delivered to end users in the state for use in the state, excluding gas delivered to an Oregon local distribution company, and:

(a) Report the annual amount of natural gas delivered to each large natural gas end user separately in the state including customer information required in 40 C.F.R. 98.406(b)(12), and source identification number(s) if available. In instances where multiple end users are downstream of a delivery point that registers at least 460,000 Mscf annually report the total gas delivered and identifying information for each user downstream of the delivery point; and

(b) Report identifying information for each natural gas marketer contracting use of the distribution system during the year including company name, and address;

(4) ~~For importers of natural gas, compressed natural gas, or liquefied natural gas into the state by any means other than a pipeline distribution system or interstate pipeline, including but not limited to imports by rail or truck, and in-state producers of natural gas or biomethane~~ must separately report:

(a) ~~The total amount of natural gas, compressed natural gas, and liquefied natural gas and biomethane imported or produced and delivered or sold for into the state for use in the state, excluding volumes delivered to an Oregon local distribution company or injected into an interstate pipeline; and:~~

(b) ~~Such regulated entities must report~~ the total amount of natural gas, compressed natural gas, ~~or liquefied natural, or biomethane~~ delivered to each large natural gas end user in the state including customer information required in 40 C.F.R. 98.406(b)(12), and source identification number if available; and

~~(5) For regulated entities that own or operate facilities that make liquefied natural gas or compressed natural gas products report the total annual amount of natural gas delivered or sold for use in the state, excluding volumes delivered to an Oregon local distribution company, report the annual amount of natural gas delivered to each large natural gas end user in the state including customer information required in 40 C.F.R. 98.406(b)(12), and source identification number if available; and~~

(6) For all natural gas suppliers, calculate and report the CO₂, biogenic CO₂ from any reported biomass-derived fuel, CH₄, N₂O, and CO₂e emissions in metric tons that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state. Calculate and report greenhouse gas emissions for the previous year utilizing emission quantification methodology prescribed in 40 C.F.R. part 98 and as follows:

(a) Calculate greenhouse gas emissions separately for natural gas, compressed natural gas ~~and~~ liquefied natural gas and biomethane;

(b) Calculate and report CO₂ emissions as follows:

(A) Local distribution companies must utilize quantification methodologies and report all data elements as required by 40 C.F.R. 98 subpart NN - Suppliers of Natural Gas and Natural Gas liquids for the total volume of gas supplied in the state; and

(B) All other natural gas suppliers including interstate pipeline owners or operators, importers of natural gas, ~~and owners or operators of facilities~~ in-state producers ~~that make natural gas products~~ must calculate and report using calculation methodology 1 as specified in 40 C.F.R. 98.403(a)(1);

(c) Calculate and report CH₄ and N₂O emissions from natural gas imported, sold, or distributed for use in this state using equation C-8 and table C-2 as required in 40 C.F.R. 98.33(c)(1) for all fuels subject to reporting;

(d) CO₂ emissions from biomass-derived fuel are based on the fuel the natural gas supplier ~~contractually purchased on behalf of~~ and contractually delivered to end users. Emissions from biomethane are calculated using the methods for natural gas required by this section, including the use of the emission factor for natural gas in 40 C.F.R. 98.408, table NN-1. Natural gas suppliers who report emissions from biomethane must report information required by OAR 340-215-0044(5) and provide retain supporting documentation as required under OAR 340-215-00424(5); and

(e) Not report data or emissions for exported products ~~for which a final destination outside Oregon can be demonstrated~~.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020

340-215-0120

Requirements for Electricity Suppliers

Electricity suppliers required to register and report under OAR 340-215-0030(5) must report information and emissions related to the generation of electricity delivered or distributed to end users in this state during the previous year, regardless of whether the electricity was generated in this state or imported. Such reports must;

(1) Report the megawatt-hours (MWh) and greenhouse gas emissions from the generation of electricity from unspecified sources and from each specified source delivered or distributed to end users in Oregon during the previous year, as follows:

(a) For unspecified sources, report the MWh of electricity and calculate and report the associated GHG emissions according to section (5)(a). Separately identify the MWh for power purchased from any energy imbalance market(s) or other centralized market(s);

(b) For specified sources of electricity, report as follows:

(A) Report specified sources when one of the following applies:

(i) The electricity supplier is a facility or unit operator, full or partial owner, party to a power contract for a fixed percentage of generation from the facility or generating unit, party to a tolling agreement and rents a facility or unit from the owner or is an exclusive power deliverer that is not a retail provider and that has prevailing rights to claim electricity from the specified source; or

(ii) The electricity supplier has a power contract for electricity from a DEQ-approved asset-controlling supplier (ACS) or generated by a facility or unit, subject to meeting all other specified source requirements and can provide documentation that the contract was designated at the time the transaction was executed; and

(B) Electricity suppliers reporting specified sources must:

(i) Report the MWh of electricity disaggregated by facility or unit, and by fuel type or ACS, as measured at the busbar. If not measured at the busbar, report the amount of electricity delivered in Oregon, including estimated transmission losses using the default transmission loss correction factor of 1.02;

(ii) Report the GHG emissions associated with the electricity calculated according to subsection (5)(b); and

(iii) Report details about each specified facility, unit, or ACS, including fuel type or types and information about the seller, including company name and contact information;

(c) For electricity suppliers that are multi-jurisdictional utilities that deliver or distribute electricity in Oregon, report total MWh and greenhouse gas emissions from the generation of electricity from specified and unspecified sources in the utility's service territory or power system as required by subsections (a) and (b), and also report the following:

(A) Wholesale electricity purchased and taken from specified sources (MWh);

(B) Wholesale electricity purchased from unspecified sources (MWh);

(C) Wholesale electricity sold from specified sources (MWh); and

(D) Retail sales (MWh) to customers in Oregon's portion of the utility's service territory or power system; ~~and~~

(d) For electricity suppliers that are not multi-jurisdictional utilities, proportionally adjust all resources on an annual basis to account for the sale of power to the wholesale market that is not known to be just specified or unspecified; and

(e) Electric companies and electricity service suppliers as defined in ORS 757.600 subject to ORS 469A.210 must separately report and identify electricity (MWh) and greenhouse gas emissions associated with electricity acquired from net metering of customer resources or a qualifying facility under the terms of the Federal Energy Regulatory Commission's Public Utility Regulatory Policies Act of 1978 ("PURPA") Qualifying Facility program;

(2) Use DEQ approved and published emission factors for calculating and reporting GHG emissions, including;

(a) The emission factor for calculating emissions from unspecified power is 0.428 MT CO₂e/MWh;

(b) Electricity suppliers reporting specified source power provided by a multi-jurisdictional utility or DEQ-approved ACS must calculate emissions using a system emission factor published by DEQ, which will be calculated by DEQ according to subsection (6)(b);

(c) Electricity suppliers reporting specified source power from a specific facility or unit must calculate emissions using emission factors published by DEQ, which will be calculated according to subsection (6)(a); and

(d) For reporting emissions from specified sources for which DEQ has not published an approved emission factor, electricity suppliers may propose facility-specific or unit-specific anthropogenic and biogenic emission factors expressed as metric tons of carbon dioxide equivalent (MT CO₂e) per megawatt-hour of generation. Such a proposal to DEQ must include documentation describing how the proposed facility-specific or unit-specific emission factors are derived, including the necessary information for verification of these calculations. DEQ may adopt the proposed emission factors or may develop and assign facility-specific or unit-specific emission factors for the specified source. The regulated entity may use such an emission factor only if approved by DEQ;

(3) For utilities that do not receive electricity from other sources and who serve load exclusively in Oregon, a third-party report from the Bonneville Power Administration (BPA), reporting the preference sales provided to Oregon consumer-owned utilities may satisfy such regulated party's obligations under this division. If BPA does not report this information to DEQ, those consumer-owned utilities must report the information as required by this division;

(4) For a consumer-owned utility, a third-party may submit the registration and report, and the report may include information for more than one consumer-owned utility, provided that the report contains all information required under this division for each individual consumer-owned utility, and:

(a) The consumer-owned utility must notify DEQ at least 30 [calendar](#) days prior to the reporting deadline that a third-party will be reporting on its behalf. This notification must include the name and contact information for the third-party;

(b) This notification may include notice that the third-party will report on behalf of the consumer-owned utility for future years;

(c) For any future year in which there is a change in the third-party reporting on behalf of the consumer-owned utility, the consumer-owned utility must provide notification to DEQ at least 30 [calendar](#) days prior to the reporting deadline;

(d) Third-parties reporting on behalf of a consumer-owned utility must notify DEQ and request authorization from DEQ prior to submitting any reports. This notification must include identifying information of the consumer-owned utility; and

(e) Each consumer-owned utility must ensure that reports submitted on its behalf meet all requirements of this division;

(5) Calculate and report greenhouse gas emissions as follows:

(a) Emissions reported for electricity associated with unspecified sources must be calculated using the following equation:

$$\text{CO}_2\text{e} = \text{MWh} \times \text{TL} \times \text{EF}_{\text{unsp}}$$

For the purposes of this calculation, “EF_{unsp}” means default emission factor for unspecified electricity equal to 0.428 MT CO₂e/MWh;

(b) Emissions reported for electricity associated with specified sources must be calculated using the following equation:

$$\text{CO}_2\text{e} = \text{MWh} \times \text{TL} \times \text{EF}_{\text{sp}}$$

For the purposes of this calculation, “EF_{sp}” means facility-specific, unit-specific, or ACS system emission factor published by DEQ; and

(c) Emissions reported by a multi-jurisdictional utility may be calculated according to a cost allocation methodology approved by the Oregon Public Utility Commission (OPUC) using the following equation:

$$\text{CO}_2\text{e} = \text{MWh}_{\text{MJOR}} \times \text{TL} \times \text{EF}_{\text{MJ}}$$

For the purposes of this calculation, the following definitions apply:

“MWh_{MJOR}” means total megawatt-hours of electricity delivered to retail customers in Oregon;

“EF_{MJ}” means multi-jurisdictional utility system emission factor calculated according to equation (6)([bc](#)) (MT CO₂e/MWh);

(6) For electricity suppliers, use emission factors calculated and published by DEQ for calculating and reporting emissions, as follows:

(a) DEQ will calculate facility-specific or unit-specific emission factors using the following equation:

$$\text{EF}_{\text{sp}} = \text{Esp} / \text{EG}$$

For the purposes of this calculation, the following definitions apply:

“EFsp” means the facility-specific or unit specific emission factor;

“Esp” means CO2e emissions for a specified facility or unit for the report year (MT CO2e);

“EG” means net generation from a specified facility or unit for the report year;

(b) DEQ will calculate ~~multi-jurisdictional utility and~~ asset-controlling supplier system emission factors using the following equations:

$$EFSYS = \text{Sum of System Emissions MT CO}_2\text{e} \div \text{Sum of System MWh}$$

$$\text{Sum of System Emissions MT CO}_2\text{e} = \sum \text{Esp} + \sum (\text{PEsp} \times \text{EFsp}) + \sum (\text{PEunsp} \times \text{EFunsp}) - \sum (\text{SEsp} \times \text{EFsp})$$

$$\text{Sum of System MWh} = \sum \text{EGsp} + \sum \text{PEsp} + \sum \text{PEunsp} - \sum \text{SEsp}$$

For the purposes of the calculations, the following definitions apply:

“ΣEsp” means Emissions from Owned Facilities. Sum of CO2e emissions from each specified facility/unit in the supplier’s fleet, consistent with section (5)(b) (MT CO2e);

“ΣEGsp” means Net Generation from Owned Facilities. Sum of net generation for each specified facility/unit in the supplier’s fleet for the data year as reported to DEQ under this division (MWh);

“PEsp” means Electricity Purchased from Specified Sources. Amount of electricity purchased wholesale and taken from specified sources by the supplier for the data year as reported to DEQ under this division (MWh);

“PEunsp” means Electricity Purchased from Unspecified Sources. Amount of electricity purchased wholesale from unspecified sources by the supplier for the data year as reported to DEQ under this division (MWh);

“SEsp” means Electricity Sold from Specified Sources. Amount of wholesale electricity sold from specified sources by the supplier for the data year as reported to DEQ under this division (MWh);

“EFsp” means CO2e emission factor as defined for each specified facility or unit calculated consistent with section (5)(b) (MT CO2e/MWh);

“EFunsp” means default emission factor for unspecified sources calculated consistent with section (5)(a) (MT CO2e/MWh); [and](#)

(c) DEQ will calculate multi-jurisdictional utility system emission factors consistent with a cost allocation methodology approved by the Oregon Public Utility Commission using the following equation:

$$EFMJ = \text{Sum of System Emissions MT CO}_2\text{e} \div \text{Sum of System MWh}$$

$$\text{Sum of System Emissions MT CO}_2\text{e} = \frac{\sum \text{Esp} + \sum (\text{PEsp} \times \text{EFsp}) + \sum (\text{PEunsp} \times \text{EFunsp}) - \sum (\text{SEsp} \times \text{EFsp})}{\sum (\text{SEsp} \times \text{EFsp})}$$

$$\text{Sum of System MWh} = \sum \text{EGsp} + \sum \text{PEsp} + \sum \text{PEunsp} - \sum \text{SEsp}$$

For the purposes of the calculations, the following definitions apply:

“ΣEsp” means Emissions from Owned Facilities allocated to serve retail customers in Oregon pursuant to a cost allocation methodology approved by the Oregon Public Utility Commission. Sum of CO₂e emissions from each specified facility/unit in the supplier’s fleet, consistent with section (5)(b) (MT CO₂e);

“ΣEGsp” means Net Generation from Owned Facilities allocated to serve retail customers in Oregon pursuant to a cost allocation methodology approved by the Oregon Public Utility Commission. Sum of net generation for each specified facility/unit in the supplier’s fleet for the data year as reported to DEQ under this division (MWh);

“PEsp” means Electricity Purchased from Specified Sources allocated to serve retail customers in Oregon pursuant to a cost allocation methodology approved by the Oregon Public Utility Commission. Amount of electricity purchased wholesale and taken from specified sources by the supplier for the data year as reported to DEQ under this division (MWh);

“PEunsp” means Electricity Purchased from Unspecified Sources allocated to serve retail customers in Oregon pursuant to a cost allocation methodology approved by the Oregon Public Utility Commission. Amount of electricity purchased wholesale from unspecified sources by the supplier for the data year as reported to DEQ under this division (MWh);

“SEsp” means Electricity Sold from Specified Sources consistent with a cost allocation methodology approved by the Oregon Public Utility Commission. Amount of wholesale electricity sold from specified sources by the supplier for the data year as reported to DEQ under this division (MWh);

“EFsp” means CO₂e emission factor as defined for each specified facility or unit calculated consistent with section (5)(b) (MT CO₂e/MWh);

“EFunsp” means default emission factor for unspecified sources calculated consistent with section (5)(a) (MT CO₂e/MWh); and

(7) For a person that owns or operates inter-connected electricity generating facilities or has exclusive rights to claim electricity from these facilities even though it does not own them may request that DEQ designate them as an asset-controlling supplier, and:

(a) Persons seeking designation by DEQ as an asset-controlling supplier must annually adhere to the requirements of this division, or be removed from asset-controlling supplier designation;

(b) In addition to submitting the applicable information as required by this rule, persons seeking designation by DEQ as an asset-controlling supplier must also submit the following by June 1 of each year:

(A) General business information, including business name and contact information;

(B) A list of officer names and titles;

(C) Wholesale electricity purchased and taken from specified sources (MWh);

(D) Wholesale electricity purchased from unspecified sources (MWh);

(E) Wholesale electricity sold from specified sources (MWh); and

(F) An attestation, in writing and signed by designated representative of the applicant that the information submitted is true, accurate, and complete; and

(c) DEQ will calculate and publish a supplier-specific system emission factor according to subsection (6)(b) for designated asset-controlling suppliers.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-215-0125

Requirements for Petroleum and Natural Gas Systems

(1) Any person required to register and report under OAR 340-215-0030(6) must submit an emissions data report utilizing EPA quantification methodologies and data reporting requirements in 40 C.F.R part 98 subpart W.

(2) The emissions data report submitted according to section (1) must:

(a) Include greenhouse gas emissions from each facility (or part of a facility for the onshore natural gas transmission pipeline industry segment) listed in OAR 340-215-0030(6)(a) through (e) that is physically located in Oregon and that meets the applicability threshold in OAR 340-215-0030(6); and

(b) If applicable, separately indicate subpart W emissions associated with an air permitted facility and report identifying information for that facility including the air permit identification number.

Statutory/Other Authority: ORS 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468 & 468A

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

[340-215-0130](#)

[Separate Violations](#)

[Each metric ton of greenhouse gas emissions not reported according to the requirements of this division by a covered fuel supplier, as defined in OAR 340-271-0020, that affects applicability determinations, compliance instrument distribution, or compliance obligations under the Oregon Climate Protection Program, OAR Chapter 340 Division 271, is a separate violation of this division.](#)



State of Oregon Department of Environmental Quality

Draft Rules – Division 271

Edits Highlighted

Oregon Administrative Rules Chapter 340 Division 271 CLIMATE PROTECTION PROGRAM

340-271-0010

Purpose and Scope

(1) This division establishes rules and requirements for the Climate Protection Program for certain air contamination sources that emit greenhouse gases or that cause greenhouse gases to be emitted.

(2) Climate change caused by anthropogenic greenhouse gas emissions has detrimental effects on the overall public welfare of the State of Oregon. Reducing greenhouse gas emissions and mitigating climate change will improve the overall public welfare of Oregon. In particular, reducing greenhouse gas emissions will improve the welfare of environmental justice communities.

(a) Fuel combustion and industrial processes result in emissions of greenhouse gases, which are air contaminants that cause climate change;

(b) Reducing greenhouse gas emissions may also reduce emissions of other air contaminants, which may improve air quality for Oregon communities; and

(c) Environmental justice communities in Oregon are disproportionately burdened by air contamination, including through disproportionate risk of the impacts of climate change.

(3) The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. To support these purposes, this division:

(a) Requires that covered entities reduce greenhouse gas emissions;

(b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;

(c) Prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities;

(d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and

(e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements in part through contributing community climate investment funds to support projects that reduce greenhouse gas emissions and prioritize benefits for environmental justice communities in Oregon.

(4) DEQ administers this division in all areas of the State of Oregon and subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement OAR 340-271-0150(3) of this division within its area of jurisdiction.

(5)(a) Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(b) The proceedings authorized by subsection (a) may be instituted without the necessity of prior DEQ notice, hearing and order.

(c) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to 468.140 and OAR chapter 340, divisions 11 and 12.

[\(6\) If any dates under this division occur on a Saturday, Sunday, or a state holiday, the deadline is extended to the following business day](#)

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.135 & 468.100

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.135, 468.035, 468A.010, 468A.015, 468A.045 & 468.100

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0020

Definitions

The definitions in OAR 340-200-0020, OAR 340-215-0020, and this rule apply to this division. If the same term is defined in this rule and either or both OAR 340-200-0020 and OAR 340-215-0020, the definition in this rule applies to this division. If the same term is defined in OAR 340-200-0020 and OAR 340-215-0020, but not in this rule, then the definition in OAR 340-215-0020 applies to this division.

- (1) “Air contamination source” has the meaning given the term in ORS 468A.005. Air contamination sources include, without limitation, stationary sources, fuel suppliers, in-state producers, and local distribution companies.
- (2) “Best available emissions reduction order” or “BAER order” means a DEQ order establishing required actions the owner or operator of a covered stationary source must take to limit covered emissions from the covered stationary source. ~~The BAER order will identify the conditions and requirements that must be included in the CPP permit addendum.~~
- (3) “Biomass-derived fuels” has the meaning given the term in OAR 340-215-0020. Biomass-derived fuels include, without limitation, biomethane, biodiesel, renewable diesel, renewable propane, woody biomass, and ethanol.
- (4) “Cap” means the total number of compliance instruments generated by DEQ for each calendar year.
- (5) “Climate Protection Program permit addendum” or “CPP permit addendum” means written authorization that incorporates the requirements of this division into a permit by amending an Air Contaminant Discharge Permit or a Title V Operating Permit.
- (6) “Climate Protection Program permit” or “CPP permit” means a permit issued to a covered fuel supplier according to this division.
- (7) “Community climate investment credit” or “CCI credit” or “credit” means an instrument issued by DEQ to track a covered fuel supplier’s payment of community climate investment funds, and which may be used in lieu of a compliance instrument, as further provided and limited in this division.
- (8) “Community climate investments,” “community climate investment funds” or “CCI funds” means money paid by a covered fuel supplier to a community climate investment entity to support implementation of community climate investment projects and any interest that accrues on the money while it is held by a CCI entity or subcontractor.
- (9) “Community climate investment entity” or “CCI entity” means a nonprofit organization that has been approved by DEQ as a CCI entity and that has entered into a written agreement with DEQ consistent with OAR 340-271-0920 to implement projects supported by community climate investment funds.
- (10) “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one MT CO₂e of greenhouse gases. Compliance instruments may not be divided into fractions.
- (11) “Compliance obligation” means the total quantity of covered emissions from a covered fuel supplier rounded to the nearest metric ton of CO₂e.

(12) “Compliance period” means a period of multiple consecutive calendar years, as described in OAR 340-271-0440.

(13) “Covered emissions” means the greenhouse gas emissions described in any of subsections OAR 340-271-0110(3)(b), (4)(b) and (5)(b), for which covered entities may be subject to the requirements of this division.

(14) “Covered entity” means an air contamination source subject to the requirements of this division. A covered entity may be either a covered fuel supplier, a covered stationary source, or both.

(15) “Covered fuel supplier” means an air contamination source that is either:

(a) A fuel supplier or in-state producer as described in OAR 340-271-0110(3); or

(b) A local distribution company as described in OAR 340-271-0110(4).

(16) “Covered stationary source” means an air contamination source described in OAR 340-271-0110(5).

(17) “Designated representative” means the person responsible for certifying, signing, and submitting any registration, report, or form required to be submitted according to this division, on behalf of a covered entity. For the owner or operator of a covered stationary source with an Oregon Title V Operating Permit, the designated representative is the responsible official and certification must be consistent with OAR 340-218-0040(5).

(18) “Environmental justice communities” means communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

~~(19) “Evaluation period” means a period of multiple consecutive calendar years, as described in Table 5 in OAR 340-271-9000, that DEQ uses to evaluate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company.~~

(19) “Existing source” means a source that is operating under the authority of either a current Air Contaminant Discharge Permit or Title V Operating Permit or, when the term of an issued permit has expired, under the authority of OAR 340-216-0082(1) or OAR 340-218-0120(2) and 340-218-0130(2).

(20) “New source” means a source that is not operating under the authority of either a current Air Contaminant Discharge Permit or Title V Operating Permit or, when the term of an issued permit has expired, under the authority of OAR 340-216-0082(1) or OAR 340-218-0120(2) and 340-218-0130(2). ~~by December 31, 2021 did not commence construction and did not submit all necessary applications to DEQ according to OAR chapter 340 divisions 210 and 216.~~

(21) “Nominal electric generating capacity” has the meaning given in ORS 469.300.

(22) “Shut down” means that all operations of a covered entity are permanently shut down, including but not limited to decommissioning and cancelling air permits. Permanent shutdown may include continued operations of space heaters and water heaters as necessary to support decommissioning activities.

~~(23) “Related entity” means any direct or indirect parent company, direct or indirect subsidiary, company that shares ownership of a direct or indirect subsidiary, or company under full or partial common ownership or control.~~

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0030

Acronyms

(1) “BAER” means best available emissions reduction.

(2) “CCI” means community climate investment.

(3) “CFR” means Code of Federal Regulations.

(4) “CPI-U West” means the US Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items.

(5) “CPP” means Oregon Climate Protection Program established in this division.

(6) “DEQ” means Oregon Department of Environmental Quality.

(7) “EQC” means Environmental Quality Commission.

(8) “EPA” means US Environmental Protection Agency.

(9) “IRS” means US Internal Revenue Service.

(10) “LRAPA” means Lane Regional Air Pollution Agency.

(11) “Metric tons of CO₂e” or “MT CO₂e” means metric tons of carbon dioxide equivalent.

(12) “US” means United States.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0090

Overview of Program Provisions for Covered Entities and CCI Entities

- (1) OAR 340-271-0100 describes general requirements for covered entities.
- (2) OAR 340-271-0110 describes which air contamination sources are covered entities subject to the requirements of the CPP.
- (3) OAR 340-271-0120, OAR 340-271-0130, and 340-271-0150 describe covered entity requirements including notifying DEQ of changes in ownership, operational control, and related entities; cessation of applicability; and requirements to obtain CPP permits and CPP permit addendums, respectively.
- (4) OAR 340-271-0310 through OAR 340-271-0390 describe the provisions that apply to covered stationary sources.
- (5) OAR 340-271-0410 through OAR 340-271-0890 and OAR 340-271-9000 describe the provisions that apply to covered fuel suppliers.
- (6) OAR 340-271-0900 through OAR 340-271-0990 describe the provisions for how DEQ will approve CCI entities and how CCI entities will implement eligible projects supported by CCI funds.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0100

Oregon Climate Protection Program Requirements

- (1) A person who owns or operates a covered entity must comply with the rules in this division. Compliance with this division does not relieve a person who owns or operates a covered entity of the obligation to comply with any other provisions of OAR chapter 340, as applicable.
- (2) CPP permit or CPP permit addendum. A person who owns or operates a covered entity identified in OAR 340-271-0110 must apply for and hold a CPP permit or CPP permit addendum according to OAR 340-271-0150 that authorizes the person's covered emissions and subjects the person to the requirements of this division.

