



Oregon Department of Environmental Quality
Nov. 15-16, 2018
Oregon Environmental Quality Commission meeting
Agency Staff Report
Rulemaking, Action item D

Clean Fuels Program 2018 Rulemaking

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NOTE: To reduce paper waste, this public review copy does not include the proposed rules (pages 31-144 for the proposed rules with edits shown, pages 145 through 253 for proposed rules with edits incorporated)

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules, as seen on pages 31 through 144 of this document, as part of Chapter 340 of the Oregon Administrative Rules.

Proposed EQC motion language:

“I move that the Oregon Environmental Quality Commission adopts the proposed rule amendments for the Clean Fuels Program as seen on pages 31 through 144 of the document for this item as part of Chapter 340 of the Oregon Administrative Rules.”

Overview

Short summary

The Oregon Department of Environmental Quality proposes that the Environmental Quality Commission amend Oregon Clean Fuels Program rules under Division 253 of Chapter 340 of the Oregon Administrative Rules.

The proposed rule changes would:

- Update the models used to determine the carbon intensities of fuels and the resulting changes to the lookup table values, clean fuel standards, energy economy ratios, and temporary fuel pathway codes;
- Add new categories of fuel applications that can be used to generate credits, including forklifts and transport refrigeration units, and add new fuels that could generate credits such as alternative jet fuel and renewable propane; and
- Make some additional housekeeping changes and updates

DEQ also proposes to amend rules under Division 12 of Chapter 340 of the Oregon Administrative Rules to classify certain violations and establish or clarify enforcement criteria for violations of the Oregon Clean Fuels Program.

Brief history

The 2009 Oregon Legislature passed House Bill 2186 authorizing the EQC to adopt rules to reduce lifecycle emissions of greenhouse gases from Oregon's transportation fuels by 10 percent over a 10-year period. However, HB 2186 also contained a sunset for the program, of December 31, 2015 – requiring the agency to return to the legislature for authorization to continue the program past that date.

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

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

The 2015 Oregon Legislature passed Senate Bill 324 that removed the Dec. 31, 2015, sunset date and further amended the authorizing statute, ORS 468A.275, for the Oregon Clean Fuels Program.

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

EQC adopted temporary rules April 21, 2016, to correct a miscalculation in the Clean Fuel standards and certain carbon intensity values. The commission adopted permanent rules for the correction Aug. 18, 2016.

The 2017 Oregon Legislature passed House Bill 2017 that added provisions for a Credit Clearance Market as an additional cost containment mechanism, certain reporting requirements, and that reorganized the portions of ORS 468A that authorize and set requirements for the Clean Fuels Program. The sections authorizing the Clean Fuels Program were renumbered to ORS 468A.265 through 277.

EQC adopted updated rules Nov. 2, 2017, adding the Credit Clearance Market mechanism, updating several provisions relating to electricity's use as a transportation fuel, adding market monitoring provisions, and other housekeeping changes and updates.

Regulated parties

The Clean Fuels Program currently has 154 businesses that are registered to participate, including:

- **Importers of Blendstocks**
These are businesses that import liquid fuel components which can be blended with another fuel component or used alone. There are currently 58 businesses registered as importers of blendstocks.
- **Importers of Finished Fuels**
These are businesses that only import fuels that can be used directly in a motor vehicle, such as clear gasoline, gasoline blended with 10 percent ethanol, clear diesel and diesel blended with 5 percent biodiesel. There are currently 50 businesses registered as importers of finished fuels. 35 importers are large (more than 500,000 gallons per year) and 15 are small (less than 500,000 gallons per year). Small importers of finished fuels are largely exempted from the program, except for the requirement to register and annually file a report through the agency's greenhouse gas reporting program. To note, the program's definition of a "small importer," required by statute, does not align with the statutory definition of a "small business" that is used to analyze the fiscal and economic impact to small businesses.
- **Oregon Producers of Transportation Fuels**
There are currently three registered Oregon producers of biofuels. One produces ethanol from corn, one produces ethanol from waste food products, and one produces biodiesel from used cooking oil.
- **Credit Generators**
These are businesses that provide or produce clean fuels (natural gas, renewable natural gas, propane, electricity and hydrogen). These businesses are not required to participate in the program, but must register in order to generate credits if they wish to sell credits to fuel suppliers. Importers of blendstocks and Oregon producers may

also generate credits due to the nature of fuels they provide, but an entity registered as a credit generator is doing so solely because it provides clean fuels. There are currently 43 businesses registered as credit generators.

