



State of Oregon Department of Environmental Quality

Oregon Environmental Quality

Commission Meeting

Dec. 7, 2023

Item B: Climate 2023 Temporary Rulemaking (Action)

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DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission:

- Affirm that the Commission, in its action to approve the Climate 2023 Rulemaking at its meeting on Nov. 16, 2023, intended to approve the rule adoption and rules amendments as shown on pages 68 through 216 of the DEQ staff report on Agenda Item D.
- Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned as provided under the Justification section of this staff report.
- Adopt the TEMPORARY rule amendment as proposed in Attachment A as part of Chapter 340 of the Oregon Administrative Rules to be effective on filing with the Oregon Secretary of State.

Language of proposed EQC motions (two separate motions):

Motion 1. *“I move that the Oregon Environmental Quality Commission affirm that when it approved a proposed rule and rule amendments as part of the Agenda Item D: Climate 2023 Rulemaking at its meeting on Nov. 16, 2023, the Commission intended to approve the rule and rule amendments as shown on pages 68 through 216 of the DEQ staff report provided at that meeting.”*

Motion 2. *“I move that the Oregon Environmental Quality Commission determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned, as provided under the Justification section of this staff report and adopt the temporary rule amendment as shown in Attachment A of the staff report for this item as part of Chapter 340 of the Oregon Administrative Rules to be effective upon filing with the Oregon Secretary of State.”*

Overview

DEQ is proposing a temporary rule amendment to the Climate Protection Program (CPP) rules contained in OAR Chapter 340, Division 271, to clarify the distribution of compliance instruments to liquid fuels and propane suppliers (covered fuel suppliers that are not local distribution companies).

On Nov. 16, 2023, for the Climate 2023 Rulemaking the Environmental Quality Commission (EQC) adopted rule amendments to Oregon Administrative Rules (OAR) Chapter 340, Divisions 215, 272, 271, 216, and 12.

- Greenhouse Gas Reporting Program, Division 215
- Third Party Verification, Division 272
- Climate Protection Program, Division 271
- Air Contaminant Discharge Program, Division 216
- Enforcement Procedure and Civil Penalties, Division 12

After the Commission approved those rule amendments on Nov. 16, the version of the amendments to OAR 340-271-0420 that DEQ staff filed with the Secretary of State as the final amended rule did not reflect all of the edits to the rule shown in the “Edits Highlighted” version of that rule provided in the staff report. For covered fuels suppliers regulated by the Climate Protection Program, the rule amendments included modifications to the timeline for the distribution of compliance instruments. For liquid fuels and propane fuel suppliers regulated by the Climate Protection Program, the rule amendments also included modifications to the annual compliance instrument distribution methodology, modifications to the compliance instrument reserve, and the addition of holding limits for compliance instruments.

DEQ is proposing a temporary rule amendment to OAR 340-271-0420 to clarify the methodology for distributing compliance instruments, specifically for the 2024 annual distribution of compliance instruments, consistent with the language shown in the “Edits Highlighted” version approved by the Commission on Nov. 16, 2023.

This temporary rule does not introduce any policy changes from what was presented to the commission on Nov. 16, 2023.

Statement of Need

What need is DEQ trying to address?

It is imperative that covered fuel suppliers regulated by the program have a clear understanding of how DEQ calculates and distributes compliance instruments. Liquid fuels and propane suppliers need to know how DEQ plans to calculate and distribute compliance instruments from each year's annual cap to each fuel supplier, each year. DEQ staff believes that the current rule is potentially ambiguous and unclear in explaining how DEQ would distribute compliance instruments, specifically for the 2024 annual compliance instrument distribution.

How would the proposed rule address the need?

The proposed rule amendment would provide additional clarity by adding a definition for "total emissions" for the 2024 annual distribution of compliance instruments, along with other minor clarifications.

Justification

Finding of serious prejudice

Failing to act promptly will result in serious prejudice to the interests of liquid fuels and propane suppliers regulated by the program. It is imperative that liquid fuels and propane suppliers regulated by the program have a clear understanding of how DEQ calculates and distributes compliance instruments. If a covered fuel supplier does not understand or misinterprets DEQ's methodology for distributing compliance instruments, a fuel supplier might mistakenly estimate that it would receive a different number of compliance instruments than it actually would from DEQ. This could negatively impact companies' ability to develop and execute plans for compliance with the program. Additionally, individual fuel suppliers might not pursue the most cost-effective compliance strategies. DEQ will distribute 2024 compliance instruments no later than June 30, 2024, so it is imperative that the clarifications are adopted as soon as possible, to avoid such prejudice.

