



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

March 13, 2025

Temporary Rulemaking Action Item E Climate Protection Program Temporary Rule 2025

DEQ recommendation to the EQC

DEQ recommends that the 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.
- Adopt the TEMPORARY rule amendment, as proposed in Attachment A as part of Chapter 340 of the Oregon Administrative Rules to be effective upon filing with the Oregon Secretary of State.

Language of proposed EQC motion:

“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 described in the Justification section of the staff report for this item 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.”

Translation or other formats

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800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

Overview

DEQ is proposing a temporary rule amendment to the Climate Protection Program (CPP) rules contained in Oregon Administrative Rules (OAR) Chapter 340, Division 273, to clarify the process for generating additional 2025 compliance instruments during the program's initial year.

On Nov. 21, 2024, the Environmental Quality Commission (EQC) adopted new Climate Protection Program rules, OAR Chapter 340, Division 273, and related rule amendments to OAR Chapter 340, Divisions 12, 215, 216, 253, and 272.

After the commission approved these rules and amendments on Nov. 21, 2024, DEQ identified a section in the final Division 273 rules that contained imprecise and incorrect language for the calculation of the one-time distribution of additional compliance instruments for 2025 to liquid fuels and propane fuel suppliers regulated by the program. Specifically, the adopted rules incorrectly identify the emissions to include when calculating the total emissions in 2022 through 2024 that would have been considered covered emissions had the program been in effect in those years. As adopted, the rules would significantly reduce the amount of 2022 through 2024 emissions that would be compared against the numeric benchmark included in the rules. This would result in significantly more compliance instruments distributed than DEQ staff intended and had consistently described throughout the rulemaking process. DEQ proposes a temporary rule amendment to OAR 340-273-0400 to implement the correct and intended methodology for generating additional 2025 compliance instruments.

This temporary rule does not introduce any policy changes from what was presented to the commission on Nov. 21, 2024.

Statement of need

What need is DEQ trying to address?

The adoption of the proposed temporary rule is necessary to ensure that DEQ does not generate and distribute excess compliance instruments, which would undermine the CPP's goal of reducing greenhouse gas emissions. In addition, it is imperative that liquid fuels and propane suppliers regulated by the program clearly understand how DEQ calculates and distributes compliance instruments. Liquid fuels and propane suppliers use this information to plan their activities and take appropriate actions to comply with the CPP rules. The current rule is potentially ambiguous and unclear in explaining how DEQ would calculate the number of additional 2025 compliance instruments to be generated and distributed to liquid fuels and propane suppliers.

How would the proposed rule address the need?

The proposed rule amendment would correct the incorrect language describing the calculation of 2022, 2023, and 2024 emissions to be considered against the numeric benchmark included in the

rules, to ensure that DEQ does not generate and distribute more compliance instruments than intended under this provision.

Justification

Finding of serious prejudice

Failing to act promptly will result in serious prejudice to the public interest in reducing greenhouse gas emissions. If the proposed temporary rule is not adopted, it will result in the erroneous generation and distribution of millions of excess compliance instruments, estimated between 55 and 75 million, to covered fuel suppliers. These excess compliance instruments would exceed the number of additional compliance instruments that DEQ intended to distribute under this provision, as consistently described by DEQ throughout the original rulemaking process for the CPP 2024. The distribution of those excess compliance instruments will mean that covered entities will not have to reduce their greenhouse gas emissions as much to comply with the program, significantly undermining the program's efficacy in its initial years. In addition, if this temporary rule is not adopted immediately, covered entities may not begin to make the types of plans and adjustments necessary to ensure that they can comply with the program in the first compliance period. DEQ will generate and distribute 2025 compliance instruments, including any additional 2025 compliance instruments, no later than June 30, 2025, so the clarifications must be adopted as soon as possible to avoid any such prejudice.

Consequences of not taking immediate action

These changes must be adopted before DEQ generates and distributes compliance instruments this year, which will occur no later than June 30, 2025. Additionally, as described above, adopting this temporary rule as soon as possible will provide liquid fuels and propane suppliers with clear and accurate information regarding the number of compliance instruments they may be issued in 2025. This clarity will help these suppliers effectively plan and execute their CPP compliance strategies. If the rule is not adopted immediately, some liquid fuels and propane suppliers may mistakenly believe they will receive more compliance instruments than they actually will. As a result, they may not make sufficient plans to ensure compliance during the first compliance period. Therefore, taking immediate action on these temporary rules is essential to prevent any potential disadvantage to these parties.

Affected parties

The members of the public or parties who would be harmed if the EQC did not take this action are the general public and liquid fuels and propane suppliers that must comply with the program.

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

Liquid fuels and propane suppliers have begun to plan their future operations based on the Division 273 rules adopted by the EQC on Nov. 21, 2024. If the EQC does not act immediately, a liquid fuels and propane supplier might mistakenly misinterpret the number of additional 2025 compliance instruments they would receive from DEQ, which could lead them not to make appropriate decisions for compliance strategies, which could negatively impact their ability to demonstrate compliance.

How temporary rule would avoid or mitigate consequences

If the EQC adopts the proposed temporary rule amendment, this will mitigate the harm described above by ensuring that the program does not generate excess compliance instruments, which would undermine program efficacy. It will also clarify how DEQ plans to calculate and distribute additional 2025 compliance instruments, allowing covered entities to appropriately plan for compliance with the program.

Rules affected, authorities, supporting documents

Lead division

Office of Greenhouse Gas Programs

Program or activity

Oregon Climate Protection Program

Chapter 340 action

Amend
340-273-0400

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

Statutes Implemented - ORS				
468.020	468A.025	468A.040	468.035	468A.010
468A.015	468A.045			

Housing costs

As ORS 183.534 requires, DEQ evaluated whether the proposed temporary rule amendment would affect the development cost of a 6,000-square-foot parcel and the 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.

Environmental justice considerations

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income concerning the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

Climate change caused by human activities that produce greenhouse gas emissions has harmful 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 the state. This reduction will improve the welfare of environmental justice communities, reducing the environmental burdens on those communities. The proposed temporary rule amendment aims to clarify how DEQ will calculate the number of additional compliance instruments generated under the Division 273 rules for 2025. This clarification will ensure that covered entities can take appropriate compliance actions, thereby achieving the anticipated emissions reductions from the program.

Public notice

DEQ did not send out a formal advance public notice prior to proposing this temporary rule. On Feb. 7, 2025, DEQ provided informal notice of the proposed temporary rule amendment by email to approximately 25,202 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. 21, 2024, the EQC adopted new rules for the Climate Protection Program. The current proposed temporary rule amendment for OAR 340-273-0400 before the EQC would further clarify DEQ's calculation for the one-time distribution of additional 2025 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 March 13, 2025. DEQ would notify affected parties by:

- Notifying all covered fuel suppliers under the program
- Updating the [Climate Protection Program](#) webpage with information for the covered fuel suppliers under the program
- Publishing the adopted temporary rule OAR 340-273-0400 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 program (Division 273) to implement the provisions of this temporary rulemaking.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities.

Visit DEQ's [Civil Rights and Environmental Justice page](#).

Accessibility information

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