



State of Oregon Department of Environmental Quality

# Electricity Credit Generators Draft Rules

## Nov. 19, 2020, Clean Fuels Program Electricity 2021 Rulemaking Advisory Committee Meeting

340-253-0330

Credit Generators: Providers of Electricity

(1) Applicability. This rule applies to providers of electricity used as a transportation fuel.

(2) For residential charging. For electricity used to charge an electric vehicle at a residence, subsections (a) and (b) determine the person who is eligible to generate credits.

(a) Electric Utility. In order to generate credits for the following year, an electric utility must notify DEQ by October 1 of the current year whether it will generate credits or designate an aggregator to act on its behalf. The utility or its aggregator must have an active registration approved by DEQ under OAR 340-253-0500. Once a utility has made a designation under this section that designation will remain in effect unless the utility requests a change in writing to DEQ.

(b) Backstop Aggregator. If an electric utility does not register or designate an aggregator under subsection (a), then a backstop aggregator is eligible to claim any credits that the utility could have generated for the following year under section (6).

(3) For non-residential charging. For electricity used to charge an electric vehicle at non-residential locations, such as in public, for a fleet, at a workplace, or at multi-family housing sites, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Owner or service provider of the electric-charging equipment. The owner or service provider of the electric-charging equipment may generate the credits. Only one entity may generate credits from each piece of charging equipment.

(b) Electric Utility. If the owner or service provider of the electric-charging equipment does not generate the credits, then an electric utility or an aggregator designated to act on the utility's behalf is eligible to generate the credits. The utility or its aggregator must have an active registration approved by DEQ under OAR 340-253-0500. Once a utility has made a designation under this section that designation will remain in effect unless the utility requests a change in writing to DEQ.

(c) Backstop Aggregator. If an electric utility does not register or designate an aggregator under subsection (b), then a backstop aggregator is eligible to claim any credits that the utility could have generated for the following year under section (6).

(4) Public Transit. For electricity used to power fixed guideway vehicles such as light rail systems, streetcars, and aerial trams, or transit buses, a transit agency may generate the credits. The transit agency must have an active registration approved by DEQ under OAR 340-253-0500.

(5) Forklifts. For electricity used to power forklifts, the forklift fleet owner or fleet operator may generate the credits. Only one entity may generate credits from each piece of equipment. The fleet owner has precedence to generate credits or designate an aggregator.

(6) Transportation Refrigeration Units. The fleet owner or fleet operator of the electric transportation refrigeration unit may generate credits for electricity used in transport refrigeration units. Only one entity may generate credits from each piece of equipment. The fleet owner has precedence to generate credits or designate an aggregator.

(7) Electric Cargo Handling Equipment. The owner or service provider of the electric-charging equipment may generate the credits or designate an aggregator. Only one entity may generate credits from each piece of charging equipment.

(8) Electric Ocean-Going Vessel powering. The owner of the equipment that provides electrical power from the shore to the vessel is eligible to generate credits or designate an aggregator.

(9) Responsibilities to generate credits. Any person specified under sections (2) through (6) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements of this division.

(10) Backstop Aggregator. The backstop aggregator that serves as the credit generator of electricity credits that have not been claimed by an electric utility, an aggregator designated by an electric utility, or an owner or service provider of electric charging equipment under sections (2) and (3).

(a) To qualify to submit an application to be a backstop aggregator, an organization must:

(A) Be an organization exempt from federal taxation under section 501(c)(3) of the U.S. Internal Revenue Code;

(B) Complete annual independent financial audits.

(b) An entity that wishes to be the backstop aggregator must submit an application with DEQ that includes:

(A) A description of the mission of the organization and how being a backstop aggregator fits into its mission;

(B) A description of the experience and expertise of key individuals in the organization who would be assigned to work associated with being a backstop aggregator;

(C) A plan describing:

(i) How the organization will promote transportation electrification statewide or in specific utility service territories, if applicable;

(ii) Any entities that the organization might partner with to implement its plan;

(iii) How the organization plans to use the revenue from the sale of credits, which may include, without limitation, programs that provide incentives to purchase electric vehicles or install electric vehicle chargers, opportunities to educate the public about electric vehicles, and anticipated costs to administer its plan; and

(iv) The financial controls that are, or will be put, in place to segregate funds from the sale of credits from other monies controlled by the organization.