Request for other options

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

Statement of Need

Climate change poses a serious threat to Oregon's economy, environment and public health. Transportation accounts for forty percent of all greenhouse gas emissions in Oregon, and that proportion is growing. The goal of the Clean Fuels Program is to reduce greenhouse gas emissions from Oregon's transportation sector by promoting lower-carbon production methods for existing fuels and the innovation, commercialization, and deployment of new and existing low-carbon fuels that are alternatives to gasoline and diesel, which have a relatively high carbon intensity. While the Clean Fuels Program has been in full operation since 2016, there are several reasons for this proposed rulemaking, as described below.

Proposed Rule or Topic	Discussion
Update statutory authority	
What need would the proposed rules address?	The statutes that authorize the low carbon fuel standards were modified by HB 2017 and the current rules' citations to the statutes need to be updated.
How would the proposed rules address the need?	The proposed rules would update the statutory authority to reflect the chaptering of HB 2017 and subsequent renumbering of certain sections in ORS chapter 468A.
How will DEQ know the rules addressed the need?	The proposed rules will become consistent with the authorizing statutes.
Update the models to calculate carbon intensity	
What need would the proposed rule address?	Periodically, the models used to calculate the carbon intensity of transportation fuels need to be updated to reflect the latest science.
How would the proposed rule address the need?	The proposed rules would update OR-GREET from version 2.0 to version 3.0 and OPGEE from version 1.1 to version 2.0. In addition, the proposed rules would also update the resulting changes to the lookup table values, clean fuel standards, energy economy ratios, and temporary fuel pathway codes.
How will DEQ know the rule addressed the need?	DEQ will post the new models on the CFP webpage and incorporate the changes into the CFP Online System. DEQ will monitor quarterly and annual reports, the processing of applications to obtain carbon-intensity scores, the other aspects of program implementation.

Incorporate new fuel applications and new fuels into the CFP	
What need would the proposed rule address?	The low-carbon transportation industry continues to expand and innovate in response to the market for low carbon fuels created by Oregon's program and similar programs in California and British Columbia. For Oregon to participate fully in this market, it is important that the CFP extend its incentives to providers of new low-carbon fuels and new low-carbon fuel applications by allowing them to generate credits in the program.
How would the proposed rule address the need?	The proposed rules add new categories of fuel applications that can be used to generate credits, including forklifts and transport refrigeration units, and add alternative jet fuel and renewable propane as new fuels that can generate credits. .
How will DEQ know the rule addressed the need?	DEQ will monitor quarterly and annual reports, the processing of applications to obtain carbon-intensity scores, the other aspects of program implementation.
Housekeeping changes	
What need would the proposed rule address?	DEQ learned a great deal since it began implementing the CFP in 2016. This rulemaking proposes to improve and streamline the day-to-day operation of the program.
How would the proposed rule address the need?	DEQ is proposing several rule changes that will: 1) add and modify several program definitions, 2) modify existing energy economy ratios; and 3) add substitute fuel pathway codes.
How will DEQ know the rule addressed the need?	DEQ will monitor quarterly and annual reports, the processing of applications to obtain carbon-intensity scores, the other aspects of program implementation.
Update enforcement provisions	
What need would the proposed rule address?	DEQ adopted revisions to Division 253 in 2017 but did not adopt the corresponding changes to Division 12.
How would the proposed rule address the need?	DEQ is proposing to update the enforcement provisions in Division 12 to be consistent with Division 253.

