State of Oregon
DEQ Department of Environmental Quality

Climate Protection Program EITE

Proposed changes to OAR Chapter 340, Divisions 12, 215 and 272

Key to identifying changed text:

- ~~Deleted Text~~
- **New/inserted text**

Only the rules from each division with proposed edits are included below. For complete division rules, visit the Oregon Secretary of State web site.

Division 12
ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0150
Determination of Economic Benefit

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the respondent's noncompliance. Except as provided in (3), the EB will be determined using the U.S. Environmental Protection Agency's BEN computer model. DEQ may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

(2) Upon request of the respondent, DEQ will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect the respondent's actual circumstance.

(3) For violations of the Clean Fuels Program in OAR Chapter 340, division 253, DEQ will determine economic benefit according to subsections (a),(b), or (c), with interest and other considerations as needed to properly capture the full economic benefit of the violation.

(a) the actual purchase or sale price of the credits, or the implied value of the credits in a fuel transaction, when a transaction has been completed, if DEQ has sufficient information to determine it; or

(b) the average price of credits purchased or sold in the Clean Fuels Program market as published by DEQ for the time period relevant to the violation; or

(c) the Credit Clearance Market maximum credit price as calculated under OAR 340-253-1040, where a transaction has not been completed or DEQ has insufficient information to determine the price of the credits.

(4) For violations of the Climate Protection Program in OAR Chapter 340, division 273, DEQ may determine economic benefit according to subsections (a) or (b), with interest and other considerations as needed to properly capture the full economic benefit of the violation.

(a)The actual price of compliance instruments traded or the contribution price to earn CCI credits by a respondent during the time period relevant to the violation, when trades have been completed or CCI credits have been earned and DEQ has the trade or purchase information; or

(b) The average price of compliance instruments traded or the contribution price to earn a CCI credit during the time period relevant to the violation.

(54) DEQ need not calculate EB if DEQ makes a reasonable determination that the EB is de minimis or if there is insufficient information on which to make an estimate under this rule.

(65) DEQ may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045.

(76) DEQ's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred

Division 215
OREGON GREENHOUSE GAS REPORTING PROGRAM

340-215-0042
Recordkeeping Requirements

(1) Each regulated entity subject to the requirements under OAR chapter 340, division 272 must retain all records as required by this rule, and any records or other materials

maintained under any applicable requirements of 40 C.F.R. part 98, in paper or electronic format, or both, for a period of at least seven years.

(2) Each regulated entity not subject to the requirements under OAR chapter 340, division 272 must retain all records as required by this rule, and any records or other materials maintained under any applicable requirements of 40 C.F.R. part 98, in paper or electronic format, or both, for a period of at least five years.

(3) Each regulated entity must retain records sufficient to document and allow for verification of each emissions data report submitted to DEQ and make such information available for verification upon request. This includes, but is not limited to the following:

(a) A list of all units, operations, processes, and activities for which GHG emission were calculated, as applicable;

(b) The data and information used to calculate emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to the following:

(A) The GHG emissions calculations and methods used;

(B) Analytical results for the development of site-specific emissions factors;

(C) The results of any analyses for high heat value, carbon content, and other fuel or feedstock parameters conducted or as required under 40 C.F.R. part 98, if applicable; and

(D) Any facility operating data or process information used for the GHG emission calculations;

(c) Records of supporting documentation required by or used to prepare the emissions data report, including but not limited to underlying monitoring and metering data, invoices of receipts or deliveries, fuel use records, production information, sales transaction data, electricity or fuel transaction data, calibration records, and any other relevant information;

(d) Any annual emissions data report(s) submitted to DEQ, including any revised emissions data report(s);

(e) Documentation to support any revision(s) made to any emissions data report(s);

(f) Records of supporting documentation and calculations for any missing data computations according to 40 C.F.R. part 98, or otherwise. Retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment;

(g) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data to calculate emissions reported under this division;

(h) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data to calculate emissions reported under this division; and

(i) The GHG data monitoring plan required under OAR 340-215-0042(11).