(D) Its last three years of independent financial audits and I.R.S. form 990s, and proof that the I.R.S. has certified them as qualifying as an exempt organization under 501(c)(3);

(c) Initial applications to be a backstop aggregator are due to DEQ no later than March 15, 2018, to be eligible to be the backstop aggregator beginning in 2018. If the EQC does not approve the designation of a backstop aggregator under subsection (e), then DEQ may set a new deadline for applications if it decides to undertake a new selection process.

(d) Applications will be evaluated by DEQ with the assistance of relevant experts selected by DEQ. DEQ will evaluate applications based on the likelihood that the applicant will maximize the benefits from the credits it receives to expand the use of alternative fuel vehicles and reduce greenhouse gas emissions from the transportation sector in Oregon.

(e) DEQ may recommend an organization be designated as the initial backstop aggregator to the EQC by May 31, 2018. If DEQ does not recommend an organization to be the backstop aggregator or the EQC does not approve DEQ's recommendation, then DEQ may undertake a new selection process at a later date under the same criteria in subsections (b) and (d).

(f) Following EQC approval of an organization to be the backstop aggregator, DEQ and the organization may enter into a written agreement regarding its participation in the program. A written agreement must be in place prior to the backstop aggregator registering an account in the CFP Online System and receiving credits for the first time. The backstop aggregator must:

(A) By March 31st of each year, submit a report that summarizes the previous year's activity including:

(i) How much revenue was generated from the credits it received;

(ii) A description of activities including the status of each activity, where each activity took place, and each activity's budget, including administrative costs, and an estimate of its outcomes; and

(iii) The results of its most recent independent financial audit.

(B) Maintain records and make them available upon request by DEQ, including records required to be maintained under OAR 340-253-0600 and, in addition, any records relating to its application, the programs it operates using the proceeds from the sale of credits under this program, and any of the organization's financial records.

(g) If DEQ determines that a backstop aggregator is in violation of this division or the agreement that it enters into with DEQ to be the backstop aggregator, DEQ may rescind its designation and solicit applications to select a new backstop aggregator.

(h) If the backstop aggregator wishes to terminate its agreement with DEQ, then DEQ may solicit applications to select a new backstop aggregator.

(i) After a backstop aggregator has been in place for three years, DEQ may hold a new selection process to appoint a backstop aggregator for future years. Unless DEQ has rescinded an organization as backstop aggregator under subsection (g), the current backstop aggregator may apply to be re-designated as the backstop aggregator for future years.

(9) Incremental credits. Other than for residential charging, incremental credits may be claimed by the eligible credit generator identified in sections (3)-(8) of this rule or the incremental aggregator. For residential charging, the following entities may claim incremental credits:

(a) The electric utility claiming base credits for the same vehicles under (2)(a) or their designated aggregator; or

(b) Incremental Aggregator. The incremental aggregator that serves as the credit generator of incremental electricity credits that have not been claimed by an electric utility, an aggregator designated by an electric utility, or the eligible credit generator under sections (3)-(8).

(a) To qualify to submit an application to be the incremental aggregator, an organization must:

(A) Be an organization exempt from federal taxation under section 501(c)(3) of the U.S. Internal Revenue Code;

(B) Complete annual independent financial audits.

(b) An entity that wishes to be the incremental aggregator must submit an application with DEQ that includes:

(A) A description of the mission of the organization and how being the incremental aggregator fits into its mission;

(B) A description of the experience and expertise of key individuals in the organization who would be assigned to work associated with being the incremental aggregator;

(C) How the organization plans to promote transportation electrification statewide in an equitable manner and conduct programs on a statewide basis.

(D) The financial controls that are, or will be put, in place to segregate funds from the sale of credits from other monies controlled by the organization.

(E) Its last three years of independent financial audits and I.R.S. form 990s, and proof that the I.R.S. has certified them as qualifying as an exempt organization under 501(c)(3);

(c) Initial applications to be the incremental aggregator are due to DEQ no later than July 1, 2021, to be eligible to be the incremental aggregator beginning with 2020 residential EV crediting. If the EQC does not approve the designation of an incremental aggregator under subsection (e), then DEQ may set a new deadline for applications if it decides to undertake a new selection process.