(3) Reporting. A person who owns or operates a covered entity must submit reports and attestations required in this division, as applicable.

(4) Recordkeeping. A person who owns or operates a covered entity must develop and retain all records required in this division, as applicable.

(5) A person who owns or operates a covered entity must use forms and reporting tools approved and issued by DEQ for all certifications, attestations and submissions. All submissions must be made electronically unless otherwise requested or approved by DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0110

Covered Entity and Covered Emissions Applicability

(1) Calculations of covered emissions, compliance obligations and distribution of compliance instruments will be based on emissions data and information in emissions data reports submitted by a person described in this rule and required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340, division 272. For any person that does not submit sufficient information in compliance with OAR chapter 340, divisions 215 and 272, calculations will be informed by additional best data available to DEQ. For any person that has not registered and reported according to division 215, such calculations will be based on the best data available to DEQ, following all reporting requirements and assumptions that would be applicable had the person reported according to that division.

(2) A covered entity is subject to the requirements of this division for its covered emissions described in this rule. A person remains a covered entity until cessation is met according to OAR 340-271-0130.

(3) Applicability for fuel suppliers and in-state producers. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in any applicability determination calendar year that equal or exceed the threshold for applicability listed in Table 1 in OAR 340-271-9000. All persons that are related entities must aggregate their emissions together to determine applicability and each becomes a covered fuel supplier if applicability is met. When applicability is met, each person is a covered fuel supplier beginning with the calendar year a person becomes a covered fuel supplier, as provided in Table 1 in OAR 340-271-9000. Once a person is a covered fuel supplier, the person remains a covered fuel supplier until the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a fuel supplier or in-state producer that imports, sells, or distributes fuel for use in Oregon, and is one or more of the following:

(A) A dealer, as that term is defined in ORS 319.010 that is subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax in OAR chapter 735, division 170;

(B) A seller, as that term is defined in ORS 319.520, that is subject to the Oregon Use Fuel Tax in OAR chapter 735, division 176;

(C) A person that produces, imports, sells, or distributes gasoline or distillate fuel oil for use in Oregon and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax in OAR chapter 735, divisions 170 and 176; or

(D) A person that either produces propane in Oregon or imports propane for use in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of propane and liquid fuels (including, for example and without limitation, gasoline and petroleum products) imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels;

(ii) Emissions that are from the combustion of fuels used for aviation including, for example and without limitation, aviation gasoline, kerosene-type jet fuel, and alternative jet fuel; and

(iii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems.

(4) Applicability for local distribution companies. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a local distribution company that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

- (i) Emissions that are from the combustion of biomass-derived fuels;
 - (ii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems;
 - (iii) ~~Emissions that result from non-combustion related processes that use natural gas, as determined by DEQ;~~ Emissions avoided where the use of natural gas results in greenhouse gas emissions captured and stored, if sufficiently documented by information provided to DEQ; and
 - (iv) Emissions from natural gas delivered to an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.
- (5) Applicability for stationary sources. A person is a covered stationary source if the person is described in subsection (a), unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is one or more ~~either or both~~ of the following:

(A) The person owns or operates an existing source ~~required to obtain either a Title V Operating Permit or an Air Contaminant Discharge Permit and~~ that has actual annual covered emissions described in subsection (b) that equal or exceed 25,000 MT CO₂e in 2018 or in any subsequent calendar year; ~~or~~

(B) The person owns or operates a new source, or proposes to own or operate a new source, ~~required to obtain either or both a Title V Operating Permit or an Air Contaminant Discharge Permit and~~ that has a potential to emit ~~annual~~ covered emissions described in subsection (b) that will equal or exceed 25,000 MT CO₂e per in any calendar year; ~~or~~

(C) The person owns or operates an existing source that is not a covered stationary source under (A), proposes to make a modification under OAR 340-216-0040(3), OAR 340-218-0170, OAR 340-218-0180, or OAR 340-218-0190, or a Type 2, 3 or 4 change under OAR 340-210-0225 to their source and:

(i) The modification would increase the source's potential to emit covered emissions described in subsection (b) by 10,000 MT CO₂e per calendar year or more, and;

(ii) After the modification, the source's potential to emit covered emissions described in subsection (b) would equal or exceed 25,000 MT CO₂e per calendar year.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that are from either or both processes or the combustion of solid or gaseous fuels, including emissions from combustion for both energy production and processes.

(B) Covered emissions do not include:

- (i) Emissions that are from the combustion of biomass-derived fuels;
- (ii) Biogenic CO₂ emissions from solid fuels;
- (iii) Emissions that are from the combustion of liquid fuels or propane;
- (iv) Emissions from natural gas, compressed natural gas, or liquefied natural gas used on-site that was delivered by a local distribution company;
- (v) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;
- (vi) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills;
- (vii) Emissions from an air contamination source that is owned or operated by an interstate natural gas pipeline that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission; and
- (viii) Emissions from an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 18-2022, temporary amend filed 11/18/2022, effective 11/18/2022 through 05/16/2023](#)

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0120

Changes in Covered Entity Ownership and Changes to Related Entities

(1) Changes in ownership or operational control.

(a) If a covered entity undergoes a change in ownership or operational control, the new person that owns or operates the covered entity must notify DEQ in writing within 30 days of the ownership or operational control change. The person must submit a complete and accurate notification, including providing the following information:

(A) The name of the previous owner or operator;

(B) The name of the new owner or operator;

(C) The date of ownership or operator change;

(D) Name of the designated representative;

(E) If the covered entity is a covered fuel supplier that is not a local distribution company information about each person that was a related entity prior to the change in ownership or operational control; ~~subject to any regulations~~ and that was required to report emissions according to ~~in~~ OAR chapter 340, division 215, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(F) If the covered entity is a covered fuel supplier that is not a local distribution company, information about each person that is a related entity after the change in ownership or operational control; and that is required to report emissions according ~~subject to any regulations~~ ~~in~~ to OAR chapter 340, division 215, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit.

(b) The covered entity continues to be a covered entity following a change in ownership or operational control, until it meets the cessation requirements in OAR 340-271-0130. Any other covered entity that was a related entity also continues to be a covered entity following the change in ownership or operational control, until it meets the cessation according to OAR 340-271-0130.

(c) Following a change in ownership or operational control, a covered fuel supplier that holds a compliance instrument or CCI credit according to OAR 340-271-0430 or OAR 340-271-0830 continues to hold the compliance instrument or CCI credit according to each rule, as applicable.

(2) Changes to related entities of covered fuel suppliers.

(a) If a person subject to any regulations in OAR chapter 340, division 215, becomes a new related entity to a covered fuel supplier that is not a local distribution company due to a change in ownership or operational control, the designated representative of the covered fuel supplier must notify DEQ in writing, on a form approved by DEQ, within 30 days of the ownership or operational control change. The designated representative must submit a complete and accurate notification, including providing the following information:

(A) Information about the new related entity, including legal name, full mailing address, and whether the person is a covered fuel supplier and holds a CPP permit;

(B) The name of the previous owner or operator of the new related entity;

(C) The name of the new owner or operator of the new related entity;

(D) The date of ownership or operator change for the new related entity; and

(E) Information about all other related entities subject to any regulations in OAR chapter 340, including legal names, full mailing addresses, and whether each is a covered fuel supplier and holds a CPP permit.

(b) If the person that is the new related entity to a covered fuel supplier identified in paragraph (a)(A) is not already a covered fuel supplier, the person:

(A) Becomes a covered fuel supplier beginning with the date of ownership or operator change;

(B) Must apply to DEQ for a CPP permit according to OAR 340-271-0150(1)(a)(B); and

(C) If the person is a covered fuel supplier, the person will have compliance obligations beginning with covered emissions from the calendar year in which the ownership or operator change occurred.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0130

Cessation of Covered Entity Applicability

(1) Cessation for covered fuel suppliers.

(a) A person that is a covered fuel supplier as described in OAR 340-271-0110 remains a covered fuel supplier until the person receives written notification from DEQ after either or both:

(A) The person's annual covered emissions are 0 (zero) MT CO₂e for six consecutive calendar years; [or, if the person is not a local distribution company, the covered emissions of the person's related entities must also be 0 \(zero\) MT CO₂e for the same six consecutive calendar years;](#) or

(B) The person was designated a covered fuel supplier in OAR 340-271-0110(3), [the sum of and its annual covered emissions and the annual covered emissions of its related entities](#) are less than 25,000 MT CO₂e for six consecutive calendar years and the person applies to DEQ according to subsection (c).

(b) After a covered fuel supplier identified according to paragraph (a)(A) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(A), DEQ will notify the designated representative of the covered fuel supplier in writing that cessation is met.

(c) In order for cessation according to paragraph (a)(B) to take effect, a covered fuel supplier must apply to cease being a covered fuel supplier by submitting the following information to DEQ on a form approved by DEQ:

(A) Information about the covered fuel supplier, including:

(i) Name and full mailing address, and website; and

(ii) Designated representative's contact information including name, title or position, phone number, and email address;

(B) If the person is not a local distribution company information about each related entity required to report emissions according to ~~subject to any regulations in~~ OAR chapter 340, division 215, for each of the six consecutive calendar years, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit;

(C) Information about remaining requirements that must be met according to this division at the time the application is submitted to DEQ; and

(D) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered fuel supplier] meets the eligibility for cessation as a covered fuel supplier according to Oregon Administrative Rules chapter 340, division 271. I understand that ceasing to be a covered fuel supplier means that [covered fuel supplier] will also cease to hold any compliance instruments and CCI credits.

(d) After the covered fuel supplier applying for cessation according to paragraph (a)(B) and subsection (c) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(B), DEQ will notify the designated representative of the covered fuel supplier in writing that the application for cessation is approved and that cessation is met.

(e) A person that ceases to be a covered fuel supplier according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered fuel supplier.

(f) When a person ceases to be a covered fuel supplier:

(A) The cessation does not change the compliance obligation for any year for which the person has already demonstrated compliance;

(B) Any remaining compliance instruments held by the person will be retired, held in reserve, or distributed by DEQ according to OAR 340-271-0430(3); and

(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-271-0830(1)(c).

(2) Cessation for covered stationary sources.

(a) A person that is a covered stationary source as described in OAR 340-271-0110 remains a covered stationary source until either of the following occur:

(A) The person's operations are changed such that all greenhouse gas emitting processes and operations cease to operate or are shut down. In order for cessation to take effect, the person

must submit a written notification to DEQ certifying the cessation of all greenhouse gas emitting processes and operations; or

(B) The person's covered emissions are less than 25,000 MT CO₂e for five consecutive calendar years and the person has fully complied with any applicable BAER order and any related reporting requirements and has submitted any remaining required BAER assessment and five-year BAER report. In order for cessation to take effect, DEQ will notify the covered stationary source that cessation is met.

(b) This section does not apply to seasonal operational cessations or other temporary cessation of operations.

(c) A person that ceases to be a covered stationary source according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered stationary source.

(3) Any person that ceases to be a covered entity according to this rule must resume meeting the requirements of this division for any future year in which applicability is met.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

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340-271-0150

Covered Entity Permit Requirements

(1) A person described in either or both OAR 340-271-0110(3) or (4) must apply for a CPP permit as provided in this section.

(a) The person must apply for a CPP permit according to subsections (b) and (c) by the following deadlines:

(A) If DEQ notifies the person in writing that the person is a covered fuel supplier, then the person must apply to DEQ for a CPP permit within 30 days of the notification or by another date DEQ specifies in the notification that is at least 30 days after the date of the notification;

(B) If DEQ does not provide a notification according to paragraph (A), then the person must apply to DEQ for a CPP permit by ~~whichever is later of:~~

~~(i) February 14 of the calendar year a person becomes a covered fuel supplier; or~~

~~(ii) April 15 31 of the year after the first applicability determination calendar year that the person's emissions equal or exceed the threshold in Table 1 in OAR 340-271-9000~~[becomes a covered fuel supplier](#); or

(C) If there was a change in ownership or operational control according to OAR 340-271-0120(2), then the person must apply to DEQ for a CPP permit within 45 days of the change in ownership or operational control.

(b) A person that submits a CPP permit application to DEQ must submit a complete and accurate application. The application for a CPP permit must be submitted to DEQ using a form approved by DEQ and include:

(A) Identifying information about the covered fuel supplier including name, full mailing address, and website, and designated representative's contact information including name, title or position, phone number, and email address;

(B) If the person is a covered fuel supplier that is not a local distribution company, information about each related entity required to report emissions according to ~~subject to any regulations in~~ OAR chapter 340, division 215, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(C) The following attestation, signed by the designated representative of the person considered a covered fuel supplier;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(c) DEQ may issue a CPP permit to a covered fuel supplier that submits a complete and accurate application. The permit may contain all applicable provisions of this division and such other conditions as DEQ determines are necessary to implement, monitor and ensure compliance with this division.

(2) New and modified stationary sources

(a) The owner or operator of a new source that is a covered stationary source may not emit any covered emissions prior to being issued a BAER order and a permit ~~according to~~ as described in subsection (3)(c) ~~and OAR 340-271-0330(1)~~.

(b) The owner or operator of an existing source that is proposing a modification and is required to complete a BAER assessment under OAR 340-271-0310(1)(c) may not construct the modification or emit any covered emissions from the modification prior to being issued a BAER order and approved permit modification as described in subsection (3)(d).

(3)(a) The owner or operator of an existing covered stationary source required to apply for a CPP permit addendum according to OAR 340-271-0330(1) must submit a complete and accurate application to DEQ or LRAPA, as applicable, that complies with and includes information identified in this section.

~~(a)~~ The application must include the following:

(A) Identifying information about the covered stationary source, including name and the name of the person that owns or operates the covered stationary source, full mailing address, the physical address of the covered stationary source, and a description of the nature of business being operated, the name, phone number and email address of the designated representative who is responsible for compliance with the permit, the permit number for an existing source, and the SIC or NAICS code of the covered stationary source;

(B) The name of a person authorized to receive requests from DEQ for additional data and information;

(C) The date DEQ notified the owner or operator of the covered stationary source of the BAER order established according to OAR 340-271-0320;

(D) A BAER implementation plan that includes the following:

(i) Identification of the actions that the owner or operator of the covered stationary source will take to comply with the BAER order; and

(ii) The schedule for implementing the requirements in the BAER order, consistent with any deadlines provided by DEQ in the BAER order, if applicable, and including an estimate of when all requirements from the BAER order will be completed;

(E) Any other information requested by DEQ; and

(F) The following attestation, signed by the designated representative of the covered stationary source;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(b) DEQ or LRAPA, as applicable, may issue a CPP permit addendum to the owner or operator of a covered stationary source that submits a complete and accurate permit modification application [under subsection \(a\)](#), consistent with the requirements of OAR chapter 340, divisions 216 and 218, as applicable. The CPP permit addendum will be issued as a Category II permit action according to OAR chapter 340, division 209. A CPP permit addendum will amend the covered stationary source's Air Contaminant Discharge Permit or Title V Operating Permit ~~until the requirements in the addendum can be incorporated into the operating permit~~. The CPP permit addendum ~~may will~~ contain all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and this division.

(c) If DEQ or LRAPA approves an application for an Air Contaminant Discharge Permit or Title V Operating Permit submitted by the owner or operator of a new source, then DEQ or LRAPA, as applicable, will incorporate the CPP conditions into the new ~~operating permit~~ [Air Contaminant Discharge Permit or Title V Operating Permit](#) and will not issue a separate CPP permit addendum. Such CPP conditions ~~may contain~~ [will include](#) all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and this division.

[\(d\) If DEQ or LRAPA approves an application for a modification of an Air Contaminant Discharge Permit or Title V Operating Permit submitted by the owner or operator of an existing source that is required to undertake a BAER assessment described in OAR 340-271-0310\(1\)\(c\), then DEQ or LRAPA, as applicable, will incorporate the CPP conditions into the modified Air Contaminant Discharge Permit or Title V Operating Permit and will not issue a separate CPP permit addendum. Such CPP conditions will include all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and this division.](#)

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.135

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.135, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0310

Best Available Emissions Reduction Assessments for Covered Stationary Sources

(1) Requirement to conduct a BAER assessment.

(a) When notified in writing by DEQ, the owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(A) must submit a complete and accurate BAER assessment according to this rule. The owner or operator of the covered stationary source must submit a complete BAER assessment to DEQ not later than nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in its notice or DEQ approves an extension according to section (6).

(b) The owner or operator of a new source described in OAR 340-271-0110(5)(a)(B) must submit a complete and accurate BAER assessment completed according to this rule with its permit application submitted according to OAR chapter 340, division 216, or its notice of construction application submitted according to OAR chapter 340, division 210.

[\(c\) Modifications.](#)

[\(A\) A source that is a covered stationary source described in OAR 340-271-0110\(5\)\(a\)\(C\) must complete a BAER assessment if notified in writing by DEQ. DEQ will require a BAER assessment at the time of the modification only if DEQ determines that the modification](#)

represents a significant change to the equipment or processes that emit covered emissions at the source.

(B) If the modification described in OAR 340-271-0110(5)(a)(C) is a notice of construction for a Type 2 change required under OAR 340-210-0230, DEQ will notify the source not later than 60 days after submittal of the notice of construction if a BAER assessment is required. Upon receipt of that notification, the owner or operator of the source must submit a complete and accurate BAER assessment completed according to this rule and an application for a permit modification submitted according to OAR chapter 340, division 216 or 218, as applicable. Notwithstanding OAR 340-210-0225(2) and (3), such permit modification application is a Type 3 change as described in OAR chapter 340, division 210.

(2) BAER assessment requirements. BAER assessments submitted to DEQ must include the following:

(a) A description of the covered stationary source's production processes and a flow chart of each process;

(b) Identification of all fuels, processes, equipment, and operations that contribute to the covered stationary source's covered emissions, including:

(A) Estimates of annual average covered emissions identified in OAR 340-271-0110(5)(b). For existing covered stationary sources, estimates must be of current annual average covered emissions. For new sources and existing sources proposing a modification, estimates must be of ~~anticipated~~-annual ~~average~~-potential to emit covered emissions. Emissions must be identified in MT CO₂e, following methodologies identified in OAR chapter 340, division 215. This must also include and distinguish quantities and covered emissions of each fuel used to control air contaminants that are not greenhouse gases; and

(B) Estimates of current ~~annual average~~ and anticipated type and annual quantity of all fuels used or proposed to be used by the covered stationary source, ~~and anticipated annual average fuel usage for new sources~~;

(c) Identification and description of all available fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions described in OAR 340-271-0110(5)(b). Strategies considered must include but are not limited to the strategies used by other sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality; and

(d) An assessment of each of the following for each strategy identified in subsection (c):

(A) An estimate of annual average covered emissions reductions achieved if the strategy were implemented compared to the emissions estimated in paragraph (b)(A);

(B) Environmental and health impacts, both positive and negative, if the strategy were implemented, including any impacts on air contaminants that are not greenhouse gases and impacts to nearby communities;

(C) Energy impacts if the strategy were implemented, including whether and how the strategy would change energy consumption at the covered stationary source, including impacts related to any fuel use that results in anthropogenic greenhouse gas emissions. Any energy-related costs must be included in the economic impacts assessment in paragraph (D), not the energy impacts assessment;

(D) Economic impacts if the strategy were implemented, including operating costs and the costs of changing existing processes or equipment or adding to existing processes and equipment. Any energy-related costs must be included in the economic impacts assessment, not the energy impacts assessment in paragraph (C). The economic impacts assessment must include both costs and cost savings (benefits);

(E) An estimate of the time needed to fully implement the strategy at the covered stationary source; and

(F) A list of the information, resources, and documents used to support development of the BAER assessment, including, if available, links to webpages that provide public access to supporting documents.

(3) Upon receipt of a BAER assessment described in section (2), DEQ will review the submittal and if DEQ determines that any additional information, corrections, or updates are required then DEQ may provide the owner or operator of the covered stationary source with a written request to provide such information by a certain date or DEQ may issue the BAER order based on the information it has available. If DEQ requests that the owner or operator of the covered stationary source revise its BAER assessment according to this section, the owner or operator must provide such information no later than the deadline provided by DEQ.

(4) Five year BAER reports.

(a) Every five years following the date that DEQ issued a BAER order, the owner or operator of a covered stationary source must submit to DEQ a five year BAER report that includes an update of the information described in subsections (2)(a) through (c).

(b) If one or more new strategies are identified in a five year BAER report required in subsection (a) that have not previously been evaluated in a BAER assessment, DEQ may notify the owner or operator of the covered stationary source and require that it conduct a complete BAER assessment according to section (2) and submit it to DEQ. Such complete BAER assessment must also include:

(A) Evaluation of any new strategies identified and any previously identified strategies using any new information available at the time the assessment is being conducted; and

(B) Current status and analysis of the implementation of requirements in any prior BAER order(s).

(5) When notified in writing by DEQ, the owner or operator of a covered stationary source identified in section (1) may be required to conduct and submit an updated complete BAER assessment conducted according to this rule, in accordance with the following:

(a) DEQ may not require the owner or operator of a covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment [unless the source is proposing a modification and is required to complete a new BAER assessment under OAR 340-271-0310\(1\)\(c\)](#). However, if DEQ determines the owner or operator of a covered stationary source submitted information that it knew or should have known was false, inaccurate, or incomplete to DEQ, then DEQ may require the owner or operator of the covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment;

(b) The updated BAER assessment must include assessment of new strategies and previously identified strategies and any new information available at the time the assessment is being conducted;

(c) The owner or operator of the covered stationary source must include current status and analysis of the implementation of requirements in any prior BAER order; and

(d) The owner or operator of the covered stationary source must submit the updated BAER assessment to DEQ not later than nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in the notice or DEQ approves an extension according to section (6).

(6) The owner or operator of a covered stationary source required to conduct a BAER assessment as described in sections (1) or (5) may request an extension of time to complete the BAER assessment by providing DEQ with a written request no fewer than 30 days prior to the submittal deadline. DEQ may grant an extension based on the following criteria:

(a) The owner or operator of the covered stationary source has demonstrated progress in completing the submittal; and

(b) A delay is necessary, for good cause shown by the owner or operator of the covered stationary source, related to obtaining more accurate or new data, performing additional analyses, or addressing changes in operations or other key parameters, any of which are likely to have a substantive impact on the outcomes of the BAER assessment.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0320

~~DEQ~~ Best Available Emissions Reduction Order

(1) DEQ may issue a BAER order for each owner or operator of a covered stationary source that must submit a BAER assessment as provided in OAR 340-271-0310. A BAER order will establish the actions that the owner or operator of a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken.

(2) In establishing the requirements in a BAER order for a covered stationary source, DEQ may consider any information it deems relevant, and must consider the following:

(a) Information submitted in a BAER assessment;

(b) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques that maximize covered emissions reductions;

(c) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions used by sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality;

(d) A reasonable schedule and amount of time necessary to implement a strategy under consideration by DEQ to reduce covered emissions;

(e) Environmental, public health, and energy impacts of a strategy under consideration by DEQ to reduce covered emissions, including but not limited to air quality impacts for nearby communities and impacts related to switching to cleaner energy resources, zero-emissions energy resources, or renewable fuels;

(f) Economic impacts of a strategy under consideration by DEQ to reduce covered emissions including, but not limited to, costs so great that a new source could not be built or an existing source could not be operated, and cost-effectiveness of different strategies that would achieve similar covered emissions reductions;

(g) Processes and operations currently in use by and at the covered stationary source and the remaining useful life of the covered stationary source;

(h) Whether a strategy under consideration by DEQ to reduce covered emissions is achievable, technically feasible, commercially available, and cost-effective;

(i) Whether a strategy under consideration by DEQ to reduce covered emissions has an impact on the type or quality of good(s) produced by and at the covered stationary source, if applicable; and

(j) Input from the public and community organizations from nearby the covered stationary source. Upon receipt of a BAER assessment, DEQ will provide public notice with a copy of the BAER assessment and a minimum of 30 days to submit written comments. DEQ also will

[provide public notice with a copy of DEQ's draft BAER order and a minimum of 30 days to submit written comments.](#)

(3) For the owner or operator of a covered stationary source required to register and report according to OAR chapter 340, division 215, DEQ will consider emissions data reports to assess whether covered emissions reductions are being achieved when establishing the requirements in a BAER order or for determining when to notify the owner or operator of a covered stationary source to conduct and submit an updated complete BAER assessment as described in OAR 340-271-0310(5).

