



Oregon Department of Environmental Quality

Dec. 11–12, 2013

Oregon Environmental Quality Commission meeting Temporary rulemaking, Action item: G

Update Clean Fuels Program to clarify rule language and reduce regulatory burden on smaller businesses

DEQ recommendation to the EQC

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed TEMPORARY rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective Jan. 1, 2014; and adopt the justification for temporary rules in Attachment B. Temporary rules automatically expire 180 days following their effective date.

Overview, statement of need and justification ORS 183.335(5)

Short summary

The objective of this proposed rulemaking is to eliminate unnecessary requirements and reduce the administrative burden on smaller businesses participating in the program.

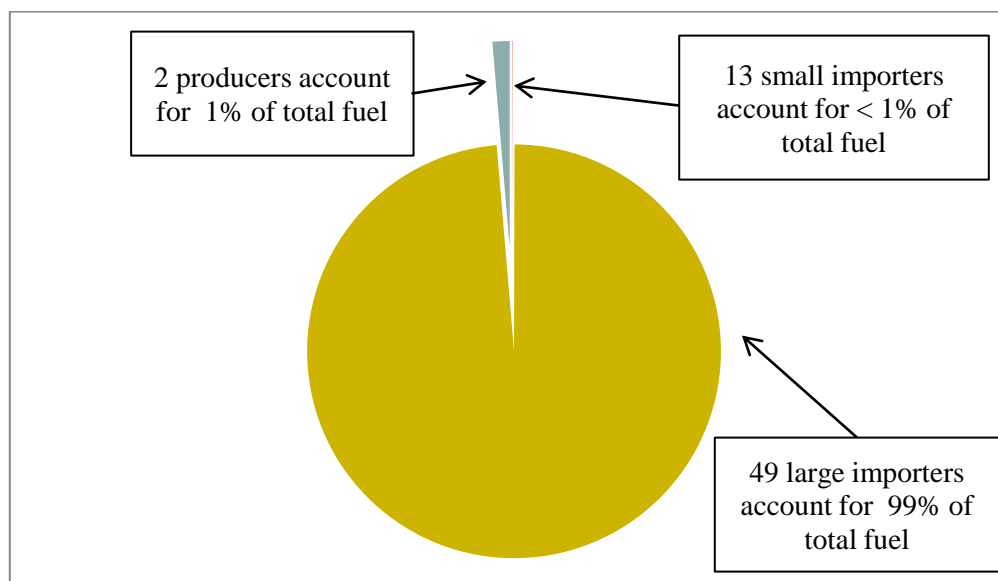
Background

The Oregon Environmental Quality Commission adopted the first phase of the Oregon Clean Fuels Program on Dec. 7, 2012. The program requires all importers and Oregon producers of transportation fuels to register, keep records and submit reports to DEQ.

Phase 1 Outreach - When a new program like Clean Fuels is created, DEQ works closely with companies to identify what works and what doesn't. DEQ staff used surveys, e-mails, workshops and individual conversations with producers and fuel providers to conduct its outreach. Through this outreach and technical assistance in the early stages of the program, DEQ identified improvements that would make it easier for participants to comply with program requirements.

Registration - During the registration process, DEQ worked closely with potential regulated parties to verify whether they were subject to the program or not. Fuel providers submitted information on the types and volumes of fuel either imported to or produced within Oregon, where and how the fuels were produced, how they were transported to Oregon and estimated the carbon intensity and greenhouse gas emissions over the lifecycle of the fuel.

Refining the recordkeeping and reporting requirements



DEQ is proposing to modify the reporting requirement requirements in OAR 340-253-0100 and OAR 340-253-0600 to reduce the recordkeeping and reporting burden on smaller businesses while still maintaining the integrity of this phase of the program.