(d) Applications will be evaluated by DEQ in partnership with the equity advisory committee selected under (j). DEQ will evaluate applications based on the likelihood that the applicant will use the revenue from the credits it receives to advance transportation electrification statewide with a focus on actions that will help vulnerable populations and communities impacted by air pollution and climate change.

(e) DEQ may recommend an organization be designated as the initial incremental aggregator to the EQC by August 15, 2021. If DEQ does not recommend an organization to be the backstop aggregator or the EQC does not approve DEQ's recommendation, then DEQ may undertake a new selection process at a later date under the same criteria in subsections (b) and (d).

(f) Following EQC approval of an organization to be the backstop aggregator, DEQ and the organization may enter into a written agreement regarding its participation in the program. A

written agreement must be in place prior to the incremental aggregator receiving credits for the first time. The incremental aggregator must:

(A) By March 31st of each year, submit a report that summarizes the previous year's activity including:

(i) How much revenue was generated from the credits it received;

(ii) A description of activities including the status of each activity, where each activity took place, and each activity's budget, including administrative costs, and an estimate of its outcomes; and

(iii) The results of its most recent independent financial audit.

(B) Maintain records and make them available upon request by DEQ, including records required to be maintained under OAR 340-253-0600 and, in addition, any records relating to its application, the programs it operates using the proceeds from the sale of credits under this program, and any of the organization's financial records.

(g) If DEQ determines that an incremental aggregator is in violation of this division or the agreement that it enters into with DEQ to be the incremental aggregator, DEQ may rescind its designation and solicit applications to select a new incremental aggregator.

(h) If the incremental aggregator wishes to terminate its agreement with DEQ, then DEQ may solicit applications to select a new backstop aggregator.

(i) After an incremental aggregator has been in place for three years, DEQ may hold a new selection process to appoint an incremental aggregator for future years. Unless DEQ has rescinded an organization as incremental aggregator under subsection (g), the current backstop aggregator may apply to be re-designated as the incremental aggregator for future years.

(j) Equity advisory committee.

(A) DEQ will convene an equity advisory committee to assist in:

(i) the selection of the incremental aggregator,

(ii) establishing criteria that will be used to set priorities to be carried out by the incremental aggregator,

(iii) developing the annual work plan for the incremental aggregator, and

(iii) the review of the performance of the aggregator.

(B) DEQ will solicit applications for residents of the state of Oregon to be appointed to the equity advisory committee. DEQ will seek representatives with the following interests and areas of expertise:

(i) Transportation electrification;

(ii) Equity and environmental justice; and

(iii) The needs and interests of communities that are most vulnerable to the impacts of climate change, tribes, low-income communities, rural communities, and other under-represented communities.

(C) DEQ will solicit applications in May 2021 and select the committee from those applicants. Committee members will serve terms of three years and DEQ may annually solicit applications and make additional selections to serve on the committee. (k) DEQ and the incremental aggregator will annually agree on a workplan for the next year. Projects to be undertaken by the incremental aggregator may include:

(A) Electrification and battery swap programs for school or transit buses;

(B) Electrification of drayage trucks;

(C) Investment in public EV charging infrastructure and EV charging infrastructure in multi-family residences;

(D) Investment in electric mobility solutions, such as EV sharing and ride-hailing programs;

(E) Multilingual marketing, education, and outreach designed to increase awareness and adoption of EVs and clean mobility options that includes information about their benefits to individuals, the environment, and human health;

(F) Additional rebates and incentives for low-income individuals beyond existing local, federal and state rebates and incentives for:

(i) Purchasing or leasing new or previously owned EVs;

(ii) Installing EV charging infrastructure in residences;

(iii) Promoting the use of public transit and other clean mobility; and

(iv) Off-setting costs for residential or non-residential EV charging.

(G) Other projects that promote transportation electrification in disadvantaged and/or low-income communities and/or rural areas or for low-income individuals which are approved by the equity advisory committee and DEQ. Individuals and organizations may submit such projects to DEQ for consideration, and the application must include a complete description of the project, the demonstration that the project promotes transportation electrification in communities that are most vulnerable to the impacts of climate change, tribes, low-income communities, rural communities, and other underrepresented communities or provides increased access to electric transportation for low-income individuals, and evidence that the project was developed in coordination with local environmental justice advocates, local community-based organizations, and local municipalities.