How will DEQ know the rule addressed the need?	DEQ will review applicable enforcement actions to verify that the updates are sufficient to fully address enforcement issues that result from violations of the CFP.
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Rules affected, authorities, supporting documents

Lead division

Air Quality Division

Program or activity

Oregon Clean Fuels Program

Chapters 340 and 012 action

Rules Adopted – OAR 340

340-253-0350

Rules Amended – OAR 340

340-012-0054	340-012-0135	340-012-0140	340-012-0150	340-253-0000
340-253-0040	340-253-0060	340-253-0100	340-253-0200	340-253-0250
340-253-0310	340-253-0320	340-253-0330	340-253-0340	340-253-0400
340-253-0450	340-253-0470	340-253-0500	340-253-0600	340-253-0620
340-253-0630	340-253-0640	340-253-0650	340-253-0670	340-253-1000
340-253-1005	340-253-1010	340-253-1020	340-253-1030	340-253-1040
340-253-1055	340-253-2000	340-253-2100	340-253-8010	340-253-8020
340-253-8030	340-253-8040	340-253-8050	340-253-8060	340-253-8070
340-253-8080	340-253-8090	340-253-8100		

Statutory Authority - ORS

468.020	468.1306	468A.266	468A.268	468.277
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Statutes Implemented - ORS

468.020	468.090	468.140	468.130	468.135
468.140	468A.265	468A.266	468A.268	468A.271
468A.272	468A.273	468A.274	468A.276	468A.277

Legislation

House Bill 2186 (2009)	Senate Bill 324 (2015),	House Bill 2017-A (2017)
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Documents relied on for rulemaking

Document title	Document location
CFP 2018 Rulemaking materials, February – July 2018	https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rCFP2018.aspx
Argonne GREET model	https://greet.es.anl.gov/
Stanford University OPGEE model	https://pangea.stanford.edu/researchgroups/eao/research/opgee-oil-production-greenhouse-gas-emissions-estimator
2018 Amendments to the California Low Carbon Fuel Standards and Alternative Diesel Fuels Regulations	https://www.arb.ca.gov/regact/2018/lcfs18/lcfs18.htm https://www.arb.ca.gov/fuels/lcfs/ca-greet/ca-greet.htm

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

The Oregon Clean Fuels Program is a technology-neutral, market-based regulatory program to reduce carbon pollution from transportation fuels and accelerate the commercialization and deployment of innovative low-carbon fuels. The program does not mandate the use of any particular type of fuel or technology. Instead, it creates a performance standard for fuel suppliers, requiring them to reduce the average carbon intensity of fuels sold by 10 percent over 10 years. The program allows for many strategies to be employed for meeting the clean fuel standards, giving each regulated party the flexibility to consider its particular circumstance, perspective and business needs when devising its own strategy to meet the standard.

The scope of this fiscal and economic impact statement is limited to the impact of the proposed rule changes contained in this rulemaking, it does not re-assess the existing Clean Fuels Program in its entirety as no significant changes are proposed to the base program. The proposed rule changes fall into three broad categories: 1) changes in the potential market value of lower carbon fuels based on updated carbon intensity values for 2019 and beyond; 2) new fuel types and fuel applications; and 3) changes and clarifications related to enforcement. The proposed rule revisions are based on discussions and input from DEQ's CFP 2018 Rulemaking Advisory Committee.

- Updates to the models used to calculate carbon intensity values and the resulting changes to carbon intensity values and the clean fuel standards
 - Update to OR-GREET 3.0
 - Update to OPGEE 2.0
 - Revised carbon intensity values
 - Revised clean fuel standards
- New fuel types and fuel applications that can generate credits in the program
 - Forklifts
 - Transport refrigeration units
 - Alternative jet fuel
 - Renewable propane
- Updates to enforcement provisions

Statement of Cost of Compliance

General Direct Costs

- **Administrative Costs**

There is a one-time cost to a business of staff time to register with the program if the business is not already registered. There are on-going costs to keep records, submit reports, obtain carbon intensities, and generate and transfer credits.

The proposed rule changes would make it easier to submit a Tier 1 application and would not otherwise change the administrative costs associated with participating in the program.

- **Costs Related to Enforcement**

There are costs to businesses of an enforcement action that include responding to requests for additional information, correcting the violation and the payment of civil penalties if assessed.

The proposed rule changes would not have a significant economic impact on businesses, individuals or government entities. The enforcement rules would apply to a party only if they violate the program rules.