(4) Regulated entities reporting biomass-derived fuels or hydrogen, as required under OAR 340-215-0044(5), must retain supporting documentation that authenticates the purchase quantity and quality of the hydrogen or gaseous or liquid biomass-derived fuel between parties. This supporting documentation:

(a) May include, but is not limited to, documentation from each upstream party, invoices, bills of lading, shipping reports, balancing reports, storage reports, in-kind nomination reports, allocation, contracts confirming the source of fuel supplied in the state, attestations, information on the environmental attributes associated with the sale or use of the fuel, renewable thermal credit or certificate records, or any combination therein; and

(b) When reporting biogas, biomethane, or hydrogen, must include attestations from each upstream party collectively demonstrating that no other upstream party can make a claim on environmental attributes that are being reported under this division. The quantity of energy covered by the environmental attributes must match or exceed the energy of fuel reported under this division.

(5) When reporting direct delivery of biogas, biomethane, or hydrogen in Oregon regulated entities must retain documentation that shows the fuel type and quantity directly delivered from the point of origin to the point of use in Oregon.

(6) When reporting contractual deliveries of biomethane or hydrogen using book and claim accounting the regulated entity must retain and make available:

(a) Records demonstrating the specific quantity of gas claimed was injected into a pipeline that is part of the natural gas transmission and distribution network connected to Oregon in the current data year and link those environmental attributes to a corresponding quantity of gas withdrawn for use in Oregon;

(b) Records demonstrating the quality of the fuel reported;

(c) Records documenting the fuel production facility, the facility’s production and purification process, facility location and feedstock(s). This may include, but is not

limited to, documentation of feedstock production and schemata of the production method;

(d) Records demonstrating the full lifecycle carbon intensity of the reported fuel including all records supporting the estimation of the reported carbon intensity value required under OAR 340-215-0044(5)(b)(I);

(e) If using an electronic tracking system approved by DEQ for book and claim accounting, records demonstrating the retirement of all environmental attributes of that fuel that are being reported under this division. The quantity of energy covered by the environmental attributes must match or exceed the energy of fuel reported under this division;

(f) Records demonstrating that the retired or claimed environmental attribute was generated from gas injected into the pipeline within the same reporting data year; and

(g) Any records used in the reporting of information required under OAR 340-215-0044(5)

(7) Each regulated entity that is an in-state producer or fuel supplier, including a natural gas supplier, must retain records for exported products. Records must demonstrate delivery to a final destination outside Oregon, indicate the amount delivered, type of fuel delivered, delivery date and identify the state the fuel was delivered to. This may include, but is not limited to, product transfer documents, bills of lading, invoices, contracts, meter tickets, and rail inventory sheets.

(8) Each regulated entity that is an electricity supplier must retain documentation supporting claims of specified sources of electricity.

(9) Electricity suppliers that sell wholesale electricity must maintain records for each sale of specified or unspecified source sales.

(10) Each person designated by DEQ as an asset-controlling supplier must retain documentation to confirm that the power sold by the supplier originated from the supplier’s fleet of facilities and either that the fleet is under the supplier’s operational control or that the supplier has exclusive rights to market electricity for the fleet or facility.