(4) DEQ may verify information submitted in a BAER assessment.

(5) DEQ may consult with industry experts and third-party organizations before issuing a BAER order.

(6) DEQ will notify the owner or operator of a covered stationary source of a BAER order in writing. A BAER order is effective 30 days from the date of the notification unless, within that time, DEQ receives a written request for a hearing from the owner or operator of the covered stationary source according to section (7).

(7) The owner or operator of a covered stationary source may file with DEQ a written request for a contested case hearing to challenge a BAER order issued according to section (6). The request must be filed in writing within 30 days of the date that DEQ issued the BAER order and must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 11.

(8) DEQ will provide a public status update if DEQ has not yet issued a BAER order after 18 months of the date on which DEQ notified the owner or operator of a covered stationary source that it must conduct a BAER assessment.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0330

Compliance with a BAER Order

(1) The owner or operator of a covered stationary source for which DEQ has issued a BAER order according to OAR 340-271-0320 must:

(a) Comply with the requirements in the BAER order; and

(b) [For an existing source that is required to complete a BAER assessment under OAR 340-271-0310\(1\)\(a\), S](#)submit to DEQ or LRAPA, as applicable, a complete [permit modification](#)

application for a CPP permit addendum according to OAR 340-271-0150(3) not later than 390 days after the date that the BAER order is final and effective, or a later date specified in the BAER order.

(2) Reporting requirements.

(a) The owner or operator of a covered stationary source that has been issued a CPP permit addendum or operating permit that includes provisions related to a BAER order must submit an annual progress report to DEQ describing the progress in implementing the requirements in the BAER order. The annual progress reports are due to DEQ on or before February 15 of each year following the date that the notice of the BAER order is final and effective. The annual progress report must include:

(A) A description of the progress achieved in implementing the requirements in any BAER order;

(B) A schedule indicating dates for future increments of progress;

(C) A description of any increases or decreases in covered emissions that have occurred at the covered stationary source since the submission date of the most recently conducted complete BAER assessment; and

(D) An estimate of when all implementation of requirements of the BAER order will be complete.

(b) The owner or operator of a covered stationary source must submit a BAER order completion report to DEQ no later than 60 days after implementation of all requirements in the BAER order are complete, except for items related to continuous and ongoing requirements. The report must include:

(A) The final increments of progress achieved in fully implementing the requirements in the BAER order and the date the final increments of progress were achieved;

(B) A summary of the actions taken to fully implement the requirements in the BAER order; and

(C) An estimate of the resulting covered emissions reductions that will be achieved now that the requirements in the BAER order are being implemented.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

[340-271-0390](#)

Recordkeeping Requirements Related to BAER

(1) Recordkeeping requirements related to BAER assessments and five year BAER reports.

(a) The owner or operator of a covered stationary source that submits any information to DEQ related to a complete BAER assessment or five year BAER report conducted according to OAR 340-271-0310 must retain the following records, in paper or electronic format, for a period of at least ten years from the date the information is submitted to DEQ:

(A) A copy of the assessment or report submitted to DEQ;

(B) Any contract(s) with any independent third-party(ies) in relation to developing the assessment or report; and

(C) All other information and documentation used to support and inform development of the assessment or report.

(b) The owner or operator of the covered stationary source must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

(2) Recordkeeping requirements related to compliance with a BAER order.

(a) The owner or operator of a covered stationary source issued a BAER order must retain the following records, in paper or electronic format, for a period of at least ten years from the applicable date specified below:

(A) All records and information related to a BAER order including but not limited to a copy of the most recently submitted complete BAER assessment and a copy of DEQ's written BAER order from the effective date of the BAER order;

(B) A copy of the permit modification application for the CPP permit addendum or the applicable permit application from the date it is submitted to DEQ;

(C) A copy of each progress report from the date it is submitted to DEQ; and

(D) All other information and documentation related to actions taken to comply with requirements in a BAER order from the effective date of the BAER order.

(b) The owner or operator of a covered stationary source issued a BAER order must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0410

Generation of Compliance Instruments

(1) Each year, DEQ will generate the number of compliance instruments equal to the cap for the calendar year identified in Table 2 in OAR 340-271-9000.

(2) A compliance instrument is a regulatory instrument and does not constitute personal property, a security or any other form of property.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0420

Distribution of Compliance Instruments to Covered Fuel Suppliers

(1) DEQ will distribute compliance instruments according to this rule. DEQ will distribute compliance instruments from a cap according to sections (2), ~~(3), through (4), and (6)~~ no later than ~~March 31~~ [June 30](#) of the calendar year of that cap.

(2) Annual distribution of compliance instruments to covered fuel suppliers that are local distribution companies. DEQ will annually distribute to each local distribution company, or to its successor(s) due to a change in ownership or operation, the number of compliance instruments from the calendar year's cap stated in Table 4 in OAR 340-271-9000.

(3) DEQ will establish a compliance instrument reserve for covered fuel suppliers that are new to the program and are not local distribution companies. DEQ will hold, according to subsection (4)(a), a subset of compliance instruments in the reserve from the caps identified in Table 2 in OAR 340-271-9000. Once a compliance instrument is held in the reserve, it remains in the reserve until DEQ determines, at its discretion, to undertake one of the following actions:

(a) DEQ distributes the compliance instrument according to section (5) to a covered fuel supplier that is not a local distribution company;

(b) DEQ retires the compliance instrument because the compliance instrument reserve exceeds the size described in Table 3 OAR 340-271-9000, provided that after such retirement the size of the compliance instrument reserve will equal or exceed the reserve size described in Table 3; or

(c) DEQ distributes the compliance instrument to a covered fuel supplier that is not a local distribution company because the size of the compliance instrument reserve exceeds the reserve size described in Table 3 in OAR 340-271-9000. DEQ will only distribute compliance

instruments from the reserve according to this subsection if there are at least 10,000 compliance instruments to distribute and if the remaining size of the reserve after this distribution will equal or exceed the reserve size described in Table 3 in OAR 340-271-9000. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company according to [subsection \(4\)\(b\)](#), except “total compliance instruments to distribute” means the total number of compliance instruments DEQ is distributing from the reserve according to this subsection.

(4) Annual distribution of compliance instruments to covered fuel suppliers that are not local distribution companies. DEQ will annually distribute compliance instruments from the applicable calendar year’s cap to covered fuel suppliers that are not local distribution companies as follows:

(a) If the size of the compliance instrument reserve is less than the reserve size described in Table 3 in OAR 340-271-9000 for the calendar year, then DEQ will calculate the difference and hold in the compliance instrument reserve that quantity of compliance instruments. Otherwise, the number of compliance instruments in the reserve will not be changed.

(b) Except for compliance instruments identified in Table 4 in OAR 340-271-9000 for distribution according to section (2) and the compliance instruments held in the reserve according to section (3) and subsection (4)(a), DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company as described in this subsection, based on ~~available information~~ [emissions data from the prior calendar year as reported by each covered fuel supplier as required by OAR chapter 340, division 215, and subject to DEQ’s initial review for errors, but prior to completion of third-party verification as required by OAR chapter 340, division 272.](#) ~~from the evaluation period described in Table 5 in OAR 340-271-9000. If a~~ [person that becomes a covered fuel supplier after DEQ has distributed the compliance instruments for that year will not receive a distribution under this subsection.](#) ~~or its related entities do not have available information for one or more years of the evaluation period, DEQ may exclude the covered fuel supplier and its emissions from this calculation. If the covered fuel supplier is excluded, then the distribution for the covered fuel supplier will be addressed using the methodology described in section (5).~~

[\(A\) Prior to each calculation of compliance instrument distribution in OAR 340-271-0420\(4\)\(b\)\(B\), DEQ will apply a “Verified emissions data correction factor” to the annual compliance instrument distribution of each covered fuel supplier. DEQ will recalculate the compliance instrument distribution from the previous year using third-party verified emissions data. If DEQ determines that the reported emission data used for the previous year’s compliance instrument distribution resulted in a lesser or greater number of compliance instruments being distributed to a covered fuel supplier, when compared to the recalculation using the third-party verified data, DEQ will increase or reduce, respectively, the number of compliance instruments distributed to the covered fuel supplier by an equal amount in the current compliance instrument distribution.](#)

~~(BA)~~ DEQ will use the following formula to calculate the number of compliance instruments to distribute to each covered fuel supplier:

Number of Compliance Instruments = $(\text{Total compliance instruments to distribute} * ((\text{Covered fuel supplier covered emissions} + \text{covered fuel supplier biofuel emissions}) / \text{Total emissions})) \pm \text{Verified emissions data correction factor} - \text{Compliance instrument holding limit reduction}$

(BC) As used in the formula in paragraph (AB):

(i) “Total compliance instruments to distribute” means the cap for the calendar year, according to Table 2 in OAR 340-271-9000, minus the number of compliance instruments identified in Table 4 in OAR 340-271-9000; and minus the number of compliance instruments held in the compliance instrument reserve;

(ii) “Covered fuel supplier covered emissions” means the sum of a covered fuel supplier’s covered emissions ~~for during~~ the ~~evaluation period~~ prior calendar year;

(iii) “Covered fuel supplier biofuel emissions” means emissions described in OAR 340-271-0110(3)(b)(B)(i) that result from the complete combustion or oxidation of the annual quantity of biomass-derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state ~~for during~~ the ~~evaluation period~~ prior calendar year; and

(iv) “Total emissions” means the sum of “covered fuel supplier covered emissions” and “covered fuel supplier biofuel emissions” ~~for during~~ the ~~evaluation period~~ prior calendar year for all covered fuel suppliers whose compliance instrument distribution is calculated according to this section; and

(v) “Verified emissions data correction factor” means a correction applied as a result of changes to reported data since the previous distribution of compliance instruments, as described in OAR 340-271-0420(4)(b)(A); and

(vi) “Compliance instrument holding limit reduction” means the number of compliance instruments described in OAR 340-271-0430(2). If the compliance instrument holding limit reduction exceeds the number of compliance instruments that a covered fuel supplier would have received in the distribution before subtracting the compliance instrument holding limit reduction, then the covered fuel supplier will not receive any compliance instruments in the distribution, and a compliance instrument holding limit reduction equal to the amount by which it exceeded the number of compliance instruments that a covered fuel supplier would have received in the distribution before subtracting the compliance instrument holding limit will be applied in the following year.

(CD) DEQ will distribute a number of compliance instruments to each covered fuel supplier using the formula in paragraph (BA) and rounded down to the nearest whole number.

(DE) Any remaining compliance instruments not distributed due to rounding will be held in the compliance instrument reserve.

(5) Distribution from compliance instrument reserve for new covered fuel suppliers that are not local distribution companies.

(a) A covered fuel supplier is eligible for a distribution from the compliance instrument reserve if it is not a local distribution company and if:

~~(A) The covered fuel supplier was excluded from the distribution in section (4) due to a lack of sufficient available information; or~~

~~(B) The person becomes a covered fuel supplier after DEQ has distributed the compliance instruments for that year according to section (4). was not included in the distribution of compliance instruments for that year according to section (4).~~

(b) For all calendar years after 2024, a covered fuel supplier meeting the requirements of subsection (a) is not eligible for a distribution of compliance instruments from the reserve if the person is a related entity to a covered fuel supplier that received a distribution of compliance instruments under section (4).

~~(c)~~ A covered fuel supplier identified according to subsection (a) and not ineligible under subsection (b) may request a distribution of compliance instruments from the reserve by submitting an application to DEQ, on a form approved by DEQ, that includes the information described in paragraphs (A) through (D), no later than June 1 of the year after the calendar year of the annual distribution of compliance instruments from which the covered fuel supplier was not included. The covered fuel supplier must submit a separate application for each year for which it is seeking distribution of compliance instruments from the reserve.

(A) Information about the covered fuel supplier, including:

(i) Name and full mailing address; and

(ii) Designated representative's contact information including name, title or position, phone number, and email address;

(B) The calendar year of covered emissions for which compliance instruments are requested;

(C) The reason for the request, including description of eligibility according to subsection (a); and

(D) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this application on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered fuel supplier] is a covered fuel supplier in the year indicated in this application and requests compliance instruments from the reserve according to the information included in this application.

(c) DEQ will review an application submitted according to subsection (b) to ensure that it meets the requirements of this section. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(d) If DEQ approves an application, DEQ ~~may~~ will distribute one or more compliance instruments to the covered fuel supplier from the reserve no later than June 15 of the year after the calendar year of the annual distribution of compliance instruments from which the covered fuel supplier was not included. ~~In determining the number of~~ DEQ will distribute compliance instruments ~~to distribute~~ from the reserve to the covered fuel supplier, ~~DEQ may consider~~ as follows:

~~(A) The number of compliance instruments the covered fuel supplier might have received according to section (4) if DEQ had sufficient available information to include the covered fuel supplier in that calculation;~~

~~(B) The number of compliance instruments in the reserve at that time;~~

~~(A)~~ (A) A maximum distribution amount that will not exceed the covered fuel supplier's covered emissions in that calendar year using emissions data from the prior calendar year as reported by each covered fuel supplier as required by OAR 340, division 215, and subject to DEQ's initial review for errors, but prior to completion of third-party verification as required by OAR 340, division 272; and

~~(B) A maximum distribution amount that will not exceed 300,000 compliance instruments per covered fuel supplier per year.~~ If there are fewer compliance instruments in the reserve at the time of distribution than have been requested by all covered fuel suppliers who are approved for a reserve distribution for a calendar year, DEQ shall allocate compliance instruments in the reserve according to the ratio of each covered fuel supplier's covered emissions in that calendar year to the total covered emissions from all covered fuel suppliers in that calendar year.

(6) Each year, the sum of all compliance instruments that are not distributed to fuel suppliers in the distribution under section OAR 340-271-0420(4) as a result of compliance instrument holding limit reductions will be distributed to all covered fuel suppliers that did not have any compliance instrument holding limit reduction using the formula described in paragraph OAR 340-271-0420(4)(b)(B), except that, for purposes of such redistribution, "total compliance instruments to distribute" means the total number of compliance instruments that DEQ did not distribute to fuel suppliers in the general distribution under section OAR 340-271-0420(4) as a result of compliance instrument holding limit reductions. Such additional distribution of compliance instruments shall be made at the same time as the distribution described in section OAR 340-271-0420(4). Any remaining compliance instruments not distributed due to rounding will be held in the compliance instrument reserve.

(76) Upon distribution of compliance instruments according to sections (2), (4), ~~and~~(5), and (6), DEQ will notify the designated representative of each covered fuel supplier in writing of the availability of compliance instruments.

(87) DEQ will track distributed compliance instruments.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021

340-271-0430

Holding Compliance Instruments

(1) When DEQ distributes a compliance instrument to a covered fuel supplier according to OAR 340-271-0420 or when a covered fuel supplier acquires a compliance instrument according to OAR 340-271-0500, the covered fuel supplier may continue to hold the compliance instrument until any of the following apply:

(a1) The covered fuel supplier uses the compliance instrument toward its demonstration of compliance with a compliance obligation according to OAR 340-271-0450;

(b2) The covered fuel supplier transfers the compliance instrument to another covered fuel supplier according to OAR 340-271-0500; or

(c3) The covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When this occurs, DEQ may, at its discretion:

(ia) Retire the compliance instrument; or

(iib) If the covered fuel supplier is not a local distribution company:

(A) Hold the compliance instrument in the compliance instrument reserve described in OAR 340-271-0420(3); or

(B) Distribute the compliance instrument to a covered fuel supplier that is not a local distribution company. DEQ will only distribute the compliance instrument if there are at least 10,000 compliance instruments to distribute. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier according to OAR 340-271-0420(4)(b), except “total compliance instruments to distribute” means the total number of compliance instruments DEQ is distributing according to this paragraph.

(2) For each covered fuel supplier that is not a local distribution company, a compliance instrument holding limit reduction will be calculated on November 22 of the year following the end of each compliance period, or 25 days after DEQ’s notification in OAR 340-271-0450(1).

whichever is later. A covered fuel supplier's compliance instrument holding limit reduction is the number of compliance instruments from any prior year held by the covered fuel supplier on that date that exceeds one and a half times the sum of the covered fuel supplier's annual compliance obligation(s) for each year of the prior compliance period. In the year subsequent to the year after the end of a compliance period, if a fuel supplier did not receive any compliance instruments in the distribution under section OAR 340-271-0420(4) in the prior year because its compliance instrument holding limit reduction exceeded the number of compliance instruments that it otherwise would have been distributed, then the fuel supplier's compliance instrument holding limit reduction will be reduced as provided in subparagraph OAR 340-271-0420(4)(b)(B)(vi), and such reduced compliance instrument holding limit reduction will be used in the subsequent year's compliance instrument distribution calculation under section OAR 340-271-0420(4).

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

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340-271-0440

Compliance Periods

- (1) Each compliance period is three consecutive calendar years.
- (2) The first compliance period begins with calendar year 2022, and includes calendar years 2023 and 2024.
- (3) A new compliance period begins with the calendar year following the last calendar year of the preceding compliance period.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021

340-271-0450

Demonstration of Compliance

- (1) DEQ will determine a covered fuel supplier's total compliance obligation for a compliance period as the sum of the covered fuel supplier's annual compliance obligation(s) for each year of the compliance period. DEQ will base its determinations on emissions calculated according to OAR 340-271-0110(1). DEQ will notify the covered fuel supplier of its determination.

(2) A covered fuel supplier must demonstrate compliance according to this rule by ~~November 28~~ December 9 of the year following the end of each compliance period, or ~~40~~25 days after DEQ's notification described in section (1), whichever is later.

(3) To demonstrate compliance for a compliance period, a covered fuel supplier must submit the following to DEQ:

(a) For each metric ton of CO₂e of the total compliance obligation, either a compliance instrument or a CCI credit, subject to the following limitations:

(A) A covered fuel supplier may only submit compliance instruments that DEQ distributed from the caps for the calendar years of the applicable compliance period or from caps for earlier compliance periods; and

(B) The quantity of CCI credits used to demonstrate compliance as a percentage of the total compliance obligation for the applicable compliance period may not exceed the allowable percentage specified in Table 6 in OAR 340-271-9000.

(b) A demonstration of compliance form, approved by DEQ that includes:

(A) Name and full mailing address of the covered fuel supplier;

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(C) Identification of the compliance period and calendar year(s) for which the covered fuel supplier is demonstrating compliance;

(D) The total compliance obligations in metric tons of CO₂e for the compliance period and listed separately for each calendar year in the compliance period;

(E) The total number of compliance instruments the covered fuel supplier is submitting to DEQ to demonstrate compliance, and separately the total number submitted from each calendar year's cap;

(F) The total number of CCI credits the covered fuel supplier is submitting to DEQ to demonstrate compliance; and

(G) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this report on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. It is the intent of [covered fuel supplier] to use the quantity of compliance instruments and credits listed on this form and submitted to DEQ for the demonstration of compliance. I

certify that [covered fuel supplier] has not exceeded the allowable use of CCI credits. If any portion of these compliance obligations remain unmet after this submission, I understand that [covered fuel supplier] must still demonstrate compliance with the remaining portion and may be subject to enforcement action.

(4) Each metric ton of CO₂e of a compliance obligation for which a covered fuel supplier does not demonstrate compliance according to this rule is a separate violation of this division.

(5) If a change in ownership of a covered fuel supplier occurs, the person that owns or operates the covered fuel supplier as of December 31 in the final year of a compliance period is responsible for demonstration of compliance according to this rule for each annual compliance obligation during the compliance period. Compliance obligations may not be split or subdivided based on ownership changes during the compliance period or during any year within the compliance period.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0490

Recordkeeping Requirements Related to Demonstration of Compliance

(1) A person must retain the following records necessary for determining compliance obligations, in paper or electronic format, for a period of at least seven years beginning September 30 of the year following a year in which covered emissions occurred:

(a) Records according to the recordkeeping requirements of OAR chapter 340, divisions 215 and 272, as applicable;

(b) Copies of reports and forms submitted to DEQ related to determination of compliance obligations according this division and OAR chapter 340, divisions 215 and 272, including but not limited to:

(A) Applicable emissions data reports submitted according to OAR chapter 340, division 215; and

(B) Applicable verification statements submitted according to OAR chapter 340, division 272; and

(c) All other information and documentation used to calculate and report emissions and used to determine emissions and compliance obligations according to this division.

(2) A person must retain the following records necessary for supporting demonstration of compliance, according to OAR 340-271-0450, in paper or electronic format for a period of at least seven years following the deadline for demonstration of compliance in OAR 340-271-0450:

(a) Copies of reports and forms submitted to DEQ related to demonstration of compliance, including but not limited to demonstration of compliance forms; and

(b) All other information and documentation used to support demonstration of compliance.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0500

Trading of Compliance Instruments

(1) A covered fuel supplier may trade one or more compliance instruments only according to this rule. A covered fuel supplier may transfer one or more compliance instruments to another covered fuel supplier up to the amount that it has available and has not used to demonstrate compliance. A covered fuel supplier may acquire one or more compliance instruments from another covered fuel supplier.

(2) A covered fuel supplier may not engage in a trade of a compliance instrument involving, related to, in service of, or associated with any of the following:

(a) Fraud, or an attempt to defraud or deceive using any device, scheme or artifice;

(b) Use of any unconscionable tactic in connection with the transfer, by any person;

(c) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the compliance instrument being sold. A fact is material if it is reasonably likely to influence a decision by another person or by DEQ;

(d) Any activity intended to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition in the market for compliance instruments;

(e) A conspiracy in restraint of trade or commerce; or

(f) An attempt to monopolize holding of compliance instruments, or to combine, collude, or conspire with any other person or persons to monopolize.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0510

Compliance Instrument Trade Notifications and Process

(1) Covered fuel suppliers that trade one or more compliance instruments must notify DEQ of the trade. The designated representatives of both the covered fuel supplier transferring the compliance instrument and the covered fuel supplier acquiring the compliance instrument must sign and submit a compliance instrument trade form that meets the requirements of this section, using a form approved by DEQ.

(a) The covered fuel supplier transferring one or more compliance instruments must sign first; and

(b) The covered fuel supplier acquiring the compliance instrument(s) must sign the same form and submit it to DEQ no later than one week after the transferring covered fuel supplier signs the form.

(c) All of the following must be included on a compliance instrument trade form:

(A) The agreed upon date of the trade.

(B) The total number of compliance instruments traded, and separately the total number traded from each calendar year's cap.

(C) The total price per compliance instrument (in US dollars), excluding any fees. If a specific dollar value is not paid for the compliance instrument, an estimate must be provided.

(D) As applicable, other information about the trade that DEQ determines is necessary to support DEQ's monitoring of trades and that DEQ includes on the form;

(E) The following information about the covered fuel supplier transferring the compliance instrument(s):

(i) Name and full mailing address of the covered fuel supplier.

(ii) Designated representative's contact information including name, title or position, phone number, and email address.

(iii) The following attestation, signed by the designated representative:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this form is true, accurate, and complete. [Covered fuel supplier] is transferring these compliance instruments to [covered fuel supplier that is acquiring] for the price described in this form.

(F) The following information about the covered fuel supplier acquiring the compliance instrument(s):

(i) Name and full mailing address of the covered fuel supplier.

(i) Designated representative's contact information including name, title or position, phone number, and email address.

(iii) The following attestation, signed by the designated representative:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this form is true, accurate, and complete. [Covered fuel supplier] is acquiring compliance instruments from [covered fuel supplier that is transferring] for the price described in this form.

(2) When DEQ receives a compliance instrument trade form for one or more compliance instruments as described in section (1), DEQ will inform the applicant either that the submitted form is complete or that additional specific information is required to make the form complete. Upon receipt of a complete form signed by both covered fuel suppliers involved in a trade, DEQ will track traded compliance instruments. DEQ will notify the designated representative of the covered fuel supplier acquiring compliance instrument(s) in writing of availability of these compliance instruments. DEQ will notify the designated representative of the covered fuel supplier transferring compliance instrument(s) in writing that the covered fuel supplier no longer holds the compliance instruments. If DEQ determines that the form is incomplete, DEQ will not track the requested trade unless and until the applicant provides the additional information requested by DEQ to make the form complete, and such instruments will not be available to the covered fuel supplier acquiring the instruments.

(3) A covered fuel supplier acquiring one or more compliance instrument(s) in a trade may not use the compliance instrument(s) in other trades or toward demonstration of compliance with any compliance obligation until the trade has been reported to DEQ and DEQ has tracked the traded compliance instrument(s). Trades may only be reported to DEQ after DEQ has made the compliance instrument trade form available. DEQ will notify covered fuel suppliers when the compliance instrument trade form is available.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0590

Recordkeeping Requirements Related to Trading

(1) A person who transfers one or more compliance instruments in a trade according to OAR 340-271-0510 must retain the following records related to each trade, in paper or electronic format for a period of at least seven years following the submission date of a complete compliance instrument trade form:

- (a) A copy of each compliance instrument trade form submitted to DEQ;
- (b) A copy of any invoice or documentation of monetary payment received related to the trade;
- (c) A statement from a financial institution showing receipt of any payment for the compliance instrument;
- (d) Documentation of any service or other qualitative compensation received related to the trade;
and
- (e) A copy of all other data, reports, or other information related to the trade.