- **Costs to Regulated Entities to Reduce Carbon Intensity**

As described above, the proposed clean fuel standards for gasoline and diesel are slightly lower than the current values, reflecting recalculations of the baseline carbon intensities for gasoline and diesel. These changes could have minor effects by raising the costs of compliance for regulated entities, and increasing the value of credits. The proposed changes to OR-GREET do not result in any significant change to the carbon intensities of gasoline or diesel substitutes. The proposed changes to the values for the gasoline and diesel clean fuel standards would not have a significant economic impact.

The proposed rules would add additional credit generation from alternative jet fuel, renewable propane, and the use of clean fuels in forklifts and transport refrigeration units. These changes may have an impact on credit prices as these applications increase in use over time. Individual businesses that provide these fuels or use them in the specified fuel applications would benefit economically by their inclusion in the program. Additional supplies of credits from these applications into the program's credit market would, all else being equal, lower the price of credits in the program and result in reduced compliance costs for regulated entities.

Potential Impact to Fuel Consumers

Fuel consumers could experience both positive and negative impacts to the extent that regulated parties pass changes to their savings and/or costs to their customers. For example, if the retail prices of lower carbon fuels are less than the fuels they replace, then costs should decrease all else being equal in a competitive market. Conversely, if the retail prices of low-carbon fuels are greater than the fuels they replace, or if regulated parties had to purchase credits to comply with the standards, costs could increase. As the changes in the carbon intensities are minor, and the changes in additional options for credit generation are relatively limited, the proposed rule changes are not expected to affect costs to consumers significantly. The current costs of the program are estimated to be no more than 0.23 cents per gallon of gasoline, and 0.31 cents per gallon of diesel (estimated costs if fuel suppliers do not pass on any costs savings from the use of lower-cost alternatives to consumers).

DEQ and other state agencies, federal agencies, local governments

Direct Impact on DEQ: The proposed rule changes will increase the amount of work for DEQ CFP staff in terms of having additional parties register in the program. This additional work will be absorbed into the current 2.5 FTE allocated to implement the program.

Direct Impacts on other agencies: The proposed rule changes do not impose direct fiscal or economic effects on state or federal agencies or local governments unless they import transportation fuel or provide clean fuels. If so, see the discussions about the General Direct Costs above.

Indirect Impacts: State and federal agencies and local governments are fuel consumers. See the discussions about the Potential Impact on Fuel Consumers above.

Public

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

Indirect Impacts: Members of the public purchase fuel for their vehicles. See the discussions about the Potential Impact on Fuel Consumers above.

Large businesses - businesses with more than 50 employees

Many large businesses participate in the program including but not limited to fuel terminal operators, biofuel producers, fuel marketers, natural gas and electric utilities, EV charger owners, and transit districts. The proposed rule changes would add owners and operators of forklift fleets or warehousing operations to the types of businesses that could participate in the program.

Direct Impacts: See the discussions about General Direct Costs above.

Indirect Impacts: Large businesses are fuel consumers. See the discussions about the Potential Impact on Fuel Consumers above.

Small businesses – businesses with 50 or fewer employees

Direct Impacts: See the discussions about General Direct Costs above.

Indirect Impacts: Small businesses are fuel consumers. See the discussions about the Potential Impact on Fuel Consumers above.

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

Approximately 50 small businesses are registered with the program, primarily fuel distributors, credit generators, and biofuel producers.

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

There proposed rule changes would not affect these costs except in the case of a new small business registering to generate credits from the proposed additions to the program. In this case they will incur minimal administrative costs described in the discussions about the General Direct Costs above.

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

The proposed rule changes would not affect these costs.

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

DEQ convened a 25-member advisory committee that included small businesses to discuss the proposed rule changes.

Documents relied on for fiscal and economic impact

Document title	Document location
California Low Carbon Fuel Standard regulation, workgroup and rulemaking documents	http://www.arb.ca.gov/fuels/lcfs/lcfs.htm
Argonne GREET model	https://greet.es.anl.gov/
Stanford University OPGEE model	https://pangea.stanford.edu/researchgroups/eao/research/opgee-oil-production-greenhouse-gas-emissions-estimator
Oregon Clean Fuels Program Updates Rulemaking Advisory Committee (2018)	https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rCFP2018.aspx
Reports from registered regulated parties for the Oregon Clean Fuels Program	Program files located at: DEQ Headquarters 700 NE Multnomah Street Portland, OR 97232-4100

Advisory committee

DEQ appointed the CFP 2018 Rulemaking Advisory Committee to provide input on the proposed rules and for input on the fiscal and economic impact statement. As ORS 183.333 requires, DEQ asked for the committee's recommendations on:

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

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the meeting summary and in submitted written comments posted here: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rCFP2018.aspx>. The committee determined the proposed rules would not have a significant impact on businesses in general, nor an adverse impact on small businesses in Oregon.