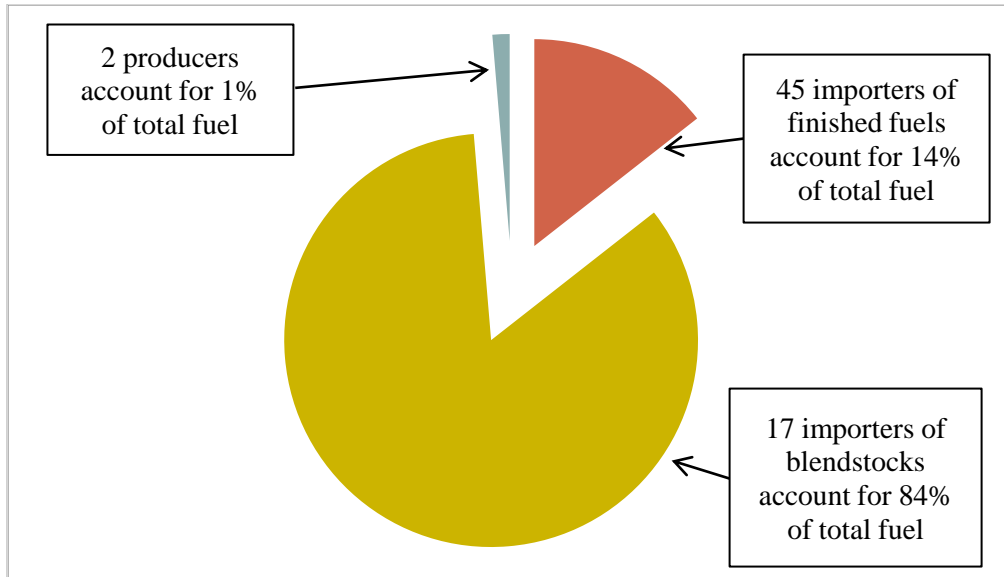
According to information gathered during registration, there are 64 parties subject to the Oregon Clean Fuels Program: 62 importers and two Oregon producers of fuels. Of the 62 importers, 13 are considered small, fewer than 250,000 gallons per year imported, and 49 are considered large, more than 250,000 gallons per year imported. Small importers account for less than one percent of all Oregon's fuel.

Recognizing that meeting the requirements of the clean fuels program requires significant resources from its regulated parties, DEQ exempted small importers from recordkeeping and reporting requirements; they are only required to register with DEQ. Large importers and Oregon producers, however, are required to keep detailed records about the types and volumes of fuel they import, including where the fuel was produced, how it was transferred to Oregon and the fuel's carbon intensity. In addition, they are required to register and submit reports to DEQ.

Documenting carbon intensity: A critical piece of information that is unique to the Clean Fuels Program is the carbon intensity of a fuel, an estimate of the greenhouse gases emitted over the lifecycle of the fuel. This is a value that is dependent on what is used as a feedstock to produce the fuel, how it is processed and refined, how it is stored and ultimately transported to Oregon for use in a motor vehicle.

Through working with fuel providers, DEQ has learned that importers, specifically those that supply blendstocks, which are fuels which must be blended with other blendstocks to produce a finished fuel, such as clear gasoline, ethanol, clear diesel and

biodiesel, work more closely with fuel producers and therefore have better access to documentation about the carbon intensity of their fuels. DEQ has also learned that it is significantly more difficult for importers who supply finished fuels, fuels that are ready for use in a motor vehicle such as gasoline blended with 10 percent ethanol or diesel blended with five percent biodiesel, to obtain the same information since their fuels are pre-blended and lack the documentation for what types of ethanol or biodiesel was used.



Using registration data, DEQ has found that, in addition to the 13 previously-considered small companies, there are 32 companies that would be considered importers of finished fuels. They account for about 14 percent of all Oregon's fuel. That leaves 17 companies that would be considered importers of blendstocks that account for about 84 percent of all Oregon's fuel.

As part of this proposed temporary rule, DEQ would simplify recordkeeping requirements for finished fuels importers to information that they already track, namely where the fuel was obtained and the volume. DEQ would not require them to get information about carbon intensity; DEQ will assume typical carbon intensities expected for these fuels. DEQ can then focus the more rigorous recordkeeping requirements on the importers of blendstocks who import the majority of the fuel into Oregon and who can more easily supply information on the carbon intensity of the fuel.

Creating a more efficient program for Phase 1

Initial importers: DEQ proposes to only require importers to keep records for the fuels that are imported for the first time. DEQ is proposing to delete several requirements in OAR 340-253-0310, OAR 340-253-0320 and OAR 340-253-0340. The current program requires companies to keep records every time fuel is transferred from the importer all the way to the when it enters a motor vehicle. In the first phase of the program, there are no compliance standards so keeping these records is not needed. In the next phase of the program, this level of documentation would be needed to calculate deficits and credits that are used in complying with carbon intensity standards.

What is critical at this time is to document the total volume of fuels imported into and produced in Oregon. For imports, the initial importers are the best source of that information; for production, the Oregon producers are the best source.