(2) A person who acquires one or more compliance instruments in a trade according to OAR 340-271-0510 must retain the following records related to each trade, in paper or electronic format for a period of at least seven years following the submission date of a complete compliance instrument trade form:

- (a) A copy of each compliance instrument trade form submitted to DEQ;
- (b) A copy of any invoice or documentation of monetary payment related to the trade;
- (c) A statement from a financial institution showing any payment for the compliance instrument;
- (d) Documentation of any service or other qualitative compensation provided related to the trade;
and
- (e) A copy of all other data, reports, or other information related to the trade.

(3) Covered fuel suppliers must make the records retained according to this rule available to DEQ upon request. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0810

Covered Fuel Supplier Application for Community Climate Investment Credits

(1) A covered fuel supplier is eligible to receive one or more CCI credits if it contributes CCI funds according to this rule.

(a) The covered fuel supplier may receive CCI credits only for contributions to a CCI entity that has been approved by DEQ according to OAR 340-271-0920(1) and has entered into a written agreement with DEQ to accept and administer CCI funds according to OAR 340-271-0920(2).

(b) A covered fuel supplier is not eligible to receive a CCI credit for any contribution made to a CCI entity prior to March 1, 2023.

(c) If more than one CCI entity is approved to accept funds according to subsection (a) the covered fuel supplier must contribute an equal amount of CCI funds to each CCI entity that may receive funds consistent with its agreement with DEQ according to OAR 340-271-0920(2). The contribution amount to each CCI entity may vary by up to one US dollar.

(2) A covered fuel supplier must apply to receive CCI credits by submitting an application to DEQ, on a form approved by DEQ that includes the information described in section (3). A covered fuel supplier may not submit an application to request CCI credits on behalf of another person.

(3) A covered fuel supplier that submits an application to DEQ to request CCI credits must submit a complete and accurate application. The application must include:

(a) Information about the covered fuel supplier, including:

(A) Name and full mailing address; and

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(b) The name of each CCI entity that received CCI funds from the covered fuel supplier;

(c) A copy of the receipt(s) described in OAR 340-271-0930(1)(a) received from each CCI entity;

(d) The total CCI funds (in US dollars) contributed to each CCI entity, excluding any fees; and

(e) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [Covered fuel supplier] contributed the community climate investment funds noted in this application to each community climate investment entity listed for the purposes of supporting eligible projects as described in OAR 340-271-0900.

(4)(a) A covered fuel supplier seeking to receive CCI credits in order to use them to demonstrate compliance for a particular compliance period must submit its application to DEQ no later than November 14 of the year it will demonstrate compliance according to OAR 340-271-0450, or 11 days after DEQ's notice described in OAR 340-271-0450(1), whichever is later.

(b) DEQ's determination of the quantity of CCI credits to generate and distribute is based on the amount of the covered fuel supplier's contribution to CCI entities, as documented in its application and the CCI credit contribution amount described in Table 7 in OAR 340-271-9000 that was in effect on the date the contribution was made, adjusted for inflation according to OAR 340-271-0820(3).

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0820

Generation and Distribution of Community Climate Investment Credits

(1) DEQ will review an application submitted according to OAR 340-271-0810 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If DEQ determines that the application is incomplete or does not meet the requirements of OAR 340-271-0810, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(2) DEQ will approve an application for CCI credits submitted by a covered fuel supplier if DEQ determines that the application is accurate and complete according to the requirements of OAR 340-271-0810, and DEQ determines that the CCI funds have been provided to an approved CCI entity that is in good standing according to OAR 340-271-0910 through OAR 340-271-0990.

(3) Approval of an application for CCI credits.

(a) Upon approval of an application for CCI credits, DEQ will notify the covered fuel supplier in writing that DEQ has approved the application and will generate and distribute to the covered fuel supplier the quantity of CCI credits approved according to subsection (b).

(b) The amount of CCI credits that DEQ will generate and distribute to the covered fuel supplier is one CCI credit for every verified contribution of the CCI credit contribution amount that a

covered fuel supplier provides to a CCI entity, rounded down to the nearest whole number. The CCI credit contribution amount is the applicable amount in Table 7 in OAR 340-271-9000 for the date the contribution was made, with the CCI credit contribution amount adjusted for inflation and rounded to the nearest dollar using the inflation rate since January 2021, as provided by the United States Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items. DEQ will post the current, inflation adjusted CCI credit contribution amount on its website effective March 1 of each year. The formula for the adjustment is as follows:

$$\text{CCI Credit Contribution Amount} = \text{CCI Credit Contribution Amount in Table 7 in OAR 340-271-9000} * (\text{CPI-U West for January of the calendar year for the price in Table 7 in OAR 340-271-9000 that is currently in effect} / \text{CPI-U West for January 2021})$$

(4) A CCI credit is a regulatory instrument and does not constitute personal property, a security or any other form of property.

(5) DEQ will track distributed CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0830

Holding Community Climate Investment Credits

(1) When DEQ distributes a CCI credit to a covered fuel supplier according to OAR 340-271-0820, the covered fuel supplier may continue to hold the CCI credit until any of the following apply:

(a) The covered fuel supplier uses the CCI credit toward its demonstration of compliance according to OAR 340-271-0450;

(b) Two demonstration of compliance deadlines described in OAR 340-271-0450(2) have passed since the date DEQ provided written notice of its approval of the CCI credit to the covered fuel supplier according to OAR 340-271-0820 and the covered fuel supplier has not used the CCI credit in its demonstration(s) of compliance. In such a case, DEQ will cancel the CCI credit. A cancelled CCI credit may not be used toward demonstration of compliance; or

(c) The covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When a covered fuel supplier ceases to be a covered fuel supplier, DEQ will cancel the CCI credit at the time of such cessation. A cancelled CCI credit may not be used toward any demonstration of compliance.

(2) Only a covered fuel supplier that receives a CCI credit from DEQ may hold the CCI credit. The covered fuel supplier may not trade the CCI credit.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0890

Recordkeeping Requirements Related to Community Climate Investment Funds

(1) A covered fuel supplier that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period of time that begins with the date it provides the CCI funds and lasts seven years after all resulting CCI credits are submitted to demonstrate compliance or are cancelled:

- (a) A copy of any invoice or documentation of monetary payment related to CCI funds;
- (b) A statement from a financial institution showing any payments related to CCI funds;
- (c) A copy of any receipt received from a CCI entity; and
- (d) All other information and documentation related to the CCI funds provided to a CCI entity.

(2) A covered fuel supplier must retain the following records, in paper or electronic format, for a period that begins the date it applies for a CCI credit and lasts seven years after the CCI credit is used to demonstrate compliance or is cancelled:

- (a) A copy of each application submitted to DEQ to request CCI credits; and
- (b) All other information and documentation related to CCI credit(s) received from DEQ.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.050

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0900

Purposes of Community Climate Investments and Eligible Uses of CCI Funds

(1) The purposes of community climate investments are to:

(a) Provide covered entities with an optional means of meeting part of their compliance obligation for one or more compliance periods;

(b) Reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ;

(c) Reduce emissions of other air contaminants that are not greenhouse gases, particularly in or near environmental justice communities in Oregon;

(d) Promote public health, environmental, and economic benefits for environmental justice communities throughout Oregon to mitigate impacts from climate change, air contamination, energy costs, or any combination of these; and

(e) Accelerate the transition of residential, commercial, industrial and transportation-related uses of fossil fuels in or near environmental justice communities in Oregon to zero or to other lower greenhouse gas emissions sources of energy in order to protect people, communities and businesses from increases in the prices of fossil fuels.

(2) A CCI entity may use CCI funds only for:

(a) Implementing eligible projects in Oregon, which are actions that reduce anthropogenic greenhouse gas emissions that would otherwise occur in Oregon. Eligible projects include, without limitation, actions that reduce emissions in Oregon resulting from:

(A) Transportation of people, freight, or both;

(B) An existing or new residential use or structure;

(C) An existing or new industrial process or structure; and

(D) An existing or new commercial use or structure.

(b) The costs of administering CCI funds and eligible projects, including costs of reporting and other requirements included in OAR 340-271-0930 and costs of capacity-building for implementation of eligible projects.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0910

Application to DEQ for Approval as a Community Climate Investment Entity

(1) To be eligible for DEQ approval as a community climate investment entity, an entity must demonstrate that it:

(a) Is authorized to do business in Oregon, and that it is exempt from federal taxation according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Has the capacity to administer and spend CCI funds to carry out eligible projects as specified in OAR 340-271-0900(2);

(c) Has or will have staff capable of conducting work associated with being a CCI entity according to this division;

(d) Has or will have staff or subcontractors capable of implementing eligible projects throughout Oregon; and

(e) Is not a covered entity or a related entity of a covered entity.

(2) An eligible entity described in section (1) may apply to be approved as a CCI entity to implement eligible projects directly or by agreement with one or more subcontractors, or both. Subcontractors are not CCI entities, and do not need to meet the eligibility requirements of section (1). However, a CCI entity may not use CCI funds to pay a subcontractor that is a covered entity or a related entity of a covered entity.

(3) An entity that seeks approval as a CCI entity must submit an application to DEQ, on a form approved by DEQ that includes the following:

(a) Information about the entity, including:

(A) Name, full mailing address, and website address;

(B) Contact person's information including name, title or position, phone number, and email address;

(C) Information to describe how the entity meets the eligibility criteria in section (1);

(D) A copy of the entity's current articles of incorporation and bylaws, and a description of the mission of the entity and how being a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals, if known, who would be working to implement eligible projects with CCI funds or assigned work associated with the requirements of a CCI entity described in OAR 340-271-0930;

(F) A description of experience implementing or supporting implementation of eligible projects or project types, particularly in environmental justice communities in Oregon. This may include the experience of the key individuals described in paragraph (E) whether or not that prior experience occurred while working with the entity;

(G) Information regarding any violation by the entity related to federal or state labor laws within the preceding five years;

(H) The entity's IRS Form 990 for each of the three most recent years, if available; and

(I) Proof that the IRS has certified the entity as qualifying as an exempt organization according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Information about each known or planned subcontractors, as available, including:

(A) Name, full mailing address, and website address;

(B) Contact person's contact information including name, title or position, phone number, and email address;

(C) Confirmation that the subcontractor is not a covered entity or any of its related entities;

(D) If applicable, a description of the mission of the subcontractor and how being a subcontractor of a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals who would be working to implement eligible projects with CCI funds;

(F) A description of the subcontractor's prior experience implementing or supporting implementation of eligible projects and a description of prior experience serving communities in Oregon; and

(G) Information regarding any violation by the proposed subcontractor related to federal or state labor laws within the preceding five years;

(c) Information about how any subcontractor(s) may be selected during project implementation if there are none listed in the application or if the entity expects to select one or more additional subcontractors during project implementation;

(d) If known, a general description of either or both of the following:

(A) Anticipated eligible project(s) or project type(s) that support the purposes of CCIs described in OAR 340-271-0900(1) and that are eligible projects as defined in OAR 340-271-0900(2) that the entity plans to implement if approved as a CCI entity; and

(B) The communities in Oregon that are anticipated to benefit if the entity is approved as a CCI entity;

(e) Description of the administrative processes and financial controls the entity will use to ensure all CCI funds are held separately from the entity's other funds. This must detail how the entity

will manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f);

(f) The anticipated annual total amount of CCI funds the entity would be able to receive and spend, including a description of why that annual amount is anticipated; and

(g) The following attestation, signed by the entity's contact person:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [Entity] seeks to become a community climate investment entity and, if approved, will comply with the applicable requirements in Oregon Administrative Rules chapter 340, division 271.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0920

DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities

(1) DEQ will review and may approve applications from entities proposing to be approved as CCI entities according to subsections (a) through (d).

(a) DEQ will review an application submitted according to OAR 340-271-0910 to ensure that it meets the requirements of that rule. DEQ will inform the entity either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the entity provides the additional information requested by DEQ.

(b) When evaluating complete applications submitted according to OAR 340-271-0910, DEQ will consult with the equity advisory committee described in OAR 340-271-0950 and may consult with any other relevant experts selected by DEQ.

(c) DEQ will consider the following when evaluating a complete application:

(A) The content of the application;

(B) Whether the entity meets the eligibility criteria in OAR 340-271-0910(1);

(C) Whether each proposed subcontractor, if applicable, complies with the eligibility criteria in OAR 340-271-0910(1)(e);

(D) The overall ability of the entity and, if applicable, its subcontractor(s) to use CCI funds to complete eligible projects that advance the purposes set forth in OAR 340-271-0900(1) and that collectively reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI contributions to the entity;

(E) The overall ability of the entity and/or its subcontractor(s) to use CCI funds as described in paragraph (D) relative to the overall ability of other applicants and approved CCI entities; and

(F) Whether the applicant or any proposed subcontractors have violated any federal or state labor laws in the preceding five years.

(d) DEQ will notify the applicant in writing whether provisional approval as a CCI entity is granted or denied.

(2) If provisional approval as a CCI entity is granted, DEQ will then work with the CCI entity to complete a written agreement. The written agreement must be approved before an entity receives final approval as a CCI entity and is authorized to receive CCI funds. The written agreement will include, but is not limited to:

(a) Agreement to use CCI funds only for the uses specified in OAR 340-271-0900(2);

(b) The initial term of the agreement and approval, which may not exceed ten years;

(c) Requirements for monitoring and reporting of project outcomes sufficient to document emissions reductions;

(d) Provisions for, and limitations on, the payment of administrative expenses;

(e) Provisions for extensions, amendments, or renewal of the agreement;

(f) Other conditions that DEQ determines are necessary to include in the agreement in order to meet the requirements of this division, such as a limit on the amount of CCI funds that a CCI entity may accept.

(3) If DEQ finds that any of the events in subsections (a) through (c) occur, DEQ may suspend or revoke approval of a CCI entity completely or in part.

(a) The CCI entity fraudulently obtained DEQ approval;

(b) The CCI entity is in violation of any applicable provisions of this division or any written agreement between the CCI entity and DEQ; or

(c) DEQ determines that the CCI entity is not in compliance with one or more of the eligibility criteria for approval in OAR 340-271-0910(1).

(4) DEQ will maintain a current list of approved CCI entities on DEQ's website.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0930

Requirements for Community Climate Investment Entities

(1) Acceptance of CCI funds.

(a) Once approved by DEQ, unless otherwise specified in the agreement between a CCI entity and DEQ, a CCI entity must accept CCI funds from any covered fuel supplier that seeks to contribute CCI funds. The CCI entity must provide a receipt to the covered fuel supplier upon receipt of CCI funds from the covered fuel supplier. The receipt must include:

(A) The name of the covered fuel supplier;

(B) The name of the CCI entity;

(C) The US dollar amount of the CCI funds accepted;

(D) The date the CCI entity accepted the CCI funds; and

(E) The following attestation:

I verify that [CCI Entity] received the contribution from [Covered fuel supplier] as described on this receipt and I affirm that I am a representative of [CCI entity] authorized to sign this receipt.

(b) Unless otherwise specified in the agreement between the CCI entity and DEQ, a CCI entity must accept CCI funds transferred to it from another CCI entity according to section (8).

(2) Holding CCI funds.

(a) A CCI entity must hold all CCI funds in one or more accounts separate from any other funds. Additionally, prior to being spent in compliance with the provisions of this division and its agreement with DEQ, funds must be managed and invested in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). A CCI entity may not encumber CCI funds or pledge CCI funds as a security for other purposes than completing one or more projects under a DEQ-approved work plan.

(b) A CCI entity must complete an independent financial audit of CCI funds for each year in which it holds CCI funds.

(3) Use of CCI funds. A CCI entity may only spend CCI funds for the uses specified in OAR 340-271-0900(2). The expenditures of CCI funds must conform to the CCI's work plan approved by DEQ under section (4) of this rule.

(4) Work Plan.

(a) A CCI entity must submit its proposed work plan to DEQ for review and approval. The period of the work plan will normally be a calendar year, unless otherwise specified in the agreement between DEQ and the CCI entity. A CCI entity must obtain DEQ approval of the work plan prior to committing or expending CCI funds for the period of the work plan. The first work plan must be submitted within 60 days of the date on which the CCI entity entered into a written agreement with DEQ described in OAR 340-271-0920(2). Each subsequent work plan must be submitted no later than 30 days prior to the end of the current work plan period.

(b) The work plan must include:

(A) A description of the project(s) or project type(s) the CCI entity expects to support with CCI funds during the period of the work plan, and how the project(s) or project type(s) support each of the purposes of CCIs described in OAR 340-271-0900(1)(b) through (e);

(B) A description of how the project(s) or project type(s) will benefit communities in Oregon, including description of the potential locations of communities or regions of Oregon in which projects may be implemented or a description of how locations may be selected;

(C) A description of how each project or project type would benefit environmental justice communities in Oregon;

(D) A description of the methodology that the CCI entity is using to estimate the reductions in anthropogenic greenhouse gas emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan. The methodology must be sufficient to allow DEQ to perform the necessary calculations in a program review according to OAR 340-271-8100;

(E) A description of the methodology that the CCI entity is using to estimate the reductions in other air contaminant emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan;

(F) The name and contact person's contact information of subcontractors that will be involved in any project activities during the period of the work plan; and

(G) The estimated total budget for the period of the work plan. CCI funds must be listed separately from any other funds, as applicable. This must separately include the following:

(i) All costs related to project implementation, listed separately for groups of project(s) or project type(s), including but not limited to personnel costs and materials costs; and

(ii) Administrative costs related to the project implementation and meeting the requirements of this rule.

(c) A CCI entity may request DEQ approval of modifications to a DEQ-approved work plan by submitting modifications to the information described in subsection (b). The CCI entity must obtain DEQ approval of any modification to a work plan prior to beginning work according to a modified work plan.

(d) DEQ will review each submitted work plan to ensure that it meets the requirements of this section. DEQ will inform the CCI entity either that the submitted work plan is complete or that additional specific information is required to make the work plan complete. If the work plan is incomplete, DEQ will not consider the work plan further until the CCI entity provides the additional information requested by DEQ. DEQ will consider the following in its review:

(A) The overall ability of the CCI entity to conduct work according to the work plan;

(B) Whether following the work plan is reasonably likely to reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI fund contributions to the CCI entity;

(C) Whether the work plan is consistent with the purposes of CCIs described in OAR 340-271-0900; and

(D) Input from the equity advisory committee described in OAR 340-271-0950 and from any other relevant experts selected by DEQ.

(5) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year that describes its CCI-related activities and finances for the preceding calendar year, including:

(a) The following information related to CCI funds received, held, or spent during the year:

(A) Each financial statement for the account(s) where CCI funds were held and the results of the CCI entity's most recent independent financial audit;

(B) The date, amount of CCI funds accepted, and as applicable, the name of the covered fuel supplier for each separate contribution received;

(C) Total CCI fund interest accrual;

(D) Total CCI funds spent, including separate totals of:

(i) CCI funds spent on each project, including but not limited to personnel costs and materials costs; and

(ii) Administrative costs related to the project, including project development, and implementation and meeting the requirements of this rule;

(E) Total CCI funds the CCI entity holds that remain unspent as of the end of the year; and

(F) Total non-CCI funds spent on implementation of each project or project type, as applicable;

(b) The following information related to implementation progress of project(s) or project type(s) during the year:

(A) Documentation of work completed or progress made on each project or project type, including the number of projects completed of each project type, as applicable;

(B) A summary of project outcomes. This must include estimated annual greenhouse gas emissions reductions in metric tons of CO₂e and non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant that are anticipated to be achieved from any project(s) completed during the year. Emissions reductions must be estimated using the methodology included in the applicable work plan. Emissions reductions may be reported by individual project or may be grouped by project type, if the CCI entity can provide sufficient information to demonstrate that the emissions reductions of multiple projects of the same type are comparable; and

(C) A description of work that occurred compared to the most recently approved work plan or modified work plan. If projects were not implemented as planned, the CCI entity must describe the reason for delay and must describe any steps that may be taken to work to remedy the delay or prevent similar delays in subsequent years; and

(c) A copy of the CCI entity's most recent IRS form 990.

(6) Maintaining CCI entity eligibility.

(a) A CCI entity must notify DEQ in writing as soon as possible, and not later than 30 days after it no longer meets any of the eligibility criteria for approval in OAR 340-271-0910(1), or if it is in violation of any of the requirements of this rule.

(b) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes are made to the administrative processes or financial controls that keep CCI funds separate from other funds;

(c) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes related to key individuals or their assigned work associated with being a CCI entity.

(d) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any finding of a violation related to federal or state labor laws by the CCI entity or by an approved subcontractor;

(e) Upon written request by DEQ, a CCI entity must provide to DEQ in a reasonably timely manner any and all information that DEQ reasonably requires for evaluating the CCI entity's

continued compliance with the requirements of this division, including the criteria for approval as a CCI entity and eligible projects.

(7) Voluntary withdrawal from DEQ approval. An approved CCI entity may request to withdraw voluntarily its approval by providing a written notice to DEQ requesting such withdrawal.

(8) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require the entity to transfer any unspent CCI funds to another CCI entity and provide proof to DEQ that the transfer has been made.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0950

Equity Advisory Committee and Environmental Justice Community Engagement

(1) DEQ will appoint and convene an equity advisory committee to assist DEQ with:

(a) Review of:

(A) Applications to become a CCI entity;

(B) Requests for DEQ approval of work plans; and

(C) Other submittals by CCI entities that require DEQ review; and

(b) Outreach to environmental justice communities.

(2) Advisory committee member selection.

(a) DEQ may solicit applications from residents of the state of Oregon to be appointed to serve as members of the equity advisory committee and may select the committee from those applications.

(b) DEQ will prioritize convening an advisory committee that represents multiple areas of expertise, interest, or lived experience in the following areas:

(A) Environmental justice;

(B) Impacts of climate change on communities in Oregon;

(C) Impacts of air contamination on communities in Oregon; and

(D) Greenhouse gas emissions reductions and climate change.

(c) DEQ will prioritize convening an advisory committee that represents multiple regions across Oregon.

(d) DEQ may appoint each committee member to a term of up to three years.

(3) In addition to outreach conducted by CCI third party entities to environmental justice communities throughout Oregon, DEQ will conduct outreach to these communities to seek input on projects that may be of interest to those communities. The equity advisory committee will consider this input when assisting DEQ as described in section (1). DEQ will consider this input when making approval decisions regarding CCI entities, projects and project types, and work plans.

(4) DEQ will offer guidance and conduct outreach to support the equity advisory committee and environmental justice communities in Oregon in understanding the provisions related to CCIs.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-0990

Recordkeeping Requirements for Community Climate Investment Entities

(1) A CCI entity must retain the following records, in paper or electronic format, for the duration of its approval as a CCI entity and for a period of at least seven years following the end of its approval:

(a) A copy of each application submitted to DEQ for approval as a CCI entity;

(b) A copy of any invoice or documentation of monetary payment related to CCI funds;

(c) A statement from a financial institution showing any payments related to CCI funds;

(d) A copy of any receipt provided to a covered fuel supplier that makes a CCI payment to the CCI entity;

(e) A copy of any work plan submitted to DEQ by the CCI entity;

(f) A copy of any report or written request for approval submitted to DEQ by the CCI entity;

(g) All other information and documentation related to CCI funds;

(h) All records related to any implemented projects; and

(i) All records and information supporting estimates of greenhouse gas emissions reductions and other air contaminant emissions reductions achieved from implemented projects or project types.

(2) CCI entities must make records required to be retained in this rule available to DEQ upon request. DEQ will specify the date by which the CCI entity must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-8100

Program Review

(1) DEQ will report to the EQC on community climate investments. DEQ will submit the first report to the EQC by August 30, 2024 and every two years thereafter. DEQ will share each report with current members of the equity advisory committee after submission to the EQC. Each community climate investment report will include:

(a) A review of community climate investments, including:

(A) CCI credits distributed to covered fuel suppliers;

(B) CCI credits used by covered fuel suppliers to demonstrate compliance;

(C) Estimates of annual greenhouse gas emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(D) Estimates of annual non-greenhouse gas air contaminant emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(E) Calculation of the average anthropogenic greenhouse gas emissions reductions achieved per CCI credit distributed based on (A) and (C) and whether reductions of approximately one MT CO₂e or more of anthropogenic greenhouse gas emissions for the average CCI credit distributed by DEQ was achieved; and

(F) Description of community benefits achieved; and

(b) DEQ's recommendations regarding any necessary or desirable changes to the CPP provisions relating to CCIs, including, without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 7 in OAR 340-271-9000 necessary to assure that the use of CCI funds is reducing anthropogenic greenhouse gas emissions in Oregon by an average of at

least one MT CO₂e per CCI credit distributed by DEQ, as well as recommendations on how to best achieve the purposes of CCIs described in OAR 340-271-0900, if applicable.