The following advisory committee work was instrumental to the design of the Oregon Clean Fuels Program.

2018

From February through July 2018, DEQ worked with a 25-member advisory committee that included small businesses. The committee discussed updates to the lifecycle accounting models, additions to the program, other miscellaneous improvements, and enforcement provisions proposed in this rulemaking. Membership and meeting summaries are at: [2018 Advisory Committee](#).

2016-7

From November 2016 through June 2017, DEQ worked with a 29-member advisory committee that included small businesses. The committee discussed cost containment updates to the program and other miscellaneous improvements proposed in this rulemaking. Membership and meeting summaries are at: [2017 Advisory Committee](#).

2015

From July through August 2015, DEQ worked with a 20-member advisory committee that included small businesses. The committee discussed updates to the program proposed in this rulemaking. Membership and meeting summaries are at: [2015 Advisory Committee](#).

2014

From June through August 2014, DEQ worked with a 21-member advisory committee that included small businesses. The committee discussed phase 2 design of the Clean Fuels Program. Membership and meeting summaries are at: [2014 Advisory Committee](#).

2013

During the first half of 2013, DEQ conducted extensive outreach to fuel importers and producers across the state to determine who was regulated and non-regulated. This included small businesses. Outreach included a web-based survey, individual phone conversations and in-person meetings in Portland, Eugene, Salem, Medford, Bend and Pendleton.

2012

In May 2012, DEQ convened an advisory committee to focus on the fiscal and economic impact of implementing phase 1. Membership and the meeting summary are at: [2012 Advisory Committee](#).

2009-2010

From November 2009 through November 2010, DEQ worked with a 29-member advisory committee that included small businesses. The committee discussed the design of the Oregon Clean Fuels Program. Membership and meeting summaries are at: [2009 Advisory Committee](#).

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because the proposed rules only affect transportation fuels used in Oregon.

Federal relationship

Relationship to federal requirements

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

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

What alternatives did DEQ consider if any?

In designing the Clean Fuels Program, DEQ considered many alternatives to those amendments contained in the proposed rule. Input from advisory committees in 2010, 2012, 2014, 2015, 2016, 2017 and 2018 and extensive outreach with affected stakeholders throughout the process informed the design of the Oregon Clean Fuels Program. Documentation is in the rulemaking record.

Land Use

Land-use considerations

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

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

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

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

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

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

Determination

DEQ determined that these proposed rules do not negatively affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program. In fact, these proposed rules have the potential to positively affect the statewide goals in that it has the potential to reduce greenhouse gas emissions and mitigate the impact of climate change.

Advisory Committee

Background

DEQ convened the CFP 2018 Rulemaking advisory committee. The committee included importers of various transportation fuels; large and small businesses that may be regulated parties; the general public; and conservation organizations with members that may be impacted by the program and met 3 times. The committee's web page is located at:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rCFP2018.aspx>.

The committee members were:

CFP2018 Rulemaking Advisory Committee	
Name	Representing
Brian McDonald	Andeavor
Don Gilstrap	Chevron
Brandon Price	Clean Energy Fuels
John Thornton	CleanFuture, Inc.
Nina Kapoor	Coalition for Renewable Natural Gas
Annie Stuart	Coleman Oil Company
Josh Proudfoot	Good Company
Mark Gram	Jubitz Corporation
Graham Noyes	Low Carbon Fuels Coalition
Shelby Neal	National Biodiesel Board
Jana Gastellum	Oregon Environmental Council
Danelle Romain	Oregon Fuels Association & Oregon Public Utility Districts Association
Beth Vargas Duncan	Oregon Refuse & Recycling Association
Waylon Buchan	Oregon Trucking Association
Jeremy Roundcount	Pacific Ethanol
Mary Wiencke	PacifiCorp
Marc Ventura	Phillips 66
Lindsay Fitzgerald	Renewable Energy Group
Jessica Hoffmann	RPMG
Ian Hill	SeQuential Biofuels
Connor Nix	Shell Oil Products US
Peter Weisberg	The Climate Trust
Jeremy Martin	Union of Concerned Scientists
Elizabeth Hepp	Valero
Jessica Spiegel	Western States Petroleum Association