(11) Regulated entities subject to 40 C.F.R. part 98 federal requirements and any entity subject to the requirements under OAR chapter 340, division 272, except electricity suppliers, must complete and retain a written GHG data monitoring plan that meets the requirements of 40 C.F.R. part 98.3(g)(5). The GHG data monitoring plan must be made available for verification upon request. Electricity suppliers subject to OAR chapter 340, division 272 must complete and retain a written GHG data monitoring plan with the following information:

(a) Information to allow the verification team to develop a general understanding of entity boundaries, operations, and electricity transactions;

(b) Reference to management policies or practices applicable to reporting under this division;

(c) List of key personnel involved in compiling data and preparing the emissions data report;

(d) Documentation of training practices and policies applicable to reporting under this division for electricity suppliers;

(e) Query data to determine the quantity of electricity (MWh) reported and query description;

(f) Reference to other independent or internal data management systems and records, including written power contracts and associated verbal or electronic records, full or partial ownership, invoices, and settlements data used to document whether reported transactions are specified or unspecified;

(g) Description of steps taken and calculations made to aggregate data into reporting categories;

(h) Records of preventive and corrective actions taken to address verifier and DEQ findings of past nonconformances and material misstatements;

(i) Log of emissions data report modifications; and

(j) A written description of an internal audit program that includes emissions data report review and documents ongoing efforts to improve the GHG data management.

(12) Written production data monitoring plan

Regulated entities subject to OAR 340-273 and required to report production data under OAR 340-215-0044(3)(g) must develop and retain a written production data monitoring plan meeting the requirements in permits issued under OAR 340-273-0150 that:

(a) Documents procedures for identifying and recording *each product type* and *units of production*;
(b) Describes data sources (e.g., production logs, meters, invoices), frequency of data collection, sampling methods, and measurement quality practices;
(c) Includes data quality assurance and quality control procedures, such as calibration schedules, data review procedures, and handling of anomalies or outliers;
(d) Specifies methods for estimating or substituting for missing production data,

with documentation of any assumptions or default values;
(e) Assigns roles and responsibilities for collecting, reviewing, approving, and correcting production data;
(f) Identifies retention timeframes for production records consistent with section (3) of this rule; and
(g) Describes internal review and verification procedures to ensure accuracy and completeness of reported production information.

(~~12~~13) Regulated entities must make all records required to be created and retained under this division, including all required documentation described in this division, available for review and verification upon written request by DEQ within 14 calendar days of notification, unless a different schedule is approved by DEQ.

340-215-0044
Emissions Data Reports

(1) Regulated entities must monitor emissions and submit emissions data reports to DEQ following the requirements specified in this division. Individual emissions data reports are identified as follows:

(a) An individual emissions data report must be submitted by and for each stationary source and electric power system facility required to register and report under OAR 340-215-0030(2);

(b) An individual emissions data report including emissions from all electric power system facilities located in Oregon must be submitted by an investor-owned utility required to register and report under OAR 340-215-0030(2)(c)(C);

(c) An individual emissions data report must be submitted by each fuel supplier and in-state producer required to register and report under OAR 340-215-0030(3);

(d) An individual emissions data report must be submitted by each natural gas supplier and in-state producer required to register and report under OAR 340-215-0030(4);

(e) An individual emissions data report must be submitted by each electricity supplier required to register and report under OAR 340-215-0030(5) and by any third-party that reports on behalf of a consumer-owner utility. A third-party reporting on behalf of a consumer-owned utility must also include all information described under OAR 340-215-0120(4) and (5), as applicable;

(f) An individual emissions data report submitted by each asset-controlling supplier seeking designation by DEQ must include all information described under OAR 340-215-0120(7); and

(g) An individual emissions data report must be submitted by the owner or operator of a facility containing petroleum and natural gas systems required to register and report under OAR 340-215-0030(6) and must include all emissions and related information described in OAR 340-215-0125.

(2) When monitoring emissions and submitting emissions data reports, regulated entities must:

(a) Utilize registration and reporting tools approved and issued by DEQ for all certifications and submissions;

(b) Submit and certify completed registration and emissions data reports. A separate emissions data report must be submitted for each emission data report type identified in this rule, as applicable, and for each individual stationary source, and must include all data and information as required by OAR 340-215-0105 through OAR 340-215-0125, as applicable; and

(c) Submit and certify any revisions to emissions data reports. If a regulated entity identifies an error in a submission, or is notified of such an error, the regulated entity must submit a revision to correct the error within 45 calendar days of discovery. Regulated entities subject to the requirements under OAR chapter 340, division 272 must submit revisions in compliance with division 272.