(2) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report to the EQC five years after the date of adoption of this division and at least once every five years thereafter. Each program review report will include:

(a) A review of the Climate Protection Program, including:

(A) Summary of covered fuel suppliers' demonstrations of compliance for compliance periods that have occurred since program start, including:

(i) Caps for each year and compliance period;

(ii) Compliance obligations for each year and compliance period;

(iii) Compliance instruments submitted for each compliance period; and

(iv) CCI credits submitted for each compliance period;

(B) Summary of the distribution of compliance instruments, including the size of the compliance instrument reserve at the start and end of each program year that has occurred and compared to Table 3 in OAR 340-271-9000;

(C) Summary of activity relating to trading of compliance instruments for each program year that has occurred;

(D) Summary of covered stationary source requirement activities that have occurred since program start or since the most recently submitted report to the EQC, whichever is later, including:

(i) The number of existing stationary sources that DEQ has notified in writing that must complete a BAER assessment;

(ii) The number of BAER assessments received or anticipated to be received by DEQ;

(iii) A brief summary of any BAER order issued and the required actions that must be taken by the owner or operator of a covered stationary source that has been issued a BAER order;

(iv) A brief summary of the status of any covered stationary source activities regarding implementation of requirements in a BAER order; and

(v) Review of any changes in annual covered emissions from current covered stationary sources to assess whether covered emissions are being reduced;

(E) Whether emission reductions from covered stationary sources align with the priorities described in section (3). This will be assessed in program reviews beginning after 2029.

(F) A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and

(G) Description of any enforcement actions taken that involved civil penalties, if applicable; and

(b) DEQ's recommendations regarding any potential changes to the CPP including, for example and without limitation, recommendations regarding potential changes to best achieve the goals described in section (3) for covered stationary sources.

(3) CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:

(a) Reduce total covered emissions from covered stationary sources; and

(b) Reduce total covered emissions from covered stationary sources that are the result of ~~use~~ combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.

(4) If the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than 20 percent higher than the average change in cost for the same fuel over the same period in Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made that would ameliorate a relative increase in costs in Oregon. If necessary, DEQ will consider recommending rule changes, such as changes to caps and distribution of additional compliance instruments, changes to the compliance instrument reserve, or changes to the allowable usage of CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-8110

Deferrals

DEQ may extend reporting or demonstration of compliance deadlines as DEQ deems necessary or appropriate and will issue written notice of any extensions.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-8120
Severability

Each requirement of this division is severable, and if any requirement of this division is held invalid, the remainder of the requirements of this division will continue in full force and effect.

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)

340-271-9000
Tables

(1) Table 1. Thresholds for applicability described in OAR 340-271-0110(3).

(2) Table 2. Oregon Climate Protection Program caps.

(3) Table 3. Compliance instrument reserve size.

(4) Table 4. Compliance instrument distribution to covered fuel suppliers that are local distribution companies.

(5) ~~Table 5. Compliance instrument distribution evaluation periods.~~ [REPEALED effective x/x/xxxxx/x/2023](#).

(6) Table 6. Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3).

(7) Table 7. CCI credit contribution amount.

[\[ED. NOTE: To view attachments referenced in rule text, click here to view rule.\]](#)

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.040

Statutes/Other Implemented: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015 & 468A.045

History:

[DEQ 27-2021, adopt filed 12/16/2021, effective 12/16/2021](#)



OAR 340-271-9000

Table 1
Thresholds for
applicability described in OAR 340-271-0110(3)

Applicability determination calendar year(s)	Threshold for applicability to compare to annual covered emissions	Calendar year a person becomes a covered fuel supplier
Any year from 2018 through 2022	200,000 MT CO ₂ e	2022
2023	200,000 MT CO ₂ e	2023
2024	200,000 MT CO ₂ e	2024
Any year from 2021 through 2025	100,000 MT CO ₂ e	2025
2026	100,000 MT CO ₂ e	2026
2027	100,000 MT CO ₂ e	2027
Any year from 2024 through 2028	50,000 MT CO ₂ e	2028
2029	50,000 MT CO ₂ e	2029
2030	50,000 MT CO ₂ e	2030
Any year from 2027 through 2031	25,000 MT CO ₂ e	2031
2032	25,000 MT CO ₂ e	2032
Each subsequent year	25,000 MT CO ₂ e	Each subsequent year



OAR 340-271-9000

Table 2
Oregon Climate Protection Program caps

Calendar year	Cap
2022	28,081,335
2023	27,001,283
2024	25,921,232
2025	25,763,209
2026	24,637,057
2027	23,510,904
2028	23,013,190
2029	21,842,149
2030	20,671,108
2031	19,910,424
2032	18,688,088
2033	17,465,752
2034	16,243,416
2035	15,021,080
2036	14,219,956
2037	13,418,831
2038	12,617,707
2039	11,816,583
2040	11,015,459
2041	10,214,334
2042	9,413,210
2043	8,612,086
2044	7,810,962
2045	7,009,837
2046	6,208,713

2047	5,407,589
2048	4,606,465
2049	3,805,340
2050 and each calendar year thereafter	3,004,216



OAR 340-271-9000

Table 3
Compliance instrument reserve size

Calendar year(s) of the cap	Reserve size
2022	400,000 compliance instruments
2023 through 2030	800,000 compliance instruments
2031 through 2040	500,000 compliance instruments
2041 and each calendar year thereafter	250,000 compliance instruments



OAR 340-271-9000

Table 4
Compliance instrument distribution to covered fuel suppliers
that are local distribution companies

Calendar year	Compliance instruments to distribute to Avista Utilities	Compliance instruments to distribute to Cascade Natural Gas Corporation	Compliance instruments to distribute to Northwest Natural Gas Company
2022	703,373	743,707	5,759,972
2023	676,320	715,103	5,538,434
2024	649,267	686,499	5,316,897
2025	622,214	657,895	5,095,359
2026	595,161	629,291	4,873,822
2027	568,109	600,687	4,652,285
2028	541,056	572,083	4,430,747
2029	514,003	543,478	4,209,210
2030	486,950	514,874	3,987,673
2031	459,897	486,270	3,766,135
2032	432,845	457,666	3,544,598
2033	405,792	429,062	3,323,061
2034	378,739	400,458	3,101,523
2035	351,686	371,854	2,879,986
2036	332,930	352,021	2,726,387
2037	314,173	332,189	2,572,787
2038	295,416	312,357	2,419,188
2039	276,660	292,525	2,265,589
2040	257,903	272,693	2,111,990
2041	239,147	252,860	1,958,390
2042	220,390	233,028	1,804,791
2043	201,633	213,196	1,651,192
2044	182,877	193,364	1,497,593
2045	164,120	173,532	1,343,993

2046	145,364	153,699	1,190,394
2047	126,607	133,867	1,036,795
2048	107,850	114,035	883,196
2049	89,094	94,203	729,596
2050 and each calendar year thereafter	70,337	74,371	575,997



~~OAR 340-271-9000~~

Table 5

~~Compliance instrument distribution evaluation periods~~

Calendar years of emissions for evaluation period	Year in which evaluation occurs to determine distribution of compliance instruments	Calendar year of the cap
2018 through 2020	2021	2022
2019 through 2021	2022	2023
2020 through 2022	2023	2024
Each subsequent three year period	Each subsequent year	Each subsequent year



OAR 340-271-9000

Table 6
Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3)

Compliance period	Allowable percentage of total compliance obligation(s) for which compliance may be demonstrated with CCI credits
Compliance period 1 (2022 through 2024)	10%
Compliance period 2 (2025 through 2027)	15%
Compliance period 3 (2028 through 2030), and for each compliance period thereafter	20%



OAR 340-271-9000

Table 7
CCI credit contribution amount

Effective date	CCI credit contribution amount in 2021 dollars, to be adjusted according to OAR 340-271-0820(3)
March 1, 2023	\$107
March 1, 2024	\$108
March 1, 2025	\$109
March 1, 2026	\$110
March 1, 2027	\$111
March 1, 2028	\$112
March 1, 2029	\$113
March 1, 2030	\$114
March 1, 2031	\$115
March 1, 2032	\$116
March 1, 2033	\$117
March 1, 2034	\$118
March 1, 2035	\$119
March 1, 2036	\$120
March 1, 2037	\$121
March 1, 2038	\$122
March 1, 2039	\$123
March 1, 2040	\$124
March 1, 2041	\$125
March 1, 2042	\$126
March 1, 2043	\$127
March 1, 2044	\$128
March 1, 2045	\$129

March 1, 2046	\$130
March 1, 2047	\$131
March 1, 2048	\$132
March 1, 2049	\$133
March 1, 2050	\$134

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State of Oregon Department of Environmental Quality

Draft Rules – Division 272

Edits Highlighted

Division 272 THIRD PARTY VERIFICATION

340-272-0010

Purpose and Scope

(1) The purpose of this division is to establish requirements for responsible entities that must engage the services of a verification body approved by DEQ to perform verification under this division for emissions data reports submitted under OAR chapter 340, division 215, reports or fuel pathway applications submitted under OAR chapter 340, division 253, or any combination therein, and to establish requirements for verification bodies and verifiers seeking DEQ approval to perform the third party verifications.

(2) This division supports the following programs:

(a) Greenhouse Gas Reporting Program as adopted under OAR chapter 340, division 215;
and

(b) Clean Fuels Program as adopted under OAR chapter 340, division 253.

(3) LRAPA. Notwithstanding Lane Regional Air Protection Agency authorization in OAR 340-200-0010(3), DEQ administers this division in all areas of the State of Oregon.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0020

Definitions

The definitions in this rule and in OAR 340-200-0020, OAR 340-215-0020, and OAR 340-253-0040, and the acronyms in OAR 340-253-0060 apply to this division. If the same term is defined in this rule and another division, the definition in this rule applies to this division.

(1) “Adverse verification statement” means a verification statement from a verification body that (either or both):

(a) It cannot say with reasonable assurance the submitted report or fuel pathway application is free of a material misstatement; or

(b) The submitted report or fuel pathway application contains correctable errors and thus is not in conformance with the requirements to fix such errors according to OAR 340-272-0435.

(2) “California ARB” means California Air Resources Board.

(3) “CFP” means the Oregon Clean Fuels Program established under OAR chapter 340, ~~division~~division 253.

(4) “Conflict of interest” means a situation in which, because of financial or other activities or relationships with other persons or organizations, a verification body is unable or potentially unable to provide an impartial verification statement of a potential client’s report or fuel pathway application, or the verification body’s objectivity in providing verification services is or might be otherwise compromised.

(5) “Correctable errors” means errors identified by the verification team that affect data in the submitted report or fuel pathway ~~application~~,application, which result from a nonconformance with OAR chapter 340, division 215 or OAR chapter 340, division 253, as applicable. Differences that, in the professional judgment of the verification team, are the result of differing but reasonable methods of truncation or rounding or averaging, where a specific procedure is not prescribed by this division, OAR chapter 340, division 215, or OAR chapter 340, division 253, are not considered errors and therefore do not require correction.

(6) “DEQ” means Oregon Department of Environmental Quality.

(7) “Difference in CI” means the absolute value result of the reported operational CI minus the verifier’s calculation of CI for material misstatement of carbon intensity assessments for a CFP fuel pathway application or annual report. The verifier’s calculation of CI is based on site-specific data inputs modified to include discrepancies, omissions, and misreporting found during the course of verification services.

(8) “Full verification” means all verification services as required under OAR 340-272-0300(1).

(9) “GHG Reporting Program” means the Oregon Greenhouse Gas Reporting Program established under OAR chapter 340, division 215.

(10) “Independent reviewer” means a lead verifier within a verification body that has not participated in providing verification services for a responsible entity for the current

reporting year and provides an independent review of verification services provided to the responsible entity.

(11) “Lead verifier” means a person that has met the requirements to perform such role under OAR 340-272-0210 and has been approved by DEQ under OAR 340-272-0220 to act as the lead of a verification team providing verification services as described by this division.

(12) “Less intensive verification” means all verification services required for full verification, except for site visit(s) as described under OAR 340-272-0420, and only requiring data checks and document reviews based on the analysis and risk assessment in the most recent sampling plan developed as part of the most current full verification.

(13) “Material misstatement” means any discrepancy, omission, misreporting, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that reported data or a submitted report or fuel pathway application contains one or more errors, as described in OAR 240-272-0450, OAR 240-272-0455, and OAR 240-272-0460, as applicable.

(14) “Member” means any employee or subcontractor of the verification body or related entities of the verification body and includes any individual with majority equity share in the verification body or its related entities.

(15) “Nonconformance” means the failure to meet the applicable requirements of this division or the failure to meet requirements of OAR chapter 340, division 215 or OAR chapter 340, division 253, as applicable, to calculate or report data or submit a fuel pathway application.

(16) “Positive verification statement” means a verification statement from a verification body attesting that it can say with reasonable assurance that the submitted report or fuel pathway application is free of material misstatement and that it conforms to the requirements of this division, OAR chapter 340, division 215, or OAR chapter 340, division 253, as applicable.

(17) “Professional judgment” means decisions based on professional qualifications and relevant greenhouse gas accounting and auditing experience.

(18) “Qualified positive verification statement” means a statement from a verification body attesting that it can say with reasonable assurance that the submitted report or fuel pathway application is free of material misstatement and has been corrected or modified in conformance with OAR 340-272-0435, but may include one or more other nonconformance(s) with the requirements of this division, OAR chapter 340, division 215, or OAR chapter 340, division 253, as applicable, which do not result in a material misstatement.

(19) “Quarterly review” means a review process conducted by the verification team after quarterly data is submitted and before annual data is submitted and verified.

(20) “Reasonable assurance” means high degree of confidence in the accuracy and truth of a conclusion.

(~~21~~) “Reported emissions reductions” means the total of all greenhouse gas emissions reductions reported in a CFP project report.

(~~22~~) “Reported Operational CI Value” means the absolute value of the operational CI submitted in a CFP fuel pathway application or annual report used for material misstatement of carbon intensity assessments.

(~~23~~) “Reported quarterly fuel transaction quantity for fuel pathway code” means the total of all reported fuel quantities for each fuel pathway code for each transaction type for each quarter in a CFP quarterly report for which the verifier is conducting a material misstatement of quarterly fuel quantity assessment.

(~~24~~) “Responsible entity” means a person that is subject to or voluntarily agrees to be subject to the requirements of OAR 340-272-0110, OAR 340-272-0120, or both.

(~~25~~) “Sector specific verifier” means a person that has met the requirements to perform such a role under OAR 340-272-0210 and has been approved by DEQ under OAR 340-272-0220 to act as a sector specific verifier in providing verification services as described by this division. This may include, but is not limited to, demonstrating specialized experience in transactions, oil and gas systems, or process emissions.

(26) “Subcontractor” means an individual or business firm contracting to perform part or all of another’s contract.

(~~27~~) “Total reported emissions” means the total annual greenhouse gas emissions in a GHG Reporting Program emissions data report.

(~~28~~) “Validation statement” means the final statement produced by a verification body attesting whether a fuel pathway application is free of material misstatement and whether it conforms to the requirements of California ARB’s Low Carbon Fuel Standard.

(~~29~~) “Verification” or “third-party verification” means a systematic, independent, and documented process for evaluation of a report or fuel pathway application according to this division.

(~~30~~) “Verification body” means a business entity that has met the requirements under OAR 340-272-0210 and has been approved by DEQ under OAR 340-272-0220 to provide verification services and produce verification statements as described by this division.

(~~31~~) “Verification services” means services provided during full verification or less intensive verification, including but not limited to reviewing a report or fuel pathway application submitted by a responsible entity, assessing compliance with DEQ regulations,

ensuring accuracy according to the standards specified by DEQ, and submitting a verification statement(s) to DEQ.

(321) “Verification statement” means the final statement produced by a verification body attesting whether a report or fuel pathway application submitted by a responsible entity is free of or contains material misstatement and whether it does or does not conform to the applicable requirements.

(332) “Verification team” means all persons working for a verification body, including all subcontractors, to provide verification services.

(343) “Verifier” means an individual person that has met the requirements to perform such role under OAR 340-272-0210 and has been approved by DEQ under OAR 340-272-0220 to provide verification services as described by this division.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0100

General Requirements for Verification of Reports and Fuel Pathway Applications

(1) The annual third party verification requirements set forth in this division apply beginning in 2022 for reports with data for calendar year 2021, and in each year thereafter. Quarterly review conducted as part of annual verification services that meet the requirements of this division may begin in 2022 for reports with data for the year 2022.

(2) Each responsible entity must:

(a) Engage the services of a verification body to perform verification under this division;

(b) Do the following before verification services begin:

(A) Conduct a conflict of interest evaluation in coordination with the verification body according to OAR 340-272-0500 and develop a conflict of interest mitigation plan, if needed, according to OAR 340-272-0500. ~~Submit both the evaluation and the plan, as applicable, to DEQ~~ [Ensure both a complete and accurate conflict of interest evaluation and conflict of interest mitigation plan, as applicable, are submitted to DEQ](#), and receive from DEQ approval in writing to proceed with verification services; and

(B) Submit to DEQ the report that is to be verified and attest that the data and information submitted to DEQ in the report is true, accurate, and complete;

(c) Ensure that a verification statement is submitted to DEQ from the verification body for each report identified under OAR 340-272-0110 and OAR 340-272-0120 by the deadline specified under section (3); and

(d) Ensure the requirements of this division are met, including but not limited to, ensuring that verification services are provided in compliance with the requirements of OAR 340-272-0300 and that a potential for a conflict of interest is evaluated, monitored, and mitigated according to

OAR 340-272-0500;

(3) Verification deadlines.

(a) Each responsible entity must ensure that a positive, qualified positive, or adverse verification statement is received by DEQ from a verification body by August 31 of the year a report is submitted, for the following reports, as applicable:

(A) Any CFP report, as applicable under OAR 340-272-0110; and

(B) Any GHG Reporting Program emissions data report described under OAR 340-215-0044(1)

(a) through (d), and (g), as applicable under OAR 340-272-0120.

(b) Each responsible entity must ensure that a positive, qualified positive, or adverse verification statement is received by DEQ from a verification body by September 30 of the year a report is submitted, for each GHG Reporting Program emissions data report described under OAR 340-215-0044(1)(e) and (f), as applicable under OAR 340-272-0120.

(c) DEQ may extend verification deadlines in subsections (a) or (b) as necessary and will issue notice of any extensions.

(4) Requirements for full or less intensive verification for certain responsible entities.

(a) Responsible entities required to engage the services of a verification body to perform annual verification of CFP quarterly reports under OAR 340-272-0110(3), GHG Reporting Program emissions data reports under OAR 340-272-0120(1), or both must engage the services of a verification body to provide full verification, as described by this division, in the first year that verification is required under section (1), in 2023, and then in at least every third year thereafter, if subsection (b) is applicable. Full verification is required in any year where subsection (b) does not apply.

(b) Responsible entities required to engage the services of a verification body to perform annual verification of CFP quarterly reports under OAR 340-272-0110(3), GHG Reporting Program emissions data reports under OAR 340-272-0120(1), or both may engage the

services of a verification body to provide less intensive verification in place of full verification, for up to two years out of every three year period, if:

- (A) There has not been a change in the verification body;
- (B) A positive verification statement was issued for the previous year; and
- (C) No change of operational control of the responsible entity occurred in the previous year.

(c) A verification body may choose to provide full verification, at its discretion, in instances where the responsible entity has made changes in sources, significant changes in emissions, significant changes in data management systems, or any combination therein, occurred compared to the previous year, based on the professional judgment of the verification body.

(A) The verification body must provide reasons why it opted for full verification to the responsible entity and to DEQ.

(B) The verification body must provide justification in the verification report if it did not opt for full verification in instances where the total reported emissions differ by greater than 25 percent relative to the previous year's emissions.

(5) Verification body and verifier rotation requirements.

(a) A responsible entity must not use the same verification body or verifier(s) to perform verification for a period of more than six consecutive years.

(b) A responsible entity must wait at least three years before re-engaging the previous verification body or verifier(s) to perform verification.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0110

Requirements for Verification of CFP Reports and Fuel Pathway Applications Submitted under OAR Chapter 340, Division 253

(1) Optional verification of CFP fuel pathway (carbon intensity or CI) applications.

(a) Fuel pathway applicants supplying site-specific CI data for the fuel pathway application are not required to meet the requirements of this division or engage the services of a

verification body to perform verification for each fuel pathway application submitted under OAR chapter 340, division 253.

(b) Fuel pathway applications that have been verified according to the requirements of this division, including site visit(s), will be prioritized for approval by DEQ.

(A) Fuel pathway applicants that choose to engage the services of a verification body to perform verification may do so once a list of approved verification bodies and verifiers qualified to verify CFP fuel pathway applications is made available on DEQ's website according to OAR-340-272-0220(1)(d)(B).

(B) Fuel pathway applicants submitting fuel pathway applications to DEQ that have been verified according to the requirements of this division must submit the verification statement at the same time that the application is submitted.

(C) A fuel pathway application submitted to DEQ that includes an adverse verification statement will not be considered.

(c) Fuel pathway applications submitted to DEQ that have been verified under California ARB's Low Carbon Fuel Standard may submit to DEQ materials relating to that verification.

(A) Fuel pathway applications submitted to DEQ that include a positive or qualified positive validation statement under California ARB's Low Carbon Fuel Standard will be prioritized for approval by DEQ.

(B) Fuel pathway applications submitted to DEQ that include an adverse validation statement under California ARB's Low Carbon Fuel Standard will not be considered.

(C) Any verification statements for the fuel pathway under California ARB's Low Carbon Fuel Standard must also be submitted at the same time that the fuel pathway application and validation statement are submitted to DEQ.

(2) Annual verification of CFP annual fuel pathway (carbon intensity or CI) reports.

(a) Applicability. The following persons must meet the requirements of this division and engage the services of a verification body for the purposes of annual verification under this division, including required site visit(s), for each annual fuel pathway report submitted under OAR chapter 340, division 253, except as otherwise provided under subsection (b):

(A) Holders of certified fuel pathways that supplied site-specific CI data for pathway certification and are required to update site-specific CI data on an annual basis; and

(B) Specified source feedstock suppliers and other persons with site-specific CI data that apply for separate DEQ recognition as a joint applicant under OAR chapter 340, division 253 and elect to be responsible for separate verification.

(b) Exemptions. Holders of approved fuel pathways that do not generate at least 6,000 total credits and deficits during the previous calendar year for the quantity of fuel produced at a given production facility and reported in the CFP are not subject to the requirements of this division for that year.

(c) Verification schedule. Responsible entities that are subject to the subsection (a) requirement to engage the services of a verification body to perform verification of annual fuel pathway reports (CI) must ensure a fuel pathway verification statement for each fuel pathway report is submitted to DEQ according to OAR 340-272-0100.

(A) Quarterly review of operational CI data is optional and may only be included as part of annual verification services if the fuel pathway holder submits quarterly data to DEQ. Quarterly review may only be conducted after the fuel pathway holder submits the report and attests that the statements and information submitted are true, accurate, and complete. Quarterly review does not replace the requirements for the verification team to consider all quarterly data submitted during annual verification. Quarterly review must meet the requirements for verification under this division, but a verification statement and verification report are not submitted after quarterly review.

(B) Facilities with California pathways recertified in Oregon. A responsible entity that must meet the requirements of this division for the purposes of annual verification for any fuel production facility that is also subject to annual or deferred verification under California ARB's Low Carbon Fuel Standard must submit its verification statement to DEQ within ten [calendar](#) days of its comparable submittal to California ARB. If the responsible entity received an adverse verification statement, it must also submit the log of issues at the same time it submits the verification statement to DEQ.

(i) For responsible entities that operate facilities with one or more Oregon fuel pathway codes that are a recertification of California fuel pathway codes, the verification statement submitted to California ARB must be submitted to DEQ according to the verification deadline specified under OAR 340-272-0100.

(ii) For responsible entities that operate facilities with one or more fuel pathway codes that are not a recertification of California fuel pathway codes, but have active California fuel pathway codes, the fuel pathway holder must ensure the following:

(I) That when verification services are provided, the inputs and annual operational carbon intensity are confirmed under OR-GREET as required under OAR 340-272-0450; and

(II) That a fuel pathway verification statement for each annual fuel pathway report is submitted to DEQ according to OAR 340-272-0100.

(C) If a fuel pathway holder is eligible for deferred verification under the California program, the fuel pathway holder must notify DEQ before April 30 of each year. If fuel from the facility generates 6,000 or more total credits and deficits in Oregon, then the fuel pathway holder must engage the services of a verification body to perform verification and ensure a

fuel pathway verification statement for each annual fuel pathway report is submitted to DEQ according to OAR 340-272-0100.

(3) Annual verification of CFP quarterly reports.

(a) Applicability. The following persons must meet the requirements of this division and engage the services of a verification body for the purposes of annual verification under this division, including required site visit(s), for CFP quarterly reports submitted under OAR chapter 340, division 253, except as otherwise provided under subsection (b):

(A) Regulated parties, credit generators, and aggregators subject to OAR 340-253-0100. The scope of verification services is limited to the transaction types under paragraph (B), including associated corrections submitted into CFP quarterly and annual reports.