Meeting notifications

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

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee was asked to discuss and provide input on the following topics:

- Updates to the models used to determine the carbon intensities of fuels
- The potential for additional credit generation to the program
- Alignment of the enforcement provisions in Division 12 with the Division 253 rules adopted by the EQC on November 3, 2017
- Other topics, as identified by DEQ staff

EQC prior involvement

DEQ shares general rulemaking information with EQC through the Director's Report and periodic program updates.

Public Notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on September 1, 2018 by:

- On Sept. 1, 2018, filing notice with the Oregon Secretary of State for publication in the Sept. 1, 2018 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Clean Fuels 2018](#);
- Emailing approximately 10,775 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Oregon Clean Fuels Program
 - DEQ Public Notices
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senator Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
 - Representative Ken Helm, Chair, House Energy and Environment Committee
 - Senator Peter Courtney, Senate President
 - Representative Tina Kotek, House Speaker
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public Hearings

DEQ held one public hearing. The hearing was held at the DEQ Headquarters Office, 700 NE Multnomah Street, Portland, OR 97232 on Sept. 20, 2018, at 1:30 p.m. Cory-Ann Wind served as the presiding officer.

The presiding officer convened the hearing, summarized procedures for the hearing, explained that DEQ was recording the hearing, and summarized the content of the rulemaking notice. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments.

Four people attended the hearing in person and six people attended by teleconference. Three people commented orally and no written comments were submitted at the hearing.

Public comment period

DEQ accepted public comment on the proposed rulemaking from Sept. 1, 2018, until 4 p.m. on Sept. 28, 2018.

Summary of comments and DEQ responses

The following summaries represent oral comments received at the public hearing, written comments that were received by the close of the public comment period, and DEQ's response to the comments. Original comments are on file with DEQ. DEQ changed some of the proposed rules in response to comments described in the response sections below.

The following are oral comments presented at the September 20, 2018 public hearing:

Comment #1

Name: Graham Noyes

Organization: Low Carbon Fuels Coalition

Comment	Response
Support for the proposed rule package.	Thank you for your comment.

Comment #2

Name: Graham Noyes

Organization: Noyes Law Corporation, representing alternative jet fuel producers (World Energy Paramount, Fulcrum bioenergy, Gevo, Neste, Red Rock Biofuels, and Velocys)

Comment	Response
Support for the proposed rule package, specifically the inclusion of alternative jet fuel. Alignment with California program is beneficial to the market	Thank you for your comment.
Suggest minor wording changes to clarify credit generation from alternative jet fuel.	See responses to Comment #13.

Comment #3

Name: Oscar Garcia

Organization: Chevron

Comment	Response
Refer to July 27, 2018 comments mainly around clarifications on the transition from OR-GREET 2.0 to OR-GREET 3.0 & revocation/modification of pathways by CARB.	Thank you for your comment. See responses to Comment #5 submitted by WSPA.

Comment #4

Name: Jeff Bissonnette

Organization: Union of Concerned Scientists

Comment	Response
Support of the program and the proposed rule package.	Thank you for your comment.

The following are written comments submitted via CFP 2018 Rulemaking webpage:

Comment #5

Name: Jessica Spiegel

Organization: Western States Petroleum Association

Comment	Response
Need clarification on the transition from OR-GREET 2.0 to 3.0	OR-GREET 3.0 will be effective January 1, 2019. OAR 340-253-0400(5) has been modified to provide additional clarification to the transition.
DEQ should not rely on CARB with respect to revocation or modification of a fuel pathway.	DEQ will act independently on any pathway that is revoked or modified by CARB. OAR 340-253-0450(9)(d)(C) has been modified to provide additional clarification to this procedure.
Replace new requirement for temperature correction with guidance.	The temperature correction requirements contained in the proposal match those of the US EPA's Renewable Fuels Standard and the California Air Resources Board's Low-Carbon Fuel Standard. DEQ staff believe they are appropriate and will work with regulated parties to ensure they understand the requirements and do not double-correct volume measurements that have already been corrected for temperature.

