

OFFICE OF THE SECRETARY OF STATE

TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DEQ 8-2025

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED

03/17/2025 9:10 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Climate Protection Program Temporary Rule 2025

EFFECTIVE DATE: 03/17/2025 THROUGH 09/12/2025

AGENCY APPROVED DATE: 03/13/2025

CONTACT: Emil Hnidey
503-568-0376
emil.hnidey@deq.oregon.gov

700 NE Multnomah St.
Suite 600
Portland, OR 97232

Filed By:
Emil Hnidey
Rules Coordinator

NEED FOR THE RULE(S):

What need is DEQ trying to address?

Adoption of the proposed temporary rule is needed 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 have a clear understanding of 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. DEQ staff believes that 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 OF TEMPORARY FILING:

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 to covered fuel suppliers. These excess compliance instruments would be beyond the amount 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 in order to comply with the program, significantly undermining the efficacy of the program 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 will be able to 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 it is imperative that the clarifications are adopted as soon as possible, to avoid any such prejudice.

Consequences of not taking immediate action

These changes must be adopted prior to the date that DEQ generates and distributes compliance instruments this year, which will occur no later than June 30, 2025. In addition, as described above, adopting this temporary rule as soon as possible will ensure that liquid fuels and propane suppliers have clear and accurate information about whether and how many additional compliance instruments they may be issued in 2025, so that they may plan and execute their CPP compliance strategies accordingly. If the rule is not adopted immediately, some liquid fuels and propane suppliers may incorrectly believe that they will receive more compliance instruments than they will actually receive, and therefore not make sufficient plans to ensure their compliance in the first compliance period. Thus, taking immediate action on these temporary rules will ensure that those parties are not thereby prejudiced.

Affected parties

The members of the public or parties who would be harmed if 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 November 21, 2024. If 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 to not make appropriate decisions for compliance strategies, which could negatively 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 ensuring that the program does not generate excess compliance instruments, which would undermine program efficacy, and clarifying how DEQ plans to calculate and distribute additional 2025 compliance instruments, allowing covered entities to appropriately plan for program compliance.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

HOUSING IMPACT STATEMENT:

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.

NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Environmental Quality for a copy of this document.

AMEND: 340-273-0400

RULE TITLE: Generation of Compliance Instruments

RULE SUMMARY: DEQ is proposing a temporary rule amendment to OAR 340-273-0400 to implement the correct and intended methodology for generating additional 2025 compliance instruments.

RULE TEXT:

(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 340-273-9000.

(2) Additional 2025 compliance instruments. DEQ will add together the 2022, 2023, and 2024 emissions that would have been considered covered emissions as described in OAR 340-273-0110(3) and OAR 340-273-0110(4) for all fuel suppliers that individually, or as a group of related entities, had emissions that would have been considered covered emissions greater than or equal to 200,000 MT CO₂e from any calendar year between 2018 and 2022, and DEQ will compare these total emissions to a benchmark of 81,003,850 MT CO₂e. If the total emissions from those fuel suppliers are at least 10,000 MT CO₂e below the benchmark, DEQ will generate additional compliance instruments equal to the difference between those total emissions and 81,003,850 and will distribute those additional compliance instruments in 2025 as described in OAR 340-273-0420(5).

(3) A compliance instrument is a regulatory instrument and does not constitute personal property, a security or any other form of property.

(4) Compliance instruments may not be divided into fractions.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 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, ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045