Compliance Tools: DEQ is proposing to modify the requirements in OAR 340-253-0500, OAR 340-253-0600, OAR 340-253-0630 and OAR 340-253-0650. DEQ is creating tools to help businesses comply with the program's requirements. Tools include a registration form, a recordkeeping template and a web-based reporting tool. As the tools are being developed and as companies begin to use them, DEQ has made changes to be more accurate in how and what information needs to be collected and to fit them more closely to typical industry practices.

Consequences of not taking immediate action

DEQ determined that failure to amend the proposed rules would seriously prejudice the public's interest and the interests of parties required to register, keep records and report under these rules as outlined in Attachment B. In order to relieve some of the burden of complying with rules that are not needed for this phase of the program, timing is critical. The first report is due by April 30, 2014, and it is DEQ's intention that these proposed rules be adopted to prevent unnecessary reporting from importers of finished fuels.

Affected parties

Some of the proposed rules would affect all of the regulated and opt-in parties while others apply to a subset of smaller companies.

How temporary rule would avoid or mitigate consequences

The proposed rules would provide clarity to potential regulated and opt-in parties as they interpret whether and how the program applies to them and aligns them with DEQ's program implementation needs for this phase of the program.

Detailed justification

Topic	Discussion
<u>1.</u> Clarify definitions	
Rules	OAR 340-253-0040, OAR 340-253-0250
Description of the proposed changes	Amends the definitions of biomass-based diesel, blendstock, fuel pathway, import, importer and Oregon producer. Removes the definitions for actual PADD5, large Oregon importer and statutory PADD5. Adds the definition of physical pathway. Amends the criteria for exempt fuels.
Consequences of not taking immediate action	Failure to amend these definitions will cause potential regulated and opt-in parties to misinterpret whether and how the program applies to them, causing continued burdens and expense of complying with the program to affected

Topic	Discussion
	parties.
How would the proposed rule solve the problem?	<p>The proposed rules would provide clarity to potential regulated and opt-in parties, specifically to:</p> <ul style="list-style-type: none"> • Accurately define importers and Oregon producers • Distinguish importers of finished fuels from importers of blendstocks • Properly define research, development or demonstration facilities seeking exempt status from the rules
2. Align the rules with the registration, recordkeeping and reporting tools	
Rules	OAR 340-253-0500, OAR 340-253-0600, OAR 340-253-0630, OAR 340-253-0650
Description	Amends the information required for registration, and as reflected in a DEQ-approved registration form. Amends the records required to be kept by all regulated parties and additional records by a subset of other parties, and as reflected in a DEQ-approved recordkeeping template. Amends the information required for reporting, and as reflected in a DEQ-approved reporting tool.
Consequences of not taking immediate action	Regulated parties would have to continue unnecessary reporting and recordkeeping.
Affected parties	All regulated and opt-in parties are affected.
How temporary rule would avoid or mitigate consequences	The proposed rules would provide clarity to regulated and opt-in parties subject to the rules and align with DEQ's program implementation needs for this phase of the program.
3. Distinguish importers of blendstocks from importers of finished fuels	
Rules	OAR 340-253-0100, OAR 340-253-0600
Description	Initially, recordkeeping and reporting requirements were based on the volume of fuel imported. A better way is to base requirements on the types of fuels imported; whether finished fuels – fuels ready for use in a motor vehicle – or those that import blendstocks – fuels which must be blended with other blendstocks to produce a finished fuel.
Consequences of not taking immediate action	Failure to amend these rules will cause smaller companies keep unnecessary records on information that is difficult to obtain and not significant to the program.
Affected parties	These proposed rules would affect all regulated and opt-in parties.
How temporary rule would avoid or mitigate consequences	The proposed rules would change the way recordkeeping and reporting requirements are applied to different types of importers. Importers of blendstocks deal more closely with producers and marketers of biofuels and have better access to information used to calculate a fuel's carbon intensity. Importers of finished fuels have more difficulty in accessing this information, but DEQ can provide reasonable assumptions in their stead.