Comment	Response
ASTM D7566 should apply to the finished jet fuel (convention + alternative) jet fuel and not just the alternative jet fuel.	OAR 340-253-0040(6) has been modified to remove any reference to an ASTM standard.
Expand the definition of a Tier 1 carbon intensity to include anaerobic digestion.	OAR 340-253-0400(6)(a)(E) has been modified to include anaerobic digestion and OAR 340-253-0400(6)(b)(B) has been modified to be biomethane from other sources.
Need clarification that temporary fuel pathway codes are also available for newly produced biofuels that have not yet received a provisional pathway code, including co-processing.	This is consistent with the current proposed rule and will be emphasized during the implementation phase of this rulemaking.
The party that exports the fuel should generate the credits/deficits if they purchased the fuel with the compliance obligation.	This is consistent with the current proposed rule and will be emphasized during the implementation phase of this rulemaking.
The requirement to document exempt fuel uses are not realistic and DEQ should engage with stakeholders to prevent the unintended inclusion of obligations from exempt transactions.	DEQ will establish a workgroup for our 2019 rulemaking that will address this comment.
In Table 8, explain the changes in ORGAS0116 and ORULSD0116 from 2019 to 2020.	The proposed values for 2019 provide an interim step for fuel distributors who cannot control the CI of the blended fuels they pick up in Oregon, and who are unable to get accurate CI information for the biofuel portion of blended fuels from sellers at in-state fuel terminals.
In Table 9, update the temporary pathway codes using OR-GREET 3.0.	OAR 340-253-8090 have been modified to reflect the latest version of OR-GREET 3.0.

Comment #6

Name: Shailesh Sahay

Organization: POET, LLC

Comment	Response
Comments submitted by Growth Energy to CARB regarding CA-GREET 3.0 also apply to OR-GREET 3.0.	See responses to Comment #8 submitted by Growth Energy.

Comment	Response
EERs proposed by DEQ are too high for electric vehicles, fuel cell vehicles, transport refrigeration units, CNG and propane.	See responses to Comment #8 submitted by Growth Energy.
E15 should be included in the Clean Fuels Program.	OAR 340-253-0200(2)(f) allows for all blends of ethanol and gasoline. There is nothing in the Clean Fuels Program that prevents the use of E15 in Oregon.

Comment #7

Name: Veronica Bradley

Organization: Airlines for America

Comment	Response
Support inclusion of alternative jet fuel as a credit-generating clean fuel.	Thank you for our comment.

Comment #8

Name: Chris Bliley

Organization: Growth Energy

Comment	Response
Comments from Growth Energy to CARB regarding CA-GREET 3.0 also apply to OR-GREET 3.0. Specifically, that CA-GREET 3.0 and OR-GREET 3.0 erroneously excludes a distillers' grains methane reduction credit, that the values for energy use per ton-mile are incorrectly lower for medium duty trucks than heavy duty trucks, and that the model overstates some transportation emissions.	<p>OR-GREET 3.0 is consistent with the final version of CA-GREET 3.0:</p> <ul style="list-style-type: none"> • The identified errors on truck and transportation emissions have been corrected. • The expansion of the lifecycle analysis system boundary for corn ethanol to include livestock methane emissions is inappropriate at this time as it would add significant additional complexity to the model and require a far more detailed review and comprehensive study of the biological and market factors created by DGS entering the feed market for ruminant and non-ruminant animals.
EERs proposed by DEQ are too high for electric vehicles, fuel cell vehicles, transport refrigeration units, CNG and propane.	DEQ has reviewed the relevant analyses that CARB used in their calculations and agrees that the best available data was used. DEQ will continue to review

Comment	Response
	additional data on these fuel applications as it becomes available in the future and re-assess the appropriateness of the proposed and adopted EERs.
E15 should be included in the Clean Fuels Program.	OAR 340-253-0200(2)(f) allows for all blends of ethanol and gasoline. There is nothing in the Clean Fuels Program that creates a barrier to the use of E15 or higher ethanol blends in Oregon.