Statutory/Other Authority: ORS 468.020, 468A.266, 468A.268 & 468A.277

Statutes/Other Implemented: ORS 468.020 & ORS 468A.265 through 468A.277

History:

DEQ 1-2019, minor correction filed 01/03/2019, effective 01/03/2019

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DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-1000

Credit and Deficit Basics

(1) Carbon intensities.

(a) Except as provided in subsections (b),(c), or (d), when calculating carbon intensities, regulated parties, credit generators, and aggregators must use a carbon intensity approved by DEQ under OAR 340-253-0450.

(b) If a regulated party, credit generator, or aggregator has an approved provisional carbon intensity approved under OAR 340-253-0450, the regulated party, credit generator, or aggregator must use the DEQ-approved provisional carbon intensity.

(c) If a regulated party, credit generator, or aggregator has an approved temporary carbon intensity under OAR 340-253-0450, the regulated party, credit generator, or aggregator must use the temporary carbon intensity for the period which it has been approved, unless DEQ has subsequently approved a permanent carbon intensity for that fuel.

(d) If a registered party purchases a blended finished fuel and the seller does not provide carbon intensity information, then the registered party must:

(A) Use the applicable substitute fuel pathway code in Table 8 under OAR 340-253-8010 or otherwise approved and posted by DEQ under OAR 340-253-0450(11) if the fuel is exported, not used for transportation, or used in an exempt fuel use; and

(B) Report the volume using the applicable Table 8 fuel pathway code, or a fuel pathway code otherwise approved and posted by DEQ under OAR 340-253-0450(11), for the fossil fuel and the applicable substitute fuel pathway code for the biofuel or biofuels if the finished fuel blend is not listed.

(2) Fuel quantities. Regulated parties, credit generators, and aggregators must express fuel quantities in the unit of fuel for each fuel.

(3) Compliance period. The annual compliance period is January 1 through December 31 of each year, except:

(a) The initial compliance period is January 1, 2016, through December 31, 2017; and

(b) The initial compliance period for large importers of finished fuels is January 1, 2016 through December 31, 2018.

(4) Metric tons of CO<sub>2</sub> equivalent. Regulated parties, credit generators, and aggregators must express credits and deficits to the nearest whole metric ton of carbon dioxide equivalent.

(5) Deficit and credit generation.

(a) Credit generation. A clean fuel credit is generated when fuel is produced, imported, or dispensed for use in Oregon, as applicable, and the carbon intensity of the fuel approved for use under OAR 340-253-0400 through -0470 is less than the clean fuel standard for gasoline and gasoline substitutes in Table 1 under OAR 340-253-8010, for diesel fuel and diesel substitutes in Table 2 under 340-253-8010, or for alternative jet fuel in Table 3 under 340-253-8010. Credits are generated when a valid and accurate quarterly report is submitted in the Oregon Fuels Reporting System.

(b) Deficit generation. A clean fuel deficit is generated when fuel is produced, imported, or dispensed for use in Oregon, as applicable, and the carbon intensity of the fuel approved for use under OAR 340-253-0400 through -0470 is more than the clean fuel standard for gasoline and gasoline substitutes in Table 1 under OAR 340-253-8010 or for diesel fuel and diesel substitutes in Table 2 under 340-253-8010. Deficits are generated when a valid and accurate quarterly report is submitted in the Oregon Fuels Reporting System.

(c) No credits may be generated or claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has passed, unless the credits are being

generated for residential charging of electric vehicles or for claiming incremental credits by a utility or the incremental aggregator.

(6) Mandatory retirement of credits. When filing the annual report at the end of a compliance period, a registered party that possesses credits must retire a sufficient number of credits such that:

(a) Enough credits are retired to completely meet the registered party's compliance obligation for that compliance period, or

(b) If the total number of the registered party's credits is less than the total number of the regulated party's deficits, the registered party must retire all of its credits.