(B) Except as provided in subsection (b), reporters of volumes for any of the following transaction types must engage the services of a verification body to perform verification for the following transaction types:

(i) All liquid fuels, including:

(I) Production in Oregon;

(II) ~~Import;~~ Out of State Production for Import;

(III) ~~Export;~~ All Import transactions;

(IV) ~~Gain of inventory;~~ Exports, other than Position Holder Sales for Export or export transactions reported on behalf of an unregistered exporter;

(V) ~~Loss of inventory;~~ Gain of inventory;

(VI) ~~Not used for Transportation, and~~ Loss of inventory;

(VII) ~~Transactions used to claim exempt uses under OAR 340-253-0250;~~ Not used for transportation; and

(VIII) Transactions used to claim exempt uses under OAR 340-253-0250;

(ii) NGV fueling; and

(iii) Propane fueling.

(b) Exemptions. The following are not subject to the requirements of this division:

(A) Persons that do not generate 6,000 or more total credits and deficits, in the aggregate, during the previous calendar year. For the purposes of this rule, any credits or deficits

generated by persons that are related entities or share [full or partial](#) common ownership or [operational](#) control must be aggregated together to determine whether or not the exemption applies;

(B) Persons reporting fuel transactions only in one or more of the transaction types: [Export](#), [Position Holder Sale for Export](#), [Gain of inventory](#), [Loss of inventory](#), and [Not used for transportation](#), if all [of](#) the following conditions are met:

(i) All such transactions do not generate 6,000 or more total credits and deficits, [in the aggregate](#), during the previous calendar year;

(ii) The person did not report any liquid fuel using the transaction types: [Production in Oregon](#) or [Import into Oregon](#); and

(iii) The person did not report any NGV fueling transactions.

(c) Verification schedule. Responsible entities under subsection (a) required to engage the services of a verification body to perform annual verification of CFP quarterly reports must ensure a transactions data verification statement is submitted to DEQ according to OAR 340-272-0100.

(d) Optional quarterly review. Quarterly review of a CFP quarterly report is optional and does not replace the requirements for the verification team to consider all quarterly data submitted during annual verification. Quarterly review must meet the requirements of this division, but a verification statement and verification report are not submitted after quarterly review.

(4) Annual verification of CFP annual project reports.

(a) Applicability. The following persons must meet the requirements of this division and engage the services of a verification body for the purposes of annual verification, including required site visit(s), for CFP project reports required to be submitted as a condition of a fuel pathway's continued approval under OAR 340-253-0450(9)(~~E~~)([E](#)):

(A) Project operators; and

(B) Joint applicants.

(b) Verification schedule. Responsible entities under subsection (a) required to engage the services of a verification body to perform verification of CFP project reports must ensure a project report verification statement is submitted annually to DEQ according to with OAR 340-272-0100.

Statutory/Other Authority: ORS 468.020, 468A.266, 468A.271 & 468A.277

Statutes/Other Implemented: ORS 468A.010, 468A.015 & 468A.265 through 468A.277

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

[340-272-0120](#)

Requirements for Verification of GHG Reporting Program Emissions Data Reports Submitted under OAR Chapter 340, Division 215

(1) Annual verification of GHG Reporting Program emissions data reports.

(a) Applicability. The following persons must meet the requirements of this division and engage the services of a verification body for the purposes of annual verification of the entire emissions data report, including required site visit(s), for each separate emissions data report submitted under OAR chapter 340, division 215, except as otherwise provided under subsection (b):

(A) A regulated entity that submits an emissions data report as described under OAR [340-215-0044\(1\)](#) that indicates emissions equaled or exceeded 25,000 metric tons of CO₂e, excluding CO₂ from biomass-derived fuels; ~~and~~

(B) A third party that is not the Bonneville Power Administration (BPA) that registers and submits an emissions data report on behalf of a consumer-owned utility for emissions, data, and information submitted for each individual utility with emissions that equaled or exceeded 25,000 metric tons of CO₂e, excluding CO₂ from biomass-derived fuels and excluding emissions associated with preference power purchased from BPA; ~~and~~

(C) A regulated entity that submitted an emissions data report that indicated emissions exceeded the threshold in paragraph (A) in the previous year, but that submits an emissions data report that indicates emissions are reduced below that applicability threshold in the current reporting year; ~~and~~

[\(D\) All regulated entities subject to the Climate Protection Program requirements described under OAR chapter 340, division 271, regardless of emissions reported; and](#) ~~and~~

[\(E\) All regulated entities that are electric companies and electricity service suppliers as defined in ORS 757.600, regardless of emissions reported.](#)

(b) Exemptions. The following are not subject to the requirements of this division:

(A) A regulated ~~entity~~ entity that [is not an electric company and not subject to requirements under OAR chapter 340, division 215 and that](#) submits an emissions data report as described under OAR ~~430~~[340-215-0044\(1\)](#) that indicates emissions were less than 25,000 metric tons of CO₂e, excluding CO₂ from biomass-derived fuels. For the purposes of this rule, any GHG emissions in emissions data reports as described under OAR [340-215-0044\(1\)\(c\)](#) submitted by fuel suppliers or in-state producers that are related entities or share [full or partial](#) common ownership or [operational](#) control must be aggregated together to determine whether or not the exemption applies;

(B) An emissions data report as described under OAR 340_215_0044(1)(a) that includes emissions data and information described in 40 C.F.R. part 98 subpart HH – Municipal Solid Waste Landfills;

(C) An emissions data report as described under OAR 340_215_0044(1)(d) submitted by a natural gas supplier that is an interstate pipeline; and

(D) Any emissions data report as described under OAR 340_215_0044(1)(e) submitted by Bonneville Power Administration (BPA) acting as a third-party reporter on behalf of any consumer-owned utility, as allowable under OAR 340_215_0120(4).

(c) Verification schedule. Responsible entities that are subject to the subsection (a) requirement to engage the services of a verification body to perform verification of emissions data reports must ensure a verification statement for each emissions data report is submitted to DEQ according to OAR 340-272-0100.

(A) These requirements are in addition to the requirements in 40 C.F.R. 98.3(f).

(B) An asset-controlling supplier that submitted an emissions data report to DEQ as described under OAR 340_215_0044(1)(f) that includes the same data and information reported to and verified under California ARB's Mandatory Reporting of Greenhouse Gas Emissions program may submit the same verification statement to DEQ. If an adverse verification statement is received, a current issues log must also be submitted to DEQ.

(2) Cessation of verification requirement.

(a) Responsible entities must have an emissions data report verified for the first year that the report indicates emissions are reduced below the applicability threshold defined in paragraph (1)

(a)(A). An emissions data report is not subject to verification in any following year thereafter where emissions remain below the threshold.

(b) A responsible entity that meets the verification cessation requirements for two consecutive years must notify DEQ in writing in the second year that it is ceasing the verification requirement according to this paragraph and provide the reason(s) for cessation of verification. The notification must be submitted no later than the applicable reporting deadline under OAR chapter 340, division 215 for that year.

(c) If in any subsequent year after meeting verification cessation requirements an emissions data report meets the applicability requirements of subsection (1)(a), the responsible entity must have the emissions data report verified according to the requirements of this division, and verification must continue until the cessation requirement is met again.

Statutory/Other Authority: ORS 468.020, 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0210

Applications and Criteria for DEQ Approval of Verification Bodies and Verifiers

(1) Application for approval. A business entity or person seeking DEQ approval or renewal of DEQ approval to perform verification under this division as a verification body or verifier must submit an application to DEQ, on a form approved by DEQ, that includes the following information:

(a) For verifier applications, a statement about whether the application is for approval as a verifier, a lead verifier, or a sector specific verifier;

(b) A statement about which specific types of emissions data reports submitted under OAR chapter 340, division 215, fuel pathway applications or specific types of CFP reports submitted under OAR chapter 340, division 253, or any combination therein, for which the applicant is seeking approval to perform verification;

(c) Documentation demonstrating that the person or business entity holds the accreditation requirements described in section (2);

(d) Additional information as required by sections (2) through (7), as applicable;

(e) A certification that the person or business entity agrees to comply with and be subject to the requirements of this division in relation to all verification work for responsible entities; and

(f) Any other information requested by DEQ that DEQ determines is relevant to determine whether to approve the applicant.

(2) Application information and accreditation criteria for approval. Any person or business entity that wants to perform verification under this division must provide documentation that the person has met all the following criteria for approval, as applicable for the type of verification approval the applicant seeks:

(a) The person or business entity holds an active accreditation under at least one of the following programs:

(A) California ARB's Low Carbon Fuel Standard program (LCFS);

(B) California ARB's Mandatory Reporting of Greenhouse Gas Emissions program (MRR);

(C) American National Standards Institute for Greenhouse Gas Validation/Verification Bodies (ANSI); or

(D) A substantially equivalent program to one of the programs described in paragraphs (A), (B), or (C), and approved by DEQ;

(b) To provide verification services for CFP reports or fuel pathway applications submitted under OAR chapter 340, division 253, the person or business entity must hold accreditation under California ARB's LCFS, or a substantially equivalent program approved by DEQ;

(c) To provide verification services for emissions data reports submitted under OAR chapter 340, division 215, the person or business entity must hold accreditation under California ARB's MRR, ANSI, or a substantially equivalent program approved by DEQ; and

(d) All applicants must submit additional information in the application with details of ~~accreditatation~~[accreditation](#) and verification experience, including but not limited to, recognition or designation as a lead verifier or sector specific verifier, and sector specific accreditations by California ARB or organization-level sector accreditations by ANSI, as applicable, to demonstrate qualifications to provide verification services for specific types of emissions data reports submitted under OAR chapter 340, division 215, fuel pathway applications or specific types of CFP reports submitted under OAR chapter 340, division 253, or any combination therein.

(3) Application information and criteria for approval for a verification body. To be approved as a verification body, the applicant must also submit the following information to DEQ in the application:

(a) A list of all verification staff and subcontractors and a description of their duties and qualifications, including DEQ-approved verifiers on staff. The applicant must demonstrate staff qualifications by listing each individual's education, experience, professional licenses, accreditations, status as verifier, lead verifier, or sector specific verifier, and other relevant information. A verification body must employ ~~and/or~~ retain at least two lead verifiers, [which may include retention as; lead verifiers may be subcontractors. Any subcontractor used to meet minimum lead verifier requirements must be approved as a lead verifier by DEQ.](#)

(b) A list of any judicial proceedings, enforcement actions, or administrative actions filed against the verification body within the previous five years, with an explanation as to the nature of the proceedings;

(c) Documentation that demonstrates that the body maintains a minimum of four million U.S. dollars of professional liability insurance;

(d) Identification of services provided by the verification body, the industries that the body serves, and the locations where those services are provided;

(e) A detailed organizational chart that includes the verification body, its management structure, and any related entities; and

(f) The verification body's internal conflict of interest policy that identifies activities and limits to monetary or non-monetary gifts that apply to all employees and procedures to monitor potential conflicts of interest.

(4) Application information and criteria for approval as a verifier. To be approved as a verifier, the applicant must also submit the following information to DEQ in the application:

(a) Applicants must indicate their employer or affiliated verification body on the application; and

(b) Applicants must ~~must~~ demonstrate verification qualifications by providing information on education, experience, professional licenses, accreditations, status as verifier, lead verifier, or sector specific verifier, and other relevant information or other personal development activities that demonstrate communication, technical, and analytical skills necessary to perform verification. Evidence demonstrating necessary skills may include, but is not limited to:

(A) A bachelor's level college degree or equivalent in engineering, science, technology, business, statistics, mathematics, environmental policy, economics, or financial auditing; or

(B) Work experience in a professional role involved in emissions data management, emissions technology, emissions inventories, environmental auditing, financial auditing, life cycle analysis, transportation fuel production, or other technical skills necessary to perform verification.

(5) Application information and criteria for approval as a lead verifier for the GHG Reporting Program. To be approved as a lead verifier for verification of emissions data reports submitted under OAR chapter 340, division 215, in addition to submitting information as required by section (4), the applicant must also submit documentation to DEQ in the application indicating that at least one of the following qualifications are met:

(a) The verifier is accredited as a lead verifier by California ARB for the Mandatory Reporting of Greenhouse Gas Emissions program;

(b) The verifier is designated as a lead verifier by the ANSI-accredited verification body with which it is employed or affiliated; or

(c) The verifier is designated as a lead verifier by a substantially equivalent program to one of the programs described in subsection (a) or (b), and that is approved by DEQ.

(6) Application information and criteria for approval as a lead verifier for the CFP. To be approved as a lead verifier for verification of CFP reports or fuel pathway applications submitted under OAR chapter 340, division 253, in addition to submitting information as required by section (4), the applicant must also submit the following documentation to DEQ in the application:

(a) Indication that the applicant is accredited as a lead verifier by California ARB for the Low Carbon Fuel Standard program, or is designated as a lead verifier by a substantially equivalent program approved by DEQ;

(b) To be approved as a lead verifier for verification of CFP fuel pathway applications or annual fuel pathway reports, the applicant must also submit documentation to DEQ in the application that demonstrates experience in alternative fuel production technology and process engineering; and

(c) To be approved as a lead verifier for verification of CFP project reports and quarterly reports submitted by producers and importers of gasoline or diesel, the applicant must submit documentation to DEQ in the application that demonstrates experience with oil and gas systems. This evidence may include accreditation as an oil and gas systems sector specific verifier.

(7) Application information and criteria for approval as a sector specific verifier. To be approved as a sector specific verifier, in addition to submitting information as required by section (4), the applicant must also submit documentation to DEQ in the application demonstrating at least two years of professional experience related to the sector in which the individual is seeking approval.

(8) Verification training and exam requirements.

(a) To be approved by DEQ, applicants must take DEQ-approved general verification training, sector specific verification training, CFP specific verification training, and GHG Reporting Program specific verification training, as made available and deemed applicable by DEQ based on the application submitted to DEQ and for the type of approval the applicant has requested.

(b) Applicants must receive a passing score of greater than an unweighted 70 percent on an exit examination.

(A) If the applicant does not pass the exam after the training, the applicant may retake the exam a second time.

(B) Only one retake of the examination is allowed before the applicant must retake the applicable training.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0220

DEQ Review and Approval of Verification Bodies and Verifiers

(1) DEQ application review and approval process for verification bodies and verifiers.

(a) After receipt of an application under OAR 340-272-0210, DEQ will inform the applicant either that a submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(b) DEQ will review submitted applications to prescreen and ensure all requirements are met. DEQ will notify an applicant in writing which verification training(s) and exam(s) are required to be completed according to OAR 340-272-0210(8). An applicant may choose to take trainings and exams in addition to those required by DEQ.

(c) DEQ will not consider or issue final approval until DEQ finds an application for approval as a verification body or verifier is complete and meets all applicable requirements under OAR 340-272-0210(1) and all required verification training(s) and exam(s), as deemed applicable by DEQ under subsection (b), have been completed according to OAR 340-272-0210(8).

(d) Following completion of the application process and all applicable training and examination requirements, DEQ will notify the applicant in writing if approval has been granted or denied.

(A) DEQ may issue approval to verification bodies, verifiers, lead verifiers, and sector specific verifiers that apply and meet the criteria under OAR 340-272-0210 and successfully complete verification training(s) and exam(s) as required under OAR 340-272-0210(8).

(B) DEQ approval will be limited to certain report types, data types, sources of emissions, or sectors, according to the information in the application and the qualifications of the applicant, and based on DEQ's determination of whether the applicant demonstrates, to DEQ's satisfaction, sufficient knowledge of the relevant methods and requirements in this division, OAR chapter 340, division 215, and OAR chapter 340, division 253, as applicable.

(C) DEQ will maintain a current list of approved verification bodies, verifiers, lead verifiers, and sector specific verifiers on DEQ's website.

(e) DEQ approval is valid for a period of three years from the date the approval is issued by DEQ. The applicant may re-apply for approval as a verification body, verifier, lead verifier, or sector specific verifier ~~at any time~~, following the same application procedures according to OAR 340-272-0210, and must satisfy all DEQ training and examination requirements applicable at the time of re-application.

(2) Requirements to maintain DEQ approval.

(a) Except as provided under subsection (c) below, a verification body, verifier, lead verifier, or sector specific verifier must ~~notify~~ notify DEQ within 30 calendar days of when it no longer meets the requirements for approval under OAR 340-272-0210, as applicable.

(b) A verification body must notify DEQ of any verifier staffing changes within 30 calendar days of any such change as these changes are considered an amendment to the verification body's approval.

(c) DEQ must be notified immediately if a verification body or verifier loses or withdraws from accreditation under any program specified or approved under OAR 340-272-0210(2)(a).

(d) Within 20 calendar days of being notified of any nonconformance in another voluntary or mandatory greenhouse gas emissions reporting program or fuels program, a DEQ-approved verification body or verifier must provide written notice to DEQ of the non-conformance, including a copy of any written notification of nonconformance from the agency or body that administers the program, and information about any corrective actions taken by the verification body or verifier. That notification must include reasons for the corrective action and the type of corrective action. The verification body or verifier must provide additional information to DEQ upon request.

(e) Verification bodies and verifiers must provide in a reasonably timely manner any and all information that DEQ reasonably requires for the purpose of evaluating continued compliance with the requirements of this division, including the criteria for approval.

(3) Modification, suspension, or revocation of DEQ approval.

(a) DEQ may modify, suspend, or revoke an approval to perform verification if a verification body or verifier:

(A) Fraudulently obtained or attempted to obtain accreditation under any program specified under OAR 340-272-0210(2)(a);

(B) Fraudulently obtained or attempted to obtain approval from DEQ under this division;

(C) Failed at any time to satisfy the eligibility criteria and requirements specified under OAR 340-272-0210;

(D) Does not satisfy the requirements to maintain approval according to section (2);

(E) Provided verification services that failed to meet the requirements under OAR 340-272-0300(1) and (3);

(F) Violated the conflict of interest requirements under OAR 340-272-0500; or

(G) Knowingly or recklessly submitted false or inaccurate information or verification statement(s) to DEQ.

(b) A verifier or verification body that is subject to a DEQ action to modify, suspend, or revoke an approval to perform verification may contest DEQ's action by providing DEQ with a written request for a hearing within 20 [calendar](#) days of being notified of DEQ's action.

(A) The hearing will be conducted as a contested case under ORS 183.413 through 183.470 and OAR chapter 340, division 11.

(B) Any DEQ action taken in subsection (a) will remain in place pending the outcome of the contested case.

(c) A verification body or verifier that has had approval to perform verification revoked may re-apply according to OAR 340-272-0210 after the applicant demonstrates to DEQ that the cause of the revocation has been resolved.

(4) Voluntary withdrawal from DEQ approval. An approved verification body or verifier may request to voluntarily withdraw its approval by providing a written notice to DEQ requesting such withdrawal.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0300

Requirements for Verification Services

(1) Verification services provided and completed must meet the requirements of OAR 340-272-0405 through OAR 340-272-0495, as applicable to the type of CFP report or fuel pathway application submitted under OAR chapter 340, division 253 or emissions data report submitted under OAR chapter 340, division 215.

(2) Requirements for responsible entities.

(a) Responsible entities must engage the services of a verification body that meets the requirements and criteria under OAR 340-272-0210 and has been approved by DEQ under OAR 340-272-0220 to perform verification under this division for the type of verification services applicable to the responsible entity.

(b) A responsible entity that has been ~~notified~~[notified](#) by DEQ or by its verification body that the verification body's DEQ approval has been suspended or revoked, must engage the services of a different DEQ-approved verification body to perform verification.

(c) Each responsible entity must ensure that the verification services provided on its behalf meet the requirements of this division.

(d) Records retention and availability requirements.

(A) Responsible entities must retain records necessary for completing verification services and records requested by the verification team according to the recordkeeping requirements of OAR chapter 340, division 215 or OAR chapter 340, division 253, as applicable.

(B) Responsible entities must retain for verification purposes and make available to the verification team the following:

(i) All information and documentation used to calculate and report emissions, fuel quantities, and fuels and electricity transactions;

(ii) All data and information required by or submitted under OAR chapter 340, division 215 or OAR chapter 340, division 253; and

(iii) Other data and information as necessary in order for verification services to be completed.

(C) Responsible entities must maintain documentation to support any revisions made to the initial report or fuel pathway application submitted to DEQ as a result of verification. Documentation for all submittals must be retained by the responsible entity in paper or electronic format for a period of at least seven years.

(3) Requirements for verification bodies and verifiers.

(a) Eligibility to perform verification.

(A) A verification body or verifier must meet the requirements and criteria of OAR 340-272-0210 and must have DEQ approval under OAR 340-272-0220 to be eligible to perform verification under this division.

(B) Verifiers must be employed by, or contracted with a DEQ-approved verification body in order to provide verification services under this division.

(b) Subcontracting.

(A) Any verification body that elects to subcontract a portion of verification services must meet the following requirements:

(i) The verification body must assume full responsibility for verification services provided by subcontractor verifiers;

~~(ii) A verification body may not use subcontractors to meet the minimum lead verifier requirements as specified under OAR 340-272-0210(3)(a); and~~ A verification body that engages a subcontractor shall be responsible for demonstrating an acceptable level of conflict of interest, as provided in OAR 340-272-0500, between its subcontractor and the reporting entity for which it will provide verification services;

(iii) A verification body that engages a subcontractor is responsible for ensuring the subcontractor shall not further subcontract or outsource verification services for a reporting entity.

~~(iii) A verification body may not use a subcontractor as the independent reviewer.~~

(B) All subcontractors must apply for and meet the requirements and criteria for DEQ approval under OAR 340-272-0210 and be approved by DEQ under OAR 340-272-0220 in order to provide the verification services for which the subcontractor has been engaged by the verification body.

(c) If a verification body receives a final determination ~~frin~~from DEQ under OAR 340-272-0220(3) that is described in paragraphs (A) through (C) below,[;] then the verification body must provide written notification all responsible entities with which it is currently engaged to provide verification services or that have received verification services from it within the past six months of DEQ's final determination within ten calendar days of receiving such final determination, and the verification body may not continue to provide verification services until the verification body receives DEQ approval to recommence such services under OAR 340-272-0220:

(A) Any modification relevant to the verification services provided;

(B) Suspension of DEQ approval of the verification body or any of its verifiers, lead verifiers, sector specific verifiers, or subcontractors; or

(C) Revocation of DEQ approval of the verification body or any of its verifiers, lead verifiers, sector specific verifiers, or subcontractors.

(d) Records retention.

(A) Verification bodies that provide verification services under this division must retain documentation relating to verification in paper or electronic format for a period of at least seven years following the submission of each verification statement.

(B) The documentation must allow for a transparent review of how a verification body reached its conclusion in the verification statement, including independent review. At a minimum, the documentation retained must include:

(i) Report(s) or fuel pathway application(s) submitted by the responsible entity to DEQ for which verification services are being provided;

- (ii) Contracts for verification;
- (iii) Verification plan(s);
- (iv) Sampling plan(s);
- (v) Verification report(s);
- (vi) Verification statement(s); and
- (vii) Any other documentation, calculations, and verification notes developed as part of providing and completing verification services.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0350

DEQ Review and Approval of Verification and Re-verification Requirements

(1) DEQ review of verification.

(a) In addition to any other enforcement authority DEQ may have, DEQ retains full authority in determining whether to approve, modify, or reject any verification statement submitted to DEQ for a report or fuel pathway application by a verification body on behalf of a responsible entity under this division.

(b) DEQ may issue an adverse verification statement for a report or fuel pathway application if it has information to support such a conclusion, even if it has received a positive verification statement from a verification body.

(c) DEQ may also issue an adverse verification statement for:

(A) Failure to submit a complete or accurate fuel pathway application or annual or quarterly report in a timely manner;

(B) Failure to conduct or complete third-party verification as required by this division; or

(C) Any other violation of this division, OAR chapter 340, division 215, or OAR chapter 340, division 253.

(2) Re-verification requirements.

(a) If a verification body submits a positive or qualified positive verification statement to DEQ, DEQ may require the applicable responsible entity to have a report or fuel pathway application re-verified by a different verification body within 90 calendar days if:

(A) DEQ finds a high level of conflict of interest existed between a verification body and a responsible entity;

(B) DEQ finds a potential conflict of interest has arisen between the responsible entity and the verification body or any verifier engaged by the responsible entity to perform verification through monitoring as required under OAR 340-272-0500(8);

(C) DEQ makes a determination that any of the bases for modification, suspension, or revocation of DEQ approval under OAR 340-272-0220(3)(a) for a verification body or verifier engaged by the responsible entity to perform verification have occurred, and impacted the verification services provided, or impacted the verification statement(s) submitted to DEQ;

(D) An error is identified that affects the emissions in an emissions data report(s) submitted under OAR chapter 340, division 215, or the credit or deficit calculations in a CFP report(s) or fuel pathway application(s) submitted under OAR chapter 340, division 253; or

(E) A report that received a positive or qualified positive verification statement fails DEQ verification or audit under OAR 340-272-0355.