Consequences of not taking immediate action

Not immediately amending the rules would cause harm to the affected parties because if a liquid fuels and propane supplier does not understand or misinterprets DEQ's methodology for distributing compliance instruments, a fuel supplier might mistakenly estimate that it would receive a different number of compliance instruments than it actually would from DEQ. The fuel supplier might fail to pursue other emission reduction and compliance strategies and could fail to achieve compliance with the program, potentially facing significant penalties.

Affected parties

The members of the public or parties who would be directly harmed if EQC did not take this action include the liquid fuels and propane suppliers (covered fuel suppliers that are not local distribution companies) that must comply with the program.

Why or how failing to act immediately would cause the harm described above

The harm described above would occur if EQC does not act immediately for the reasons stated above. If EQC does not act immediately, liquid fuels and propane suppliers might mistakenly misinterpret the number of compliance instruments they would receive from DEQ, which could lead them to not make appropriate decisions for compliance strategies, which could impact their ability to demonstrate compliance.

How temporary rule would avoid or mitigate consequences

If EQC adopts the proposed temporary rule amendment, this will mitigate the harm described above by clarifying how DEQ plans to calculate and distribute compliance instruments for the 2024 annual compliance instrument distribution.

Rules Affected, Authorities, Supporting Documents

Lead division

Office of Greenhouse Gas Programs

Program or activity

Oregon Climate Protection Program

Chapter 340 action

Amend	
340-271-0420	

Statutory Authority - ORS				
468.020	468A.025	468A.040		

Statutes Implemented - ORS				
468.020	468A.010	468A.025	468A.040	468A.045

Housing Costs

As ORS 183.534 requires, DEQ evaluated whether the proposed temporary rule amendment would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed temporary rule amendment will have no impact on the supply of housing or land for residential development. The proposed temporary rule amendment will not impact the cost of labor or administration related to such development.

Public Notice

DEQ did not send out a formal advance public notice prior to proposing this temporary rule. On Nov. 30, 2023, DEQ provided informal notice of the proposed temporary rule amendment by email to approximately 26,644 interested parties on the following DEQ lists through GovDelivery:

- DEQ Public Notices
- Rulemaking
- Air Quality Permits
- Clean Fuels Program
- Climate Protection Program
- Greenhouse Gas Programs
- Greenhouse Gas Reporting
- Third Party Verification Program
- Title V Permit Program

EQC Prior Involvement

On Nov. 16, 2023, the EQC adopted amendments to rules for the Climate Protection Program. The adopted rule amendments included modifications to the timeline for the distribution of compliance instruments and to the annual compliance instrument distribution methodology, modifications to the compliance instrument reserve, and the addition of holding limits for compliance instruments. The current proposed temporary rule amendment for OAR 340-271-0420 before EQC would further clarify DEQ's methodology for distributing compliance instruments, specifically for the 2024 annual distribution of compliance instruments.

Implementation

Notification

The proposed rule amendment would become effective upon filing with the Oregon Secretary of State, expected to occur on or about Dec. 7, 2023. DEQ would notify affected parties by:

- Notifying liquid fuel and propane fuel suppliers covered under the Climate Protection Program
- Updating the [Climate Protection Program](#) webpage with information for the liquid fuel and propane fuel suppliers covered under the Climate Protection Program
- Publishing the adopted temporary rule OAR 340-271-0420 in the Oregon Secretary of State Bulletin

Compliance and enforcement

The proposed rule amendment would not make any changes to Division 12.

Outreach

If the proposed temporary rule amendment is approved, DEQ will provide educational materials and training to new or existing covered entities under the Climate Protection Program (Division 271) to implement the provisions of this temporary rulemaking, included educational materials, and trainings.

Accessibility Information

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.oregon.gov.

El DEQ puede proporcionar los documentos en un formato alternativo o en un idioma distinto al inglés si así lo solicita. Llame al DEQ al 800-452-4011 o envíe un correo electrónico a deqinfo@deq.oregon.gov.

DEQ 可以根據要求提供另一種格式的文件或英語和西班牙語以外的語言。請致電 DEQ : 800-452-4011 或發送電子 郵件至 : deqinfo@deq.oregon.gov.

ДЭК может предоставить документы в другом формате или на другом языке, помимо английского и испанского, по запросу. Позвоните в ДЭК по телефону 800-452-4011 или свяжитесь по электронной почте deqinfo@deq.oregon.gov.

Tùy theo yêu cầu, cơ quan DEQ có thể cung cấp các tài liệu ở định dạng thay thế hoặc bằng ngôn ngữ khác ngoài tiếng Anh và tiếng Tây Ban Nha. Liên hệ với DEQ theo số 800-452-4011 hoặc gửi email đến deqinfo@deq.oregon.gov.