(3) Emissions data reports submitted to DEQ must include the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code;

(b) Year and months covered by the report;

(c) Date of submittal;

(d) All information required by this division to calculate and report greenhouse gas emissions;

(e) Annual emissions of each greenhouse gas, as required under this division; and

(f) A certification from the designated representative as required under OAR 340-215-0040(1).

(g) Stationary sources identified as covered emissions-intensive and trade-exposed or covered direct natural gas sources under OAR chapter 340, division 273 must report production data, including product types, quantities, and associated production units as required by the CPP permit conditions issued by DEQ.

(4) Increases or decreases in emissions. If a regulated entity subject to OAR 340-215-0105 submits an emissions data report that indicates emissions equaled or exceeded 25,000 MT CO2e during the previous year, then the regulated entity must include the following information in the emissions data report:

(a) Whether a change in operations or status resulted in an increase or decrease of more than five percent in emissions of greenhouse gases in relation to the previous data year; and

(b) If there is an increase or decrease of more than five percent in emissions of greenhouse gases in relation to the previous year, the regulated entity must provide a brief narrative description of what caused the increase or decrease in emissions. Include in this description any changes to the regulated entity's permit status.

(5) When reporting biomass-derived fuels and hydrogen, the following requirements also apply:

(a) In addition to the requirements of section (3), a regulated entity reporting biomass-derived fuels or hydrogen must retain records as required by OAR 340-215-0042, and separately identify, calculate, and report:

(A) All direct emissions of biogenic CO2 resulting from the combustion of biomass-derived fuels; and

(B) For stationary sources direct emissions of biogenic CO2 resulting from the oxidation of biomass-derived fuels;

(b) When reporting fuels where biomass and fossil feedstocks are processed in the same facility to produce the fuel, persons may request DEQ approval of a methodology for the attribution of the biogenic feedstock to determine the amount of the final reported product that may be reported as biogenic. Regulated entities must receive written DEQ approval to use the attribution methodology prior to reporting;

(c) When reporting emissions from gaseous biomass-derived fuels or use of hydrogen, report the following information for each contracted delivery:

(A) The type and quality of the gas, including the high heating value of the claimed gas;

(B) Name and address of all intermediary and direct vendor(s) from which the fuel is purchased;

(C) Name, address, and facility type from which the fuel was produced;

(D) Annual amount contractually delivered, disaggregated by each vendor, in MMBtu for biomethane, kilograms for hydrogen and standard cubic feet for other gaseous fuels;

(E) Feedstock(s) used to produce the gas;

(F) Method(s) used to produce the gas;

(G) Month and year in which the gas was produced;

(H) Method of delivery to Oregon;

(I) The lifecycle carbon intensity, as defined in OAR chapter 340, division 253 of the pathway for the contractually delivered biomethane or hydrogen. Lifecycle carbon intensity values must be estimated using the methodology and tools described in OAR chapter 340, division 253. Upon request from a regulated entity showing good cause to use a different method than one described in OAR chapter 340, division 253, DEQ may approve another methodology;

(J) Based on the quantity of biomethane or hydrogen reported using book and claim accounting, the equivalent amount of natural gas use in Oregon (MMBtu);

(K) Name and air permit source identification number for the final end user of the gas in Oregon, if applicable; and

(L) Records demonstrating that no other party can make a claim on environmental attributes that are being reported under this division. The quantity of energy covered by the environmental attributes must match or exceed the volume of fuel reported under this division. Records must demonstrate that the retired renewable thermal credits, certificates or claimed environmental attributes were generated within the same reporting data year; and

(d) Regulated entities reporting contractual deliveries of gas using book and claim accounting must also:

(A) Report the specific type and volume of gas claimed as injected into a natural gas pipeline and delivered to Oregon in the reporting data year;

(B) Report the point of injection into a pipeline connected to Oregon;

(C) If using an electronic tracking system approved by DEQ for book and claim accounting, the regulated entity must submit records showing the retirement of all environmental attributes of the gas that are being reported under this division; and

(e) Retain and make available sufficient records to allow for verification of all reporting requirements in this section, including but not limited to those described in OAR 340-215-0040(7) and OAR 340-215-0042.