(7) Credit Retirement Hierarchy. The Oregon Fuels Reporting System will use the following default hierarchy to retire credits for the purposes of meeting a compliance obligation, first retiring credits under subsection (a), next retiring credits under subsection (b), and last retiring credits under subsection (c):

(a) Credits acquired or generated in a previous compliance period prior to credits generated or acquired in the current compliance period;

(b) Credits with an earlier completed transfer "recorded date" before credits with a later completed transfer "recorded date;" and

(c) Credits generated in an earlier quarter before credits generated in a later quarter.

Statutory/Other Authority: ORS 468.020, 468A.266, 468A.268 & 468A.277

Statutes/Other Implemented: ORS 468.020 & ORS 468A.265 through 468A.277

History:

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DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-1020

Calculating Credits and Deficits

(1) Except as provided in sections (2) and (3), credit and deficit generation must be calculated for all fuels included in OAR 340-253-1010:

(a) Using credit and deficit basics as directed in OAR 340-253-1000;

(b) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8010;

(c) Calculating the adjusted energy in megajoules by multiplying the energy in megajoules from section (2) by the energy economy ratio of the fuel listed in Table 7 or 8 under OAR 340-253-8010, as applicable;

(d) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity as approved under OAR 340-253-0400 through -0470, adjusted for the fuel application's energy economy ratio listed in Table 7 under OAR 340-253-8010 as applicable, from the clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and diesel substitutes listed in Table 2 under OAR 340-253-8010, as applicable;

(e) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in megajoules in section (3) by the carbon intensity difference in section (4);

(f) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in section (5) by 1,000,000; and

(g) Determining under OAR 340-253-1000(5) whether credits or deficits are generated.

(2) For electricity used to power fixed guideway vehicles on track placed in service prior to 2012 and forklifts, credit and deficit generation must be calculated by:

(a) Using credit and deficit basics as directed in OAR 340-253-1000;

(b) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8010;

(c) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity as approved under OAR 340-253-0400 through -0470, adjusted for the fuel application's energy economy ratio listed in Table 7 under OAR 340-253-8010 as applicable, from the clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and diesel substitutes listed in Table 2 under OAR 340-253-8010, as applicable;

(d) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in megajoules in section (3) by the carbon intensity difference in section (4);

(e) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in section (5) by 1,000,000; and

(f) Determining under OAR 340-253-1000(5) whether credits or deficits are generated.

(3) For electricity used in residential charging of electric vehicles, credit calculations must be based on the total electricity dispensed (in kilowatt hours) to vehicles, measured by:

(a) The use of direct metering (either sub-metering or separate metering) to measure the electricity directly dispensed to all vehicles at each residence; or

(b) For residences where direct metering has not been installed, DEQ annually will calculate the total electricity dispensed as a transportation fuel based on analysis of the total number of BEVs and PHEVs in a utility's service territory based on Oregon Department of Motor Vehicles records. DEQ will select one of the following methods for estimating the amount of electricity charged based on its analysis of which is more accurate and feasible at the time it is performing the analysis:

(A) An average amount of electricity consumed by BEVs and PHEVs at residential chargers, based on regional or national data; or

(B) An analysis of the average electric vehicles miles traveled by vehicle type or make and model, which compares the total amount of estimated charging for those electric vehicle miles travelled with the total reported charging in those territories in order to determine the amount of unreported charging that can be attributed to residential charging. The analysis may be done on a utility territory specific or statewide basis.

(c) If DEQ determines after the issuance of residential electric vehicle credits that the estimate under (b) contained a significant error that led to one or more credits being incorrectly generated, the error will be corrected by withholding an equal number of credits to the erroneous amount from the next year's generation of residential electric vehicle credits.

(d) A credit generator or aggregator may propose an alternative method, subject to the approval of DEQ upon its determination that the alternative method is more accurate than either of the methods described in subsection (b).

(e) Credits generated under this subsection will be calculated by DEQ under section 1 of this rule using the estimated amount of electricity under subsection (3)(b) and issued once per year into the Oregon Fuels Reporting System account of the utility, its designated aggregator, or the backstop aggregator within three months of the close of that year.

(f) Registered parties eligible to generate credits for the 2018 year also will generate credits for 2016 and 2017 residential electric vehicle charging.

Statutory/Other Authority: ORS 468.020, 468A.266, 468A.268 & 468A.277

Statutes/Other Implemented: ORS 468.020 & ORS 468A.265 through 468A.277

History:

DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020  
DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019  
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