Comment #9

Name: Blake Wojcik

Organization: RPMG

Comment	Response
Stakeholders need the opportunity to comment on OR-GREET 3.0 and the simplified calculators	DEQ apologizes for the delayed availability of OR-GREET 3.0 and the simplified calculators. The comment period was extended to September 28, 2018 in order to accommodate this.
Oregon should include barge transport in OR-GREET.	The simplified calculators have been modified to account for barge transport of ethanol.

Comment #10

Name: John Duff

Organization: National Sorghum Producers

Comment	Response
Consider updating the indirect land use change value for sorghum.	Thank you for your comment. Changes to indirect land use change values were not in scope for this rulemaking. DEQ will keep your comment in mind for the future.

Comment #11

Name: John Thornton

Organization: CleanFuture, Inc.

Comment	Response
Supports the addition of new fuel applications including forklifts and transport refrigeration units.	Thank you for your comment.

Comment #12

Name: Jana Gastellum

Organization: Oregon Environmental Council

Comment	Response
Support updates to OR-GREET, baseline calculation, and carbon intensities.	Thank you for your comment.
Support additional fuel segments including forklifts and transport refrigeration units and additional fuels including renewable propane and jet fuel.	Thank you for your comment.
Support updates to enforcement provisions.	Thank you for your comment.

Comment #13

Name: Graham Noyes

Organization: Noyes Law Corporation, representing alternative jet fuel producers (World Energy Paramount, Fulcrum Bioenergy, Gevo, Neste, Red Rock Biofuels, and Velocys)

Comment	Response
Support the inclusion of alternative jet fuel.	Thank you for your comment.
Modify OAR 340-253-0200(3) to include a reference to the carbon intensity standard for alternative jet fuel for credit generation purposes.	OAR 340-253-0200(3) has been modified to reflect this comment.
Modify OAR 340-253-1010 to confirm the eligibility of alternative jet fuel to be included in the credit calculation despite the general exemption for fuels used in aircraft under OAR 340-253-0250(2)(a)(A).	OAR 340-253-1010 has been modified to reflect this comment.

Implementation

The proposed rules would become effective Jan. 1, 2019.

Notification

- DEQ would notify affected parties via email using the Clean Fuels Program GovDelivery list.
- DEQ will update its webpage to reflect the current information.
- DEQ will publish the adopted rules in the Oregon Bulletin.

Compliance and enforcement

- DEQ would notify affected parties via email using the Clean Fuels Program GovDelivery list.

Reporting

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

Training

- DEQ will provide technical assistance about program requirements to regulated parties, credit generators and aggregators.
- DEQ will provide general education to decision makers, interested stakeholders and the general public about changes to the program.

Five-year review

Requirement

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

Exemption from five-year rule review

The Administrative Procedures Act exempts the following proposed rules from the five-year review because the proposed rules would amend or repeal an existing rule or correct errors or omissions in the existing rules:

OAR 340-012-0054, OAR 340-012-0135, OAR 340-012-0140, OAR 340-012-0150, OAR 340-253-0000, OAR 340-253-0040, OAR 340-253-0060, OAR 340-253-0100, OAR 340-253-0200, OAR 340-253-0250, OAR 340-253-0310, OAR 340-253-0320, OAR 340-253-0330, OAR 340-253-0340, OAR 340-253-0400, OAR 340-253-0450, OAR 340-253-0470, OAR 340-253-0500, OAR 340-253-0600, OAR 340-253-0620, OAR 340-253-0630, OAR 340-253-0640, OAR 340-253-0650, OAR 340-253-0670, OAR 340-253-1000, OAR 340-253-1005, OAR 340-253-1010, OAR 340-253-1020, OAR 340-253-1030, OAR 340-253-1040, OAR 340-253-1055, OAR 340-253-2000, OAR 340-253-2100, OAR 340-253-8010, OAR 340-253-8020, OAR 340-253-8030, OAR 340-253-8040, OAR 340-253-8050, OAR 340-253-8060, OAR 340-253-8070, OAR 340-253-8080, OAR 340-253-8090, OAR 340-253-8100

Five-year rule review required

No later than Nov. 15, 2023, DEQ will review the newly adopted rules for which ORS 183.405(1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

The review will apply to OAR 340-253-0350. DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405(2). DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).