(6) Regulated entities subject to the requirements of 40 C.F.R. 98.3(i) must meet those

Division 272
THIRD PARTY VERIFICATION

340-272-0430
Data Checks

(1) Verification services must include data checks that meet the requirements of this rule.

(2) All data checks must meet the following requirements:

(a) Data checks must be used to determine the reliability of the submitted report or fuel pathway application and to ensure that the appropriate methodologies and emissions factors have been applied as required under OAR chapter 340, division 253 or OAR chapter 340, division 215, as applicable;

(b) Data checks must be chosen to ensure the accuracy of data submitted in the report or fuel pathway application;

(c) The verification team must use professional judgment in establishing the extent of data checks required in order to conclude with reasonable assurance whether each data type or reported emissions quantity in the report or fuel pathway application is free of material misstatement;

(d) Data checks must be used to ensure that there is reasonable assurance that the report or fuel pathway application conforms to the requirements of OAR chapter 340, division 253 or OAR chapter 340, division 215, as applicable; and

(e) Results calculated by the verification team must be compared with the data in the report or fuel pathway application in order to confirm the extent and impact of any omissions and errors. Any discrepancies must be investigated.

(3) In addition to meeting the requirements under section (2), data checks for CFP reports and fuel pathway applications submitted under OAR chapter 340, division 253 must also meet the requirements of this section:

(a) Data checks must be chosen based on the relative contribution to greenhouse gas emissions or reductions and the associated risks of contributing to material misstatement or nonconformance, as indicated in the sampling plan;

(b) At a minimum, data checks must include:

(A) Tracing data in the fuel pathway application or CFP report to its origin;

(B) Reviewing the procedure for data compilation and collection;

(C) Recalculating intermediate and final data to check original calculations;

(D) Reviewing calculation methodologies used by the responsible entity for conformance with OAR chapter 340, division 253; and

(E) Reviewing meter and analytical instrumentation measurement accuracy and calibration for consistency with the requirements of OAR chapter 340, division 253, as applicable; and

(c) In the comparison of the verification team's calculated results with reported data, the comparison of data checks must also include the following:

(A) A narrative to indicate which data were checked;

(B) The types and quantity of data evaluated;

(C) The percentage of reported source data covered by data checks; and

(D) Any separate discrepancies that were identified in the CFP report or fuel pathway application.

(4) In addition to meeting the requirements under section (2), data checks for GHG Reporting Program emissions data reports submitted under OAR chapter 340, division 215 must also meet the requirements of this section:

(a) Data checks must be used for emissions sources and fuel and electricity transactions data, as applicable, based on their relative contributions to emissions and the associated risks of contributing to material misstatement or nonconformance, as indicated in the sampling plan;

(b) At a minimum, data checks must include:

(A) Tracing data in the emissions data report to its origin;

(B) Recalculating emissions estimates to check original calculations;

(C) Reviewing calculation methodologies used by the responsible entity for conformance with OAR chapter 340, division 215; and

(D) Reviewing meter and fuel analytical instrumentation measurement accuracy and calibration for consistency with the requirements of OAR chapter 340, division 215, as applicable;

(c) In addition to ensuring with reasonable assurance that the emissions data report conforms to the requirements of OAR chapter 340, division 215, the review of conformance must ensure the following information is correctly reported, as applicable:

(A) For facilities that combust natural gas, natural gas supplier customer account number, service account identification number, or other primary account identifier(s);

(B) For suppliers of natural gas, end user names, account identification numbers, and natural gas deliveries are reported using the appropriate units; and

(C) Energy generation, disposition information, and electricity purchases and acquisitions; and

(d) In the comparison of the verification team's calculated results with reported data, the comparison of data checks must also include the following:

(A) A narrative to indicate which sources and transactions were checked;

(B) The types and quantity of data that were evaluated for each source and transaction;

(C) The percentage of reported emissions covered by data checks; and

(D) Any separate discrepancies that were identified in emissions data.