(b) If DEQ identifies an error and determines that the error does not affect the emissions in an emissions data report, or the credit or deficit calculations in a CFP report or fuel pathway application, a correction may be made by the responsible entity without DEQ set aside of the positive or qualified positive verification statement.

(c) A verification body may not continue to provide verification services to a responsible entity, and the responsible entity must have any report(s) or fuel pathway application(s) verified by a different verification body, upon receiving notification from the verification body with which it is currently engaged to provide verification services of either of the following:

(A) A modification to DEQ approval of the verification body or any members of the verification team that is relevant to the verification services being performed; or

(B) Suspension or revocation of DEQ approval of the verification body or any members of the verification team.

(d) A responsible entity that must have a report or fuel pathway application verified by a different verification body according to subsection (c) may contact DEQ to request an extension if it believes it cannot meet the applicable verification deadline under OAR 340-272-0100(3) and it must receive written approval from DEQ of any extended deadline(s).

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0355

DEQ Data Requests and Audits

(1) DEQ data requests and audits of responsible entities.

(a) Upon written request by DEQ, the responsible entity must provide the data used to generate a report or fuel pathway application including all data made available to the verification team engaged by the responsible entity to perform verification, within 14 calendar days of DEQ's request.

(b) Upon written notification by DEQ, the responsible entity must make itself, its personnel, and other entities in its feedstock and finished fuel supply chain, as applicable, available for a DEQ audit.

(2) DEQ data requests and audits of verification bodies.

(a) Upon written request by DEQ, the verification body must provide to DEQ the verification report given to the responsible entity, as well as the sampling plan, contracts for verification, and any other supporting documents, within 14 calendar days.

(b) Upon written notification by DEQ, the verification body must make itself and its personnel available for a DEQ audit.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0405

Notice of Verification Services

(1) Before a verification body commences any verification services for the responsible entity, the responsible entity must ensure the verification body submits a notice of verification services to DEQ that meets the requirements of this rule. The notice of verification services must be submitted after DEQ has provided a determination that the potential for a conflict of interest is acceptable as specified under OAR 340-272-0500(7) and that verification services may proceed.

(a) If the conflict of interest evaluation submitted by the responsible entity and the notice of verification services submitted by the verification body are submitted at the same time, verification services may not begin until DEQ has determined the potential for conflict of interest is acceptable in writing.

(b) Except as provided in subsection (a), the verification body may begin verification services for the responsible entity after the notice of verification services is received by DEQ, but must allow a minimum of 14 calendar days advance notice of a site visit unless an earlier date is approved by DEQ. [The site visit may not take place prior to the applicable regulatory deadline for the reporting type to be verified, except under the conditions listed in OAR 340-272-0420\(2\)\(a\).](#)

(2) The verification notice must include the following information:

(a) A list of the staff designated to provide verification services as a verification team, including the names of each individual, the lead verifier, and all subcontractors, and a description of the roles and responsibilities each member will have during verification. The independent reviewer must also be listed separately. [The list must include any verifiers in training who will participate on the verification team.](#);

(b) Documentation that the verification team has the skills required to provide verification services for the responsible entity and type of report or fuel pathway application requiring verification. When required by DEQ, the notice must include a demonstration that the verification team includes at least one individual approved by DEQ as a sector specific verifier that is not also the independent reviewer, but may be the lead verifier; and

(c) General information about the responsible entity, including the following, as applicable:

(A) Name and list of facilities and other locations that will be subject to verification, and contact, address, telephone number, and e-mail address for each facility;

(B) The industry sector, North American Industry Classification System (NAICS) code, or source identification number for reporting facilities under OAR chapter 340, division 215.;

(C) The CFP ID(s) for the responsible entity under OAR chapter 340, division 253.;

(D) The date(s) of the site visit if full verification is being provided and if required under OAR 340-272-0420, with physical address and contact information.; and

(E) A brief description of expected verification services to be provided, including expected completion date and whether quarterly review is planned in the context of an annual verification requirement.

(3) The responsible entity must ensure the verification body submits an updated notice of verification services to DEQ immediately if any of the information under section (2) changes after the notice of verification services is submitted to DEQ. When an updated notice of

verification services is submitted to DEQ, the conflict of interest must be reevaluated and information must be resubmitted according to OAR 240-272-0500. Verification services must be suspended until DEQ approves the resubmitted conflict of interest evaluation information in writing.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0410

Scoping Verification Services

(1) Before beginning work on a verification, the responsible entity and the verification team must discuss the activities and scope of the verification services and there must be a transfer of information and documents that are needed for initial verification services.

(2) The verification team must review original documents and supporting data provided to them by the responsible entity.

(3) Before conducting any site visits, the verification team must create a verification plan that meets the requirements of OAR 340-272-0415 and a draft sampling plan that meets the requirements of OAR 340-272-0425.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0415

Verification Plan

(1) Verification services must include the development of a verification plan that meets the requirements of this rule.

(2) All verification plans must contain information on the timing of verification services, including:

(a) Dates of proposed meetings and interviews with ~~with~~ personnel of the responsible entity;

(b) Dates of proposed site visits;

(c) Types of proposed document and data reviews and, for CFP reports submitted under OAR chapter 340, division 253, how quarterly review is planned in the context of an annual verification requirement, as applicable; and

(d) Expected date for completing verification services.

(3) In addition to the information required under section (2), verification plans for verification services provided for CFP reports and fuel pathways applications submitted under OAR chapter 340, division 253 must also include the following information from the responsible entity:

(a) Information to allow the verification team to develop an understanding of facility or entity boundaries, operations, accounting practices, type of CFP report(s) the person is responsible for, CFP regulatory sections the responsible entity is subject to, other renewable or low carbon fuels markets the responsible entity participates in, and other mandatory or voluntary auditing programs the responsible entity is subject to, as applicable;

(b) Information regarding the training or qualifications of personnel involved in developing the report(s) or fuel pathway application(s);

(c) Description of the specific methodologies used to quantify and report data, including but not limited to calibration procedures and logs for measurement devices capturing site-specific data;

(d) Information about the data management system and accounting procedures used to capture and track data for each fuel pathway application and each type of CFP report as needed to develop the verification plan;

(e) Information about the entities in the supply chain upstream and downstream of the fuel producer that contribute to site-specific CI data, including a list of feedstock suppliers and contact names with physical addresses;

(f) Evidence demonstrating that any joint applicants are being separately verified; and

(g) Previous CFP verification reports, as applicable, and other audit reports including reports from production or management system certifications and internal audits.

(4) In addition to the information required under section (2), verification plans for verification services provided for GHG Reporting Program emissions data reports submitted under OAR chapter 340, division 215 must also include the following information from the responsible entity:

(a) Information to allow the verification team to develop a general understanding of facility or entity boundaries, operations, emissions sources, and electricity or fuel transactions, as applicable;

(b) Information regarding the training or qualifications of personnel involved in developing the emissions data report;

(c) Description of the specific methodologies used to quantify and report greenhouse gas emissions, electricity and fuel transactions, and associated data as needed to develop the verification plan;

(d) Information about the data management system used to track greenhouse gas emissions, electricity and fuel transactions, and associated data as needed to develop the verification plan; and

(e) Previous GHG Reporting Program verification reports.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0420

Site Visits

(1) Verification services must include site visit(s) that meet the requirements of this rule.

(2) Site visit(s) conducted as part of verification services for verification of CFP reports and fuel pathway applications submitted under OAR chapter 340, division 253 must meet the requirements of this section:

(a) Site visits must occur after all data and CFP reports for the previous calendar year have been attested to and submitted to DEQ, except that a site visit may be conducted as part of a quarterly review if:

(A) No aspects of the data management systems or accounting practices change following the site visit; and

(B) There are no significant changes to the fuel production process or facility when the verification is for an annual fuel pathway report;

(b) At least one DEQ-approved lead verifier on the verification team, including the sector specific verifier, if applicable, must at a minimum make one site visit to each facility during each year full verification is required under OAR 340-272-0100(4). If the responsible entity keeps records supporting a report or fuel pathway application subject to verification under this division in a location that is different from the fuel production facility, then such verifier(s) must at a minimum make one site visit to the location where those records are stored;

(c) A separate site visit is required if a responsible entity elects to engage the services of a verification body to provide verification services for verification of a fuel pathway application; and

(d) The following must be conducted during a site visit:

(A) Review supporting evidence used to develop CFP reports submitted to DEQ;

(B) Review and understand the data management systems and accounting practices used by the responsible entity to acquire, process, track, and report CFP data. Evaluate the uncertainty and effectiveness of these systems; and

(C) Carry out tasks that, in the professional judgment of the verification team, are needed in the verification process, including the following, at minimum:

(i) Conduct interviews with key personnel, such as process engineers, metering experts, accounting personnel, and project operators, as well as staff involved in compiling data and preparing the CFP reports;

(ii) Make direct observations of production equipment, confirming diagrams for processes, piping, and instrumentation; measurement system equipment; and accounting systems for data types determined in the sampling plan to be high risk;

(iii) Assess conformance with measurement accuracy, data capture, temporary measurement method requirements, and the monitoring plan for consistency with the requirements of OAR chapter 340, division 253; and

(iv) Review financial transactions to confirm complete and accurate reporting.

(3) Site visit(s) conducted as part of verification services for verification of GHG Reporting Program emissions data reports submitted under OAR chapter 340, division 215 must meet the requirements of this section:

(a) Site visits must occur after all data and emissions data reports for the previous calendar year have been attested to and submitted to DEQ;

(b) At least one approved verifier in the verification team, including the sector specific verifier, if applicable, must at a minimum make one site visit to each facility for which an emissions data report is submitted during each year full verification is required under OAR 340-272-0100(4). The headquarters or other location of central data management must be visited when the responsible entity is an electricity supplier or fuel supplier, including natural gas suppliers; and

(c) The following must be conducted during a site visit:

(A) Check that all sources specified under OAR 340-215-0030, as applicable to the responsible entity are identified appropriately;

(B) Review and understand the data management systems used by the responsible entity to track, quantify, and report greenhouse gas emissions and, when applicable, electricity and fuel transactions. Evaluate the uncertainty and effectiveness of these systems; and

(C) Carry out tasks that, in the professional judgment of the verification team, are needed in the verification process, including the following, at minimum:

(i) Conduct interviews with key personnel, such as process engineers and metering experts, as well as staff involved in compiling data and preparing the emissions data report;

(ii) Make direct observations of equipment for data sources and equipment supplying data for sources determined in the sampling plan to be high risk;

(iii) Assess conformance with measurement accuracy, data capture, and missing data substitution requirements for consistency with the requirements of OAR chapter 340, division 215, as applicable; and

(iv) Review financial transactions to confirm fuel and electricity purchases and sales, and to confirm the complete and accurate reporting of required data such as facility fuel suppliers, fuel quantities delivered, and the entity from which fuel was received.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0425

Sampling Plan

(1) Verification services must include the development of a sampling plan that meets the requirements of this rule.

(2) All sampling plans must meet the following requirements:

(a) The sampling plan must be developed based on a strategic analysis developed from document reviews and interviews to assess the likely nature, scale, and complexity of the verification services for a responsible entity and type of report or fuel pathway application. The analysis must review the inputs for the development of the submitted report(s) and fuel pathway application(s), the rigor and appropriateness of data management systems, and the coordination within the responsible entity's organization to manage the operation and

maintenance of equipment and systems used to develop submitted report(s) and fuel pathway application(s);

(b) The sampling plan must be revised to describe tasks completed as information becomes available and potential issues emerge with material misstatement or nonconformance; and

(c) The sampling plan must be retained according to the recordkeeping requirements of OAR 340-272-0300(3)(d). The sampling plan must be made available to DEQ upon request.

(3) In addition to meeting the requirements under section (2), sampling plans for verification services provided for CFP reports and fuel pathway applications submitted under OAR chapter 340, division 253 must also meet the requirements of this section:

(a) The sampling plan must include a ranking of data sources by relative contribution to the data type to be assessed for material misstatement and a ranking of data sources with the largest calculation uncertainty, including risk of incomplete reporting, based on type of report or fuel pathway application;

(b) The sampling plan must include a qualitative narrative of uncertainty risk assessment in the following areas:

(A) Data acquisition equipment;

(B) Data sampling and frequency;

(C) Data processing and tracking;

(D) Tracking of fuel transportation into Oregon to include modes of transportation and distances traveled, as applicable for CFP fuel pathway applications or annual fuel pathway reports;

(E) CI calculations, as applicable;

(F) Fuel pathway code allocation methodology, as applicable; and

(G) Management policies or practices in developing CFP reports;

(c) After the verification team completes the strategic analysis and risk assessment, the sampling plan must be revised to include a list with the information described in paragraphs (A) through

(C) of this subsection. The sampling plan list must be updated and finalized before the completion of verification services. The final sampling plan must describe in detail how the identified risks were addressed during the verification. When quarterly reviews are conducted as part of annual verification services, the final sampling plan must describe in detail how the

risks and issues identified for the annual data set were addressed during each quarterly review and final annual verification. The sampling plan list must include the following:

(A) Data sources that will be targeted for document reviews, data checks as specified under OAR 340-272-0430, and an explanation of why they were chosen;

(B) Methods used to conduct data checks for each data type; and

(C) A summary of the information analyzed in the data checks and document reviews conducted for each data type; and

(d) Specified source feedstocks included in CFP fuel pathway applications and annual fuel pathway reports that require verification must be included in the scope of verification services. When verification is not required for a fuel pathway, specified source feedstocks must be included in the scope of verification of the CFP quarterly reports. The verification team must use professional judgment and include in its risk assessment and sampling plan its analysis of the need for a desk review or site visit for verification of any entity in the feedstock chain of custody. This analysis must include an evaluation of the need to trace feedstock through feedstock suppliers, including aggregators, storage or pretreatment facilities, and traders or brokers, to the point of origin. If an error is detected during data checks of records maintained by the responsible entity, the risk assessment and sampling plan must be updated to assure specified source feedstock characterization and quantities to the point of origin.

(4) In addition to meeting the requirements under section (2), sampling plans for verification services provided for GHG Reporting Program emissions data reports submitted under OAR chapter 340, division 215 must also meet the requirements of this section:

(a) The sampling plan must include a ranking of emissions sources by amount of contribution to total reported emissions (metric tons of CO₂e) for the responsible entity and a ranking of emissions sources with the largest calculation uncertainty. As applicable and deemed appropriate by the verification team, fuel and electricity transactions must also be ranked or evaluated relative to the amount of fuel or power exchanged and uncertainties that may apply to data provided by the responsible entity including risk of incomplete reporting;

(b) The sampling plan must include a qualitative narrative of uncertainty risk assessment in the following areas:

(A) Data acquisition equipment;

(B) Data sampling and frequency;

(C) Data processing and tracking;

(D) Emissions calculations;

(E) Data reporting; and

(F) Management policies or practices in developing emissions data reports; and

(c) After the verification team completes the strategic analysis and risk assessment, the sampling plan must be revised to include a list with the information described in paragraphs (A) through

(C) of this subsection. The sampling plan list must be updated and finalized before the completion of verification services. The final sampling plan must describe in detail how the identified risks were addressed during the verification. The sampling plan list must include the following:

(A) Emissions sources and transactions, as applicable, that will be targeted for document reviews, and data checks as specified under OAR 340-272-0430, and an explanation of why they were chosen;

(B) Methods used to conduct data checks for each source or transaction; and

(C) A summary of the information analyzed in the data checks and document reviews conducted for each emissions source or transaction targeted.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0430

Data Checks

(1) Verification services must include data checks that meet the requirements of this rule.

(2) All data checks must meet the following requirements:

(a) Data checks must be used to determine the reliability of the submitted report or fuel pathway application and to ensure that the appropriate methodologies and emissions factors have been applied as required under OAR chapter 340, division 253 or OAR chapter 340, division 215, as applicable;

(b) Data checks must be chosen to ensure the accuracy of data submitted in the report or fuel pathway application;

(c) The verification team must use professional judgment in establishing the extent of data checks required in order to conclude with reasonable assurance whether each data type or

reported emissions quantity in the report or fuel pathway application is free of material misstatement;

(d) Data checks must be used to ensure that there is reasonable assurance that the report or fuel pathway application conforms to the requirements of OAR chapter 340, division 253 or OAR chapter 340, division 215, as applicable; and

(e) Results calculated by the verification team must be compared with the data in the report or fuel pathway application in order to confirm the extent and impact of any omissions and errors. Any discrepancies must be investigated.

(3) In addition to meeting the requirements under section (2), data checks for CFP reports and fuel pathway applications submitted under OAR chapter 340, division 253 must also meet the requirements of this section:

(a) Data checks must be chosen based on the relative contribution to greenhouse gas emissions or reductions and the associated risks of contributing to material misstatement or nonconformance, as indicated in the sampling plan;

(b) At a minimum, data checks must include:

(A) Tracing data in the fuel pathway application or CFP report to its origin;

(B) Reviewing the procedure for data compilation and collection;

(C) Recalculating intermediate and final data to check original calculations;

(D) Reviewing calculation methodologies used by the responsible entity for conformance with OAR chapter 340, division 253; and

(E) Reviewing meter and analytical instrumentation measurement accuracy and calibration for consistency with the requirements of OAR chapter 340, division 253, as applicable; and

(c) In the comparison of the verification team's calculated results with reported data, the comparison of data checks must also include the following:

(A) A narrative to indicate which data were checked;

(B) The types and quantity of data evaluated;

(C) The percentage of reported source data covered by data checks; and

(D) Any separate discrepancies that were identified in the CFP report or fuel pathway application.

(4) In addition to meeting the requirements under section (2), data checks for GHG Reporting Program emissions data reports submitted under OAR chapter 340, division 215 must also meet the requirements of this section:

(a) Data checks must be used for emissions sources and fuel and electricity transactions data, as applicable, based on their relative contributions to emissions and the associated risks of contributing to material misstatement or nonconformance, as indicated in the sampling plan;

(b) At a minimum, data checks must include:

(A) Tracing data in the emissions data report to its origin;

(B) Recalculating emissions estimates to check original calculations;

(C) Reviewing calculation methodologies used by the responsible entity for conformance with OAR chapter 340, division 215; and

(D) Reviewing meter and fuel analytical instrumentation measurement accuracy and calibration for consistency with the requirements of OAR chapter 340, division 215, as applicable;

(c) In addition to ensuring with reasonable assurance that the emissions data report conforms to the requirements of OAR chapter 340, division 215, the review of conformance must ensure the following information is correctly reported, as applicable:

(A) For facilities that combust natural gas, natural gas supplier customer account number, service account identification number, or other primary account identifier(s);

(B) For suppliers of natural gas, end user names, account identification numbers, and natural gas deliveries are reported using the appropriate units; and

(C) Energy generation, disposition information, and electricity purchases and acquisitions; and

(d) In the comparison of the verification team's calculated results with reported data, the comparison of data checks must also include the following:

(A) A narrative to indicate which sources and transactions were checked;

(B) The types and quantity of data that were evaluated for each source and transaction;

(C) The percentage of reported emissions covered by data checks; and

(D) Any separate discrepancies that were identified in emissions data.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0435

Documentation of Differences and Modifications to Reports and Fuel Pathway Applications

(1) While conducting verification services and data checks, the verification team must:

(a) Determine correctable errors using professional judgment, including whether differences are

not errors but result from truncation, rounding, or averaging; and

(b) Document the source of any difference identified, including whether the difference results in a correctable error or whether the difference does not require further investigation because it is the result of truncation, rounding, or averaging.

(2) As a result of data checks conducted by the verification team and before completion of a verification statement(s), the responsible entity must fix all correctable errors that affect the data in the submitted report or fuel pathway application, and submit a revised report or fuel pathway application to DEQ.

(a) Failure to fix all correctable errors identified before the completion of the verification services and submit a revised report or fuel pathway application to DEQ will result in an adverse verification statement.

(b) Failure to fix misreported data that do not affect credit or deficit calculations in CFP reports submitted under OAR chapter 340, division 253 represents a nonconformance but does not, absent other errors, result in an adverse verification statement.

(c) Failure to fix misreported data that do not affect emissions in emissions data reports submitted under OAR chapter 340, division 215 represents a nonconformance but does not, absent other errors, result in an adverse verification statement.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.050, 468A.265 through 468A.277, 468A.280, ORS 468A.010 & 468A.015

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0440

Findings

(1) To verify that the report or fuel pathway application is free of material misstatements, the verification team must make its own determination of emissions for checked sources or make its own calculation of specified data types reported by substituting the checked data from OAR 340-272-0430, and, as applicable:

(a) The verification team must determine whether there is reasonable assurance that the CFP report or fuel pathway application submitted under OAR chapter 340, division 253 does not contain a material misstatement as calculated according to OAR 340-272-0450 or OAR 340-272-0455, as applicable; or

(b) The verification team must determine whether there is reasonable assurance that the GHG Reporting Program emissions data report submitted under OAR chapter 340, division 215 does not contain a material misstatement in emissions as calculated according to OAR 340-272-0460.

(2) To assess conformance, the verification team must review the methods and factors used to develop the report or fuel pathway application for adherence to the requirements of this division and ensure that the requirements of OAR chapter 340, division 215 and OAR chapter 340, division 253 are met, as applicable.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0445

Log of Issues

(1) The verification team must keep a log that documents any issues identified in the course of verification that may affect determinations of material misstatement and nonconformance, whether identified by the verification team, by the responsible entity regarding the original or subsequent submitted reports, or by DEQ. The log of issues must contain the following:

(a) Identification of the regulatory section related to the material misstatement, nonconformance, or potential nonconformance, if applicable, and indication if the issues were corrected by the responsible entity before completing the verification services;

(b) Documentation of any other concerns with the preparation of the report or fuel pathway application, which must also be communicated to the responsible entity during the course of verification services; and

(c) Indication of whether each issue has a potential bearing on material misstatement, nonconformance, or both, and whether an adverse verification statement may result if not addressed.

(2) If quarterly review is conducted before an annual verification for CFP reports submitted under OAR chapter 340, division 253, any issues identified that may affect determinations of material misstatement or nonconformance must be documented in the log of issues during the quarterly review. The log of issues for the annual verification must include the cumulative record of issues from all quarterly reviews, as well as the annual verification.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0450

Material Misstatement Assessments for CFP Fuel Pathways and Quarterly Fuel Transactions Submitted under OAR Chapter 340, Division 253

(1) The verification team must conduct separate assessments of material misstatement on each calculated operational CI value and each quarterly fuel transaction quantity for each fuel pathway code (expressed in units from the applicable sections of OAR ~~chapter~~[chapter](#) 340 division 253). Material misstatement assessments are not conducted for quarterly review.

(2) Assessments of material misstatement of carbon intensity must meet all the requirements of this section.

(a) Each fuel pathway CI is subject to data checks under OAR 340-272-0430 and must be assessed separately for material misstatement of its carbon intensity. The inputs and annual operational carbon intensity for fuel pathway codes that are not a recertification of a California Fuel Pathway Code(s) but have an active California Fuel Pathway Code(s) must be assessed.

(b) Material misstatement of carbon intensity includes any discrepancy as described in paragraph (A) of this subsection, omission as described in paragraph (B) of this subsection, or misreporting as described in paragraph (C) of this ~~subsection~~[subsection](#), or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the reported operational CI (grams of carbon dioxide equivalent per megajoule or gCO₂e/MJ) in a CFP fuel pathway application or report contains one or more errors that, individually or collectively, result in an overstatement or understatement more than five percent of the reported operational CI, or 2 gCO₂e/MJ, whichever absolute value expressed in gCO₂e/MJ is greater.

(A) Discrepancies include any differences between the reported site-specific CI inputs and the verifier's calculated site-specific CI inputs subject to data checks under OAR 340-272-0430.

(B) Omissions include any site-specific CI inputs or associated source data the verifier concludes must be part of a fuel pathway application or report, but were not included.

(C) Misreporting includes duplicate, incomplete, or other CI input data the verifier concludes should or should not be part of a fuel pathway application or report.

(c) One or more material misstatements of carbon intensity will result in a finding of material misstatement for the fuel pathway application or report.

(d) A controlled version of the Simplified CI Calculator for Tier 1 pathways, a DEQ-approved OR-GREET for Tier 2 pathways, or another substantially equivalent model approved by DEQ for the specific fuel pathway application under OAR 340-253-0400(1), as applicable, must be populated to assess whether a fuel pathway application or report contains a material misstatement of carbon intensity.

(e) The following equations for percent error, relative error threshold, and absolute error threshold must be used to determine whether any reported operational CI value contains a material misstatement of carbon intensity and must be included in the final verification report according to OAR 340-272-0495.

Percent error (CI) = $(\sum | \text{Difference in CI} | \div | \text{Reported Operational CI} |) \times 100\%$

Relative error threshold (CI) = $| \text{Difference in CI} | \geq 0.05 \times | \text{Reported Operational CI Value} |$

Absolute error threshold (CI) = $| \text{Difference in CI} | \geq 2 \text{ g CO}_2\text{e/MJ}$

(3) Assessments of material misstatement of quarterly fuel quantity for each fuel pathway code must meet all the requirements of this section.