Topic	Discussion
4. Focus requirements on the initial importer	
Rules	OAR 340-253-0310, OAR 340-253-0320, OAR 340-253-0340
Description	Remove the requirements to transfer the compliance obligation through the distribution chain for gasoline, diesel fuel, biodiesel, biomass-based diesel, ethanol, compressed natural gas, biogas, liquefied natural gas, liquefied petroleum gas and hydrogen.
Consequences of not taking immediate action	Failure to amend these rules will continue to require regulated and opt-in parties to document the transfer of obligations through the distribution chain. This is an unnecessary process for this phase of the program and creates additional work for affected parties.
Affected parties	These proposed rules would affect all regulated and opt-in parties.
How temporary rule would avoid or mitigate consequences	The responsibility to comply remains with the initial importer. Since the information collected at this time will be used primarily to inform decision making at a statewide level, this simplified process is adequate at this phase of the program.
5. Incorporate new fuels	
Rules	OAR 340-253-0400, OAR 340-253-3010, OAR 340-253-3020
Description	Amend the requirements to provide statewide carbon intensity values for clear gasoline and clear diesel fuel. Adopt requirements to provide statewide carbon intensity values for gasoline blended with 10 percent ethanol and diesel fuel blended with five percent biodiesel or biomass-based diesel. Amend tables to include fuel pathways for clear gasoline, gasoline blended with 10 percent ethanol, clear diesel fuel, diesel fuel blended with five percent biodiesel or biomass-based diesel and ethanol made from corn (dry mill, coal-fired).
Consequences of not taking immediate action	During the registration process, regulated parties notified DEQ that there are fuel types being imported into Oregon that are not accurately represented in the rules. Failure to amend these rules will mean that DEQ will not receive the most accurate information DEQ needs and perpetuates inequities between the reporting requirements of similarly situated fuel producers and importers.
Affected parties	These proposed rules would affect regulated parties that import the new fuels.
How temporary rule would avoid or mitigate consequences	The proposed rules would add information about these new fuels to make reporting more accurate and eliminate reporting inequities.

Rules affected, authorities, supporting documents

Lead division
Air Quality Division

Program or activity
Oregon Clean Fuels Program

Chapter 340 action

Amend OAR 340-253-0040, OAR 340-253-0100, OAR 340-253-0250, OAR 340-253-0310, OAR 340-253-0320, OAR 340-253-0340, OAR 340-253-0400, OAR 340-253-0500, OAR 340-253-0600, OAR 340-253-0630, 340-253-0650, OAR 340-253-3000, OAR 340-253-3010 Table 1, OAR 340-253-3020 Table 2

Statutory authority

ORS 468.020; Or. Laws 2009, ch. 754, § 6

Statute implemented

ORS 468.020

Or. Laws 2009, ch. 754, § 6

Legislation

HB 2186, § 6

Year

2009

Documents relied on for rulemaking

Document title	Document location
Applications for registration to the program	DEQ headquarters 811 SW 6 th Avenue Portland OR 97204
Comments received during informal public review period	DEQ program files

Housing costs ORS 183.534

DEQ determined the proposed rules would have no 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. The proposed rule only affects the administrative requirements including registration, recordkeeping and reporting of companies subject to the program.

Public notice OAR 183.355, OAR 137-001-0080

Advisory committee

DEQ did not convene an advisory committee for this temporary rule, but shared the proposed rules with affected companies and key stakeholders between Sept.30 and Oct. 11, 2013. DEQ received feedback from the following companies:

Campo & Poole Distributing	RPMG LLC
CHS Inc.	SeQuential-Pacific Biodiesel
Kinergy Marketing LLC	Space Age Fuels, Inc.
Mieco Inc.	Tesoro Corporation
Oregon Environmental Council	Western Petroleum Company
Phillips 66	Western States Petroleum Association

EQC prior involvement

DEQ provided the commission with information on this topic and the temporary rule in the Director's Dialogue at the August 2013 meeting.

Public notice

DEQ provided the following notice of the temporary rule:

- Posted notice on DEQ's webpage (<http://www.oregon.gov/deq/RulesandRegulations/Pages/2013/CFPPH1.aspx>) Dec. 2, 2013.
- Emailed notice Sept. 30 and Dec. 2, 2013, to the program's regulated parties and key stakeholders.
- Emailed notice to approximately 7,913 interested parties through GovDelivery, including the Rulemaking and Oregon Clean Fuels Program interested persons lists.
- Emailed notice Dec. 2, 2013, to the following legislators required under ORS 183.335:
 - Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
 - Jules Bailey, Chair, House Energy and Environment Committee

Public comment

DEQ did not solicit public comment on the temporary rule.

Implementation

Notification

If approved by the commission, the proposed rules would become effective Jan. 1, 2014. DEQ would notify affected parties by e-mail.

Implementation

The proposed rules align with DEQ's data and information program implementation needs and how the industry currently operates. DEQ would update its web page, registration form, recordkeeping tool and any supporting documents to reflect the changes. DEQ would implement changes in the reporting requirements as it continues to develop its web-based reporting tool.

Permanent rulemaking

DEQ will propose permanent rule amendments in 2014.