(E) Any separate discrepancies that were identified in production data.

340-272-0460
Material Misstatement Assessments for Production and Emissions Data Submitted under OAR Chapter 340, Division 215

(1) The verification team must conduct separate assessments for material misstatement of total reported emissions for each emissions data report submitted under OAR chapter 340, division 215. The assessments of material misstatement of emissions data must meet all the requirements of this rule.

(a~~2~~) Material misstatement of emissions data includes any discrepancy as described in subsection (A) of this section, omission as described in subsection (B) of this section, or misreporting as described in subsection (C) of this section, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the total reported emissions (metric tons of CO_2e) in a GHG Reporting Program emissions data report contains errors greater than five percent.

(A~~a~~) Discrepancies include any differences between the reported emissions and the verifier's review of emissions for a data source subject to data checks under OAR 340-272-0430.

(B~~b~~) Omissions include any emissions the verifier concludes must be part of an emissions data report but were not included.

(~~c~~C) Misreporting includes duplicate, incomplete, or other emissions the verifier concludes should or should not be part of an emissions data report.

(b~~3~~) Each emissions data report is subject to data checks under OAR 340-272-0430 and must be assessed separately for material misstatement of emissions data.

(c4) The following equation for percent error must be used to determine whether the total reported emissions in an emissions data report contain a material misstatement of emissions data and must be included in the final verification report according to OAR 340-272-0495.

Percent error (emissions) = (∑(Discrepancies + Omissions + Misreporting) ÷ Total reported emissions) × 100%

(2) The verification team must conduct separate assessments for material misstatement of total reported production data contained in emissions data reports subject to the requirements of OAR chapter 340, division 273. The assessments of material misstatement of production data must meet all of the requirements of this rule.

(a) For sources identified as covered emissions-intensive and , trade-exposed or covered direct natural gas entities sources under OAR 340-273, the verification team must review production data reported under OAR 340-215-0044(3)(g), including product types and process or production units. The verification team must evaluate this information for discrepancies, omissions, or misreporting consistent with subsection (b), and must determine whether any such issues would materially affect the production data relied upon in calculations conducted under OAR 340-273-0110(1).

(b) Material misstatement of production data includes any discrepancy as described in subsection (A) of this section, omission as described in subsection (B) of this section, or misreporting as described in subsection (C) of this section, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the total reported production data in a GHG Reporting Program emissions data report contains errors greater than five percent.

(A) Discrepancies include any differences between the reported production data and the verifier's review of production data for a data source subject to data checks under OAR 340-272-0430.

(B) Omissions include any production data the verifier concludes must be part of an emissions data report, but were not included.

(C) Misreporting includes duplicate, incomplete, or other production data the verifier concludes should or should not be part of an emissions data report.

(c) Each emissions data report is subject to data checks under OAR 340-272-0430 and must be assessed separately for material misstatement of production data.

(d) The following equation for percent error must be used to determine whether the reported production data—specifically product types and production units—contain a material misstatement and must be included in the final verification report according to OAR 340-272-0495.

Percent error (production data) = (∑ (Discrepancies + Omissions + Misreporting) ÷ Total reported production) × 100%

(3~~5~~) When evaluating material misstatement, correctly substituted missing data must be deemed to be accurate, regardless of the amount of missing data.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities.

For translation or other formats, visit DEQ's Civil Rights and Environmental Justice page.