(a) Each aggregated quarterly fuel quantity for each fuel pathway code is subject to data checks under OAR 340-272-0430 and must be assessed separately for material misstatement of ~~quarterly~~ quarterly fuel quantity.

(b) Material misstatement of quarterly fuel quantity includes any discrepancy as described in paragraph (A) of this subsection, omission as described in paragraph (B) of this subsection, or misreporting as described in paragraph (C) of this subsection, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the reported fuel quantity for each fuel pathway code per quarter in a CFP quarterly report contains one or more errors that, individually or collectively, result in an overstatement or understatement greater than five percent.

(A) Discrepancies include any differences between the fuel quantity for the fuel pathway code reported and the verifier’s review of calculation of fuel quantity subject to data checks under OAR 340-272-0430.

(B) Omissions include any fuel quantity the verifier concludes must be part of a quarterly report, but was not included.

(C) Misreporting includes duplicate, incomplete, or other fuel quantity data the verifier concludes should or should not be part of a quarterly report.

(c) One or more material misstatements of quarterly fuel quantity will result in a finding of material misstatement for the annual verification of the quarterly fuel quantity for each fuel pathway code.

(d) The following equation for percent error must be used to determine whether any quarterly fuel quantity for each fuel pathway code contains a material misstatement of quarterly fuel quantity and must be included in the final verification report according to OAR 340-272-0495.

Percent error (fuel quantity) =

$$\frac{(\sum(\text{DiserepeniesDiscrepancies} + \text{Omissions} + \text{Misreporting}) \div \text{Reported quarterly fuel transaction quantity for fuel pathway code}) \times 100\%}{}$$

(e) When evaluating material misstatement of quarterly fuel quantity, correctly substituted missing data must be deemed to be accurate, regardless of the amount of missing data.

Statutory/Other Authority: ORS 468.020, 468A.266, 468A.271 & 468A.277

Statutes/Other Implemented: ORS 468A.010, 468A.015 & 468A.265 through 468A.277

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0455

Material Misstatement Assessments for CFP Project Reports Submitted under OAR Chapter 340, Division 253

(1) The verification team must conduct separate assessments of material misstatement of project data for each CFP project report submitted under OAR chapter 340, division 253. The assessments of material misstatement of ~~prejet~~[project](#) data must meet all of the requirements of this rule.

(2) Material misstatement of project data includes any discrepancy as described in subsection (a) of this section, omission as described in subsection (b) of this section, or misreporting as described in subsection (c) of this section, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the project report

contains one or more errors that, individually or collectively, result in an overstatement greater than five percent of the responsible entity's reported emissions reductions.

(a) Discrepancies include any differences between the reported emissions reductions and the verifier's calculated value based on data checks under OAR 340-272-0430.

(b) Omissions include any emissions, excluding any emissions reductions, the verifier concludes must be part of a project report, but were not included.

(c) Misreporting includes duplicate, incomplete, or other emissions or emissions reductions data the verifier concludes should or should not be part of a project report.

(3) A material misstatement of project data is not found when discrepancies, omissions, or misreporting, or an aggregation of the three, result in an understatement of reported emissions reductions in the project report.

(4) The following equation for percent error must be used to determine whether the greenhouse gas reductions quantified and reported in the project report contain a material misstatement of project data and must be included in the final verification report according to OAR 340-272-0495.

Percent error (project data) = $(\sum(\text{Discrepancies} + \text{Omissions} + \text{Misreporting}) \div \text{Reported emissions reduction}) \times 100\%$

(5) Any discrepancies, omissions, or misreporting found must include the positive or negative impact on the reported emissions reductions when entered in the equation in section (4).

(6) When evaluating material misstatement of project data, correctly substituted missing data must be deemed to be accurate, regardless of the amount of missing data.

Statutory/Other Authority: ORS 468.020, 468A.266, 468A.271 & 468A.277

Statutes/Other Implemented: ORS 468A.010, 468A.015 & 468A.265 through 468A.277

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0460

Material Misstatement Assessments for Emissions Data Submitted under OAR Chapter 340, Division 215

(1) The verification team must conduct separate assessments for material misstatement of total reported emissions for each emissions data report submitted under OAR chapter 340, division 215. The assessments of material misstatement of emissions data must meet all of the requirements of this rule.

(2) Material misstatement of emissions data includes any discrepancy as described in subsection

(a) of this section, omission as described in subsection (b) of this section, or misreporting as described in subsection (c) of this section, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the total reported emissions (metric tons of CO₂e) in a GHG Reporting Program emissions data report contains errors greater than five percent.

(a) Discrepancies include any differences between the reported emissions and the verifier's review of emissions for a data source subject to data checks under OAR 340-272-0430.

(b) Omissions include any emissions the verifier concludes must be part of an emissions data report, but were not included.

(c) Misreporting includes duplicate, incomplete, or other emissions the verifier concludes should or should not be part of an emissions data report.

(3) Each emissions data report is subject to data checks under OAR 340-272-0430 and must be assessed separately for material misstatement of emissions data.

(4) The following equation for percent error must be used to determine whether the total reported emissions in an emissions data report contain a material misstatement of emissions data and must be included in the final verification report according to OAR 340-272-0495.

$$\text{Percent error (emissions)} = \left(\frac{\sum(\text{Diserepancies} \text{Discrepancies} + \text{Omissions} + \text{Misreporting})}{\text{Total reported emissions}} \right) \times 100\%$$

(5) When evaluating material misstatement, correctly substituted missing data must be deemed to be accurate, regardless of the amount of missing data.

Statutory/Other Authority: ORS 468.020, 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0465

Review of Missing Data Substitution

(1) If a source selected for a data check was affected by a loss of data used for the reported data in the report or fuel pathway application, then the verification team must confirm that the reported data or reported emissions for that source were calculated:

(a) Using any missing data procedures as required under OAR chapter 340, division 215 or OAR chapter 340, division 253, as applicable; and

- (b) That a reasonable temporary data collection procedure was used for the source; or
- (c) That DEQ approved an alternative method.

(2) If a source selected for a data check was affected by a loss of data used for the reported data in the report or fuel pathway application, the verification team must note the date, time, and source of any missing data substitutions discovered during the course of verification in the verification report.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0470

Review of Operations and Emissions for Emissions Data Reports Submitted under OAR Chapter 340, Division 215

- (1) Verification services for verification of GHG Reporting Program emissions data reports submitted under OAR chapter 340, division 215 must include review that meets all of the requirements of this rule.
- (2) Facility operations must be reviewed to identify applicable greenhouse gas emissions sources, and the review must:
 - (a) Be conducted by the verification team;
 - (b) Include a review of the emissions inventory and each type of emissions source to ensure that all sources specified under OAR 340-215-0030 are included in the emissions data report, as applicable; and
 - (c) Review the reported current primary and any secondary (if reported) NAICS codes to ensure they accurately represent the NAICS-associated activities for the facility. The review of these NAICS codes and associated activities must be documented in the sampling plan. If the reported NAICS code(s) is determined to be inaccurate and the responsible entity does not submit a revised emissions data report to correct the current NAICS code(s), the result will be an adverse verification statement.
- (3) Electricity transaction records must be reviewed, including but not limited to written power contracts and any other applicable information required to confirm reported electricity procurements and deliveries. Documentation retained by the responsible entity to support claims of specified sources of electricity, as required under OAR 340-215-0042(6) must be reviewed to ensure it is sufficient to support the claim. Verifiers must use professional judgment to determine whether the records retained authenticate the claim.

(4) Information regarding increases or decreases in emissions, as required under OAR 340-215-0044(4) must be reviewed to ensure it is reported in conformance with the requirements of that division, however, the narrative description itself is not subject to the verification requirements of this division.

(5) Supporting documentation retained by the responsible entity to authenticate the purchase of gaseous or liquid biomass-derived fuels or hydrogen, as required under OAR 340-215-0042(4) must be reviewed to ensure it is sufficient to authenticate the purchase. Verifiers must use professional judgment to determine whether the records retained authenticate the purchase and fuel type.

(a) For biomethane and hydrogen reported under OAR chapter 340, division 215 the verifier must:

(A) Examine all applicable nomination, invoice, scheduling, allocation, transportation, storage, in-kind fuel purchase and balancing reports from the producer to the reporting entity and have reasonable assurance that the reporting entity is contractually receiving the identified fuel;

(B) Determine that the biomethane met pipeline quality standards;

(C) Review documentation that confirms the gas was contractually delivered to Oregon;

(D) Review attestations regarding environmental attributes confirming that no other party can make a claim on attributes that are being reported under OAR chapter 340, division 215;

(E) If book and claim accounting methodology was used to report contractual deliveries of gas, the verifier must also review documentation to confirm the reported quantity of gas was injected into a natural gas pipeline network connected to Oregon within the emissions data year; and

(F) If an electronic tracking system approved by DEQ is used for book and claim, the verifier must review records from the tracking system showing the retirement of all environmental attributes of that fuel that are being reported under division 215.

Statutory/Other Authority: ORS 468.020, 468A.050 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050 & 468A.280

History:

DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020

340-272-0495

Independent Review and Completion of Verification Services

(1) Verification statement. The verification body must complete a verification statement(s) upon completion of verification services, provide its statement to the responsible entity, and submit its statement to DEQ by the applicable verification deadline specified under OAR

340-272-0100(3). Each positive, qualified positive, or adverse verification statement must describe the findings of the verification; and

(a) For every qualified positive verification statement, the verification body must explain the nonconformances contained within the report or fuel pathway application and cite the sections(s) in OAR chapter 340, division 215, or OAR chapter 340, division 253, as applicable, that corresponds to the nonconformance and why the nonconformances do not result in a material misstatement; and

(b) For every adverse verification statement, the verification body must explain all nonconformances or material misstatements leading to the adverse verification statement and cite the sections(s) in OAR chapter 340, division 215, or OAR chapter 340, division 253, as applicable, that corresponds to the nonconformance(s) and material misstatement(s).

(2) Independent review. The verification body must have the verification services and findings of the verification team independently reviewed by an independent reviewer before each verification statement is completed. The independent reviewer must be employed by the verification body and must be a lead verifier not involved in verification services for the responsible entity during that reporting year or for that fuel pathway application period, but does not need to be a sector specific ~~verifer~~verifier. The independent reviewer must:

(a) Serve as a final check on the verification team's work to identify any significant concerns, including:

(A) Errors in planning;

(B) Errors in data sampling; and

(C) Errors in judgment by the verification team that are related to the draft verification statement;

(b) Maintain independence from the verification services by not making specific recommendations about how the verification services should be performed; and

(c) Review documents applicable to the verification services provided, and identify any failure to comply with requirements of this division, OAR chapter 340, division 215, OAR chapter 340, division 253, and with the verification body's internal policies and procedures for providing verification services, as applicable. The independent reviewer must concur with the verification findings before the verification body issues the verification statement.

(3) As part of completing verification services, the verification body must:

(a) Provide the responsible entity with the following:

(A) A detailed verification report, that must at a minimum include:

(i) A list of all verification team members that provided verification services, including identification of verifiers, lead verifiers, sector specific verifiers, [verifiers in training](#) and the independent reviewer;

(ii) A detailed description of the facility or entity including all data sources and boundaries;

(ii) A detailed description of the accounting procedures and data management systems, including data acquisition, tracking, and emissions calculation, as applicable;

(iii) The verification plan;

(iv) The detailed comparison of the data checks conducted during verification services;

(v) The log of issues identified in the course of verification services and their resolution;

(vi) Any qualifying comments on findings during verification services;

(vii) Findings of omissions, discrepancies, and misreporting, and the material misstatement calculations required under OAR 340-272-0450, OAR 340-272-0455, or OAR 340-272-0460, as applicable; and

(viii) For CFP reports submitted under OAR chapter 340, division 253, a detailed description of entities in the supply chain contributing CI parameters; and

(B) The verification statement(s); and

(b) Have a final discussion with the responsible entity explaining the verification team's findings, and notify the responsible entity of any unresolved issues noted in the issues log before the verification statement is finalized.

(4) Attestations in the verification statement. The verification statement must contain the following attestations:

(a) The verification body must attest whether it has found the submitted report or fuel pathway application to be free of material misstatement, and whether the report or fuel pathway application is in conformance with the requirements of this division, OAR chapter 340, division 215, and OAR chapter 340, division 253, as applicable;

(b) The lead verifier on the verification team must attest that the verification team has carried out all verification services as required by this division; and

(c) The lead verifier that has performed the independent review of verification services and findings must attest to [his or her](#) independent review on behalf of the verification body and [his or her](#) concurrence that the findings are true, accurate, and complete.

(5) Procedures for potential adverse verification statement and petition process.

(a) Before the verification body submits an adverse verification statement to DEQ, the verification body must notify the responsible entity of the potential of an adverse verification statement, and the responsible entity must be provided at least 14 [calendar](#) days to make modifications to correct any material misstatements or nonconformance found by the verification team. When a verification body has provided notification to a responsible entity under this subsection:

(A) The responsible entity must make modifications to correct any material misstatements or nonconformance found by the verification team;

(B) The modified report and verification statement must be submitted to DEQ before the applicable verification deadline specified in OAR 340-272-0100(3), even if the responsible entity makes a request to DEQ according to subsection (b); and

(C) The verification body must provide notice to DEQ of the potential for an adverse verification statement at the same time it notifies the responsible entity, and include in its notice to DEQ the current issues log.

(b) When a verification body has provided notice under subsection (a) and the responsible entity and the verification body cannot reach agreement on modifications that result in a positive or qualified positive verification statement because of a disagreement on the requirements of this division, the responsible entity may petition DEQ before the verification deadline and before the verification statement is submitted to make a final decision as to the verifiability of the submitted report or fuel pathway application. When the responsible entity files such petition with DEQ:

(A) The responsible entity must submit all information it believes is necessary for DEQ to make a determination with its petition;

(B) The responsible entity and the verification body must submit to DEQ within ten [calendar](#) days any additional information requested by DEQ;

(C) DEQ will review the information submitted and, based on the requirements of this division and that information, will make a determination on whether modifications are necessary in order for the verification body to issue a positive or qualified positive verification statement, or if such a statement could be issued without modifications; and

(D) DEQ will notify both the responsible entity and the verification body of its determination.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

History:

[DEQ 14-2020, adopt filed 05/07/2020, effective 05/07/2020](#)

340-272-0500

Requirements for Conflict of Interest Evaluation

(1) Conflict of interest evaluation. Before verification services may begin, each responsible entity must coordinate with the verification body with which it has engaged to perform verification to conduct a conflict of interest evaluation between itself and any verification bodies, verifiers, lead verifiers, sector specific verifiers, independent reviewers, [verifiers in training](#), and subcontractors intending to perform verification under the requirements of this division.

(2) High conflict of interest. The potential for a conflict of interest must be deemed to be high where:

(a) The responsible entity and the verification body share any management staff or board of directors membership, or any of the senior management staff of the responsible entity have been employed by the verification body, or vice versa, within the previous five years;

(b) Any employee of the verification body, or any employee of a related entity, or a subcontractor who is a member of the verification team has provided to the responsible entity any of the services in paragraph (A) (B), or (C) of this subsection, as applicable, within the previous five years:

(A) High conflict of interest services provided to any responsible entity:

(i) Designing or providing consultative engineering or technical services in the development and construction of a fuel production facility; or energy efficiency, renewable power, or other projects which explicitly identify greenhouse gas reductions as a benefit;

(ii) Any service related to development of information systems, or consulting on the development of environmental management systems except for systems that will not be part of the verification process and except for accounting software systems;

(iii) Verification services that are not provided in accordance with, or equivalent to, the requirements of this division, unless the systems and data reviewed during those services, as well as the result of those services, will not be part of the verification process;

(iv) Reporting under OAR chapter 340, division 253 or OAR chapter 340, division 215, or uploading data for DEQ, on behalf of the responsible entity;

(v) Bookkeeping and other non-attest services related to accounting records or financial statements, excluding services and results of those services that will not be part of the verification process;

(vi) Directly managing any health, environment, or safety functions for the responsible entity;

- (vii) Appraisal services of carbon or greenhouse gas liabilities or assets;
- (viii) Brokering in, advising on, or assisting in any way in carbon or greenhouse gas-related markets;
- (ix) Appraisal and valuation services, both tangible and intangible;
- (x) Any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;
- (xi) Any internal audit service that has been outsourced by the responsible entity that relates to its internal accounting controls, financial systems, or financial statements, unless the result of those services will not be part of the verification process;
- (xii) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the verification process;
- (xiii) Acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of the responsible entity;
- (xiv) Any legal services; or
- (xv) Expert services to the responsible entity, a trade or membership group to which the responsible entity belongs, or a legal representative for the purpose of advocating the responsible entity 's interests in litigation or in a regulatory or administrative proceeding or investigation.

(B) Additional high conflict of interest services provided to a responsible entity subject to OAR

chapter 340, division 253:

- (i) Designing, developing, implementing, reviewing, or maintaining an information or data management system for data submitted under OAR chapter 340, division 253 or OAR chapter 340, division 215 unless the review was part of providing independent quality assurance audit services, attestation engagement services, providing verification services according to the U.S. EPA RFS or the EU RED, or third-party engineering reports according to the U.S. EPA RFS;
- (ii) Developing CI or fuel transaction data or other greenhouse gas related engineering analysis that includes facility-specific information;
- (iii) Designing, developing, implementing, conducting an internal audit, consulting, or maintaining a project to receive CFP project-based credits;

(iv) Preparing or producing CFP fuel pathway application or CFP reporting manuals, handbooks, or procedures specifically for the responsible entity;

(v) Owning, buying, selling, trading, or retiring CFP credits, RINs, or credits in any carbon market; or

(vi) Dealing in or being a promoter of credits on behalf of the responsible entity.

(C) Additional high conflict of interest services provided to a responsible entity subject to OAR chapter 340, division 215:

(i) Designing, developing, implementing, reviewing, or maintaining an inventory or information or data management system for facility air emissions, or, where applicable, electricity or fuel transactions, unless the review was part of providing greenhouse gas verification services;

(ii) Developing greenhouse gas emissions factors or other greenhouse gas-related engineering analysis, including developing or reviewing a greenhouse gas analysis for air quality permitting or land use review that includes facility specific information; or

(iii) Preparing or producing greenhouse gas-related manuals, handbooks, or procedures specifically for the responsible entity.

(c) Any member of the verification body or verification team has provided verification services for the responsible entity except within the time periods in which the responsible entity is allowed to use the same verification body or team members as specified under OAR 340-272-0100(5); or

(d) Any member of the verification body provides any type of monetary or non-monetary incentive to a responsible entity to secure a verification contract, influence verification documentation, or influence verification findings.

(3) Low conflict of interest. The potential for a conflict of interest will be deemed to be low where:

(a) No potential for a high conflict of interest is found according to section (2);

(b) No potential for a medium conflict of interest is found according to section (4); and

(c) Verification services are provided within the allowable period under OAR 340-272-0100(5).

(4) Medium conflict of interest. The potential for a conflict of interest will be deemed to be medium where:

(a) There are any instances of personal or familial relationships between the members of the verification body and management or staff of the responsible entity; or

(b) A member of the verification team provided insignificant services to the facility within the previous five years, but are not services that result in a potential for a high conflict of interest according to section (2).

(5) Conflict of interest mitigation plan and submittal requirements for responsible entity. If a medium potential for conflict of interest is identified and the responsible entity intends to engage the verification body for verification, the responsible entity must coordinate with the verification body with which it has engaged to perform verification to submit a plan to DEQ to avoid, neutralize, or mitigate the potential conflict of interest situation, in addition to the evaluation submittal requirements specified under section (6). At a minimum, the conflict of interest mitigation plan must include:

(a) A demonstration that any individuals with potential conflicts have been removed and insulated from working on or discussing the project;

(b) An explanation of any changes to the organizational structure or verification body to remove the potential conflict of interest. A demonstration that any unit with potential conflicts has been divested or moved into an independent entity or any subcontractor with potential conflicts has been removed; and

(c) Any other circumstance that specifically addresses other sources for potential conflict of interest.

(6) Conflict of interest evaluation submittal requirements for responsible entities. A responsible entity must submit to DEQ a conflict of interest evaluation that includes the following:

(a) Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified under sections (2) through (4);

(b) Identification of whether the verification body, related entities, or any member of the verification team has previously provided verification services for the responsible entity or related entities and, if so, include a description and years of service;

(c) Identification of whether any member of the verification team, verification body, or related entity has engaged in services of any nature with the responsible entity or related entities either within or outside Oregon during the previous five years. If services other than DEQ verification under this division have previously been provided, the following information must also be submitted:

(A) The nature and location of the work performed for the responsible entity or related entity and whether the work is similar to the type of work to be performed during verification, such

as emissions inventory, auditing, energy efficiency, renewable energy, or other work with implications for the responsible entity's greenhouse gas emissions;

(B) The nature of past, present, or future relationships of any member of the verification team, verification body, or related entities with the responsible entity or related entities including:

(i) Instances when any member of the verification team, verification body, or related entities has performed or intends to perform work for the responsible entity or related entities;

(ii) Identification of whether work is currently being performed for the responsible entity or related entities, and if so, the nature of the work;

(iii) How much work was performed for the responsible entity or related entities in the last five years, in dollars;

(iv) Whether any member of the verification team, verification body, or related entities has contracts or other arrangements to perform work for the responsible entity or a related entity; and

(v) How much work related to greenhouse gases the verification team has performed for the responsible entity or related entities in the last five years, in dollars; and

(C) Explanation of how the amount and nature of work previously performed is such that any member of the verification team's credibility and lack of bias should not be under question;

(d) A list of names of the staff that would provide verification services for the responsible entity, and a description of any instances of personal or family relationships with management or employees of the responsible entity that potentially represent a conflict of interest;

(e) Identification of any other circumstances known to the responsible entity or verification body that could result in a conflict of interest; and

(f) A written attestation submitted to DEQ as follows:

"I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this conflict of interest evaluation submittal is true, accurate, and complete."

(7) Conflict of interest determinations.

(a) DEQ will review the conflict of interest evaluation and conflict of interest mitigation plan, if applicable, submitted by the responsible entity and will notify the responsible entity in writing whether the verification body is authorized to proceed with verification services.

(b) If DEQ determines the verification body or any member of the verification team meets the criteria for a high conflict of interest, verification services may not proceed. DEQ may, at its discretion, determine that a high conflict of interest exists when a member of the verification team provided services within the ~~previous~~ previous five years, but the services were not services that result in a potential for a high conflict of interest according to section (2). If DEQ makes such a determination, it must explain in writing why it believes the work performed creates a high conflict of interest.

(c) If DEQ determines that there is a low potential conflict of interest, verification services may proceed.

(d) If DEQ determines that the verification body and verification team have a medium potential for a conflict of interest, DEQ will evaluate the conflict of interest mitigation plan submitted, and may request additional information from the applicant to complete the determination. In determining whether verification services may proceed, DEQ may consider factors including, but not limited to, the nature of previous work performed, the current and past relationships between the verification body, related entities, and its subcontractors with the responsible entity and related entities, and the cost of the verification services to be provided. If DEQ determines that these factors when considered in combination demonstrate an acceptable level of potential conflict of interest, DEQ will authorize the verification body to proceed with verification services.

(8) Monitoring conflict of interest situations.

(a) After commencement of verification services, both the verification body and the responsible entity must each:

(A) Monitor and immediately make full disclosure in writing to DEQ regarding any potential for a conflict of interest situation that arises. This disclosure must include a description of actions that the verification body and the responsible entity have taken or propose to take to avoid, neutralize, or mitigate the potential for a conflict of interest;

(B) Continue to monitor arrangements or relationships that may be present for a period of one year after the completion of verification services. During that period, within 30 calendar days of the verification body or any verification team member entering into any contract with the responsible entity or related entity for which the body has provided verification services, the responsible entity must notify DEQ of the contract and the nature of the work to be performed. DEQ will determine whether the relationship constitutes a conflict and, if it does, whether the responsible entity must re-verify its reports or fuel pathway applications, and if modification, suspension, or revocation of DEQ approval of the verification body or any verification team member is warranted; and

(C) Notify DEQ, within 30 calendar days, of any conflicts of interest that arise after verification services begin and until one year after verification services are completed. When such notification is made:

(i) If DEQ determines that a disclosed emerging potential conflict is medium risk and the responsible entity and verification body agree to mitigate this risk in a manner acceptable to DEQ, the verification body may continue to provide verification services to the responsible entity and will not be subject to suspension or revocation of DEQ approval; and

(ii) If DEQ determines that a disclosed emerging potential conflict is medium or high risk and this risk cannot be mitigated, the verification body may not continue to provide verification services to the responsible entity, and may be subject to suspension or revocation of approval.

(b) Each verification body must report to DEQ any changes in its organizational structure, including mergers, acquisitions, or divestitures, that occur within one year after completion of any verification services.

Statutory/Other Authority: ORS 468.020, 468A.050, 468A.266, 468A.271, 468A.277 & 468A.280

Statutes/Other Implemented: ORS 468A.010, 468A.015, 468A.050, 468A.265 through 468A.277 & 468A.280

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