

## OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

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### DIVISION 253

### OREGON CLEAN FUELS PROGRAM

#### 340-253-0000

#### Overview

(1) Context. The Oregon Legislature found that climate change poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon. Section 1, chapter 907, Oregon Laws 2007. The Oregon Clean Fuels Program will reduce Oregon's contribution to the global levels of greenhouse gas emissions and the impacts of those emissions in Oregon in concert with other greenhouse gas reduction policies and actions by local governments, other states and the federal government.

(2) Purpose. The purpose of the Oregon Clean Fuels Program is to reduce the amount of lifecycle greenhouse gas emissions per unit of energy by a minimum of 10 percent below 2010 levels by 2025. This reduction goal applies to the average of all transportation fuels used in Oregon, not to individual fuels. A fuel user does not violate the standard by possessing fuel that has higher carbon content than the clean fuel standard allows.

(3) Background. The 2009 Oregon Legislature adopted House Bill 2186 enacted as chapter 754 of Oregon Laws 2009. The law authorizes the Environmental Quality Commission to adopt low carbon fuel standards for gasoline, diesel fuel and fuels used as substitutes for gasoline or diesel fuel. Sections 6 to 9 of chapter 754, Oregon Laws 2009 is printed as a note following ORS 468A.270 in the 2011 Edition. The 2015 Oregon Legislature amended those provisions when it adopted Senate Bill 324 (chapter 4, Oregon Laws 2015~~),~~ which was codified in ORS 468A.275. OAR division 253 of chapter 340 implements ~~the~~that law.

(4) Program Review. EQC expects DEQ to periodically review and assess the Oregon Clean Fuels Program and make recommendations to EQC for improvement. DEQ will conduct two periodic reviews between 2016 and 2025. Review and assessment may include:

- (a) The program's progress towards meeting its targets;
- (b) Adjustments to the compliance schedule, if needed;
- (c) The costs and benefits that complying with Clean Fuels Program rules cause for regulated parties and credit generators;

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- (d) The costs and benefits that complying with Clean Fuels Program rules cause for Oregon fuel consumers and Oregon's economy;
- (e) The rate of climate change and the costs of environmental and economic damage due to climate change;
- (f) The current and projected availability of clean fuels;
- (g) The progress and adoption rates of clean fuels, clean fuel infrastructure and clean fuel vehicles;
- (h) Identifying hurdles or barriers to implementing the Clean Fuels Program (e.g., permitting issues, infrastructure adequacy, research funds) and recommendations for addressing such hurdles or barriers;
- (i) The mechanisms to provide exemptions and deferrals necessary to mitigate the cost of complying with the program;
- (j) The methods to quantify lifecycle direct and indirect emissions from transportation fuels including land use change and other indirect effects;
- (k) The latest information on low carbon fuel policies and related legal issues;
- (l) The status of federal, state and regional programs that address the carbon content of transportation fuel; and
- (m) Whether there are the necessary resources to implement the program.

(5) LRAPA. Notwithstanding Lane Regional Air Pollution Agency authorization in OAR 340-200-0010(3), DEQ administers this division in all areas of the State of Oregon.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0040**

#### **Definitions**

The definitions in OAR 340-200-0020 and this rule apply to this division. If this rule and 340-200-0020 define the same term, the definition in this rule applies to this division.

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~~(1) “Actual PADD 5” means Petroleum Administration for Defense District 5, which includes Oregon, Washington, Arizona, Nevada, Hawaii, California and Alaska.~~

(2) “Aggregation indicator” means an identifier for reported transactions that are a result of an aggregation or summing of more than one transaction. An entry of “True” indicates that multiple transactions have been aggregated and are reported with a single transaction number. An entry of “False” indicates that the record reports a single fuel transaction.

“Aggregator” means a person who is not a regulated party and who voluntarily registers to participate in the clean fuels program, described in OAR 340-253-0100(3), on behalf of one or more credit generators to facilitate credit generation and to trade credits. A credit generator may also serve as an aggregator for other credit generators.

“Aggregator designation form” means a DEQ-approved document that specifies that a credit generator has designated an aggregator to act on its behalf.

(3) “Application” means the type of vehicle where the fuel is consumed, shown as either LDV/MDV or HDV.

(4) “B5” means diesel fuel containing 5 percent biodiesel.

(5) “Battery electric vehicle” or “BEV” means any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.

(6) “Bill of lading” means a document issued that lists goods being shipped and specifies the terms of their transport.

(7) “Bio-based” means a fuel produced from non-petroleum, ~~biological~~biogenic renewable resources.

(8) ~~“Biodiesel” means a motor vehicle fuel comprised consisting of mono-alkyl esters of long chain fatty acids derived from non-petroleum sourced vegetable oils or, animal fats, or other nonpetroleum resources, designated as B100 and conforming to the specifications of complying with ASTM D6751-15a, “Standard Specification for Biodiesel Fuel Blend Stock (produced in or imported into Oregon for use as a blendstock shall comply with B100) for Middle Distillate Fuels.”~~

~~(10) “Biodiesel blend” means a blend of biodiesel requirements including ASTM International D6751 and the Certificate of Analysis.~~

(9) “Biodiesel Blend” means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel containing at least 6 percent and not more than 20 percent biodiesel by volume, designated BXX where, in the abbreviation BXX, the XX

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represents the volume percentage of biodiesel fuel in the blend, ~~and conforming to the specifications of ASTM D7467-13, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)."~~

(11) "Biogas" means gas, consisting primarily of methane and carbon dioxide, produced by the anaerobic decomposition of organic matter. Biogas cannot be directly injected into natural gas pipelines or combusted in most natural gas-fueled vehicles unless first upgraded to biomethane.

(12) "Biomethane" means refined biogas that has been upgraded to a near-pure methane content product. Biomethane can be directly injected into natural gas pipelines or combusted in natural gas-fueled vehicles.

(13) "Blendstock" means a fuel component that is either used alone or is blended with one or more other components to produce a finished fuel used in a motor vehicle. A blendstock that is used directly as a transportation fuel in a vehicle is considered a finished fuel.

~~(14) "Broker" means a person who is not a regulated party or a credit generator and who voluntarily registers to participate in the clean fuels program, described in OAR 340-253-0100(3), to facilitate credit generation and to trade credits with regulated parties, credit generators and other brokers.~~

~~(15) "Broker designation form" means a DEQ-approved document that specifies that a regulated party or a credit generator has designated a broker to act on its behalf for specified transactions.~~

(16) "Business partner" refers to the second party that participates in a specific transaction involving the regulated party. This can either be the buyer or seller of fuel, whichever applies to the specific transaction.

"Buy/Sell Board" means a section of the CFP Online System where registered parties can post that they are interested in buying or selling credits and the contact information for an employee.

(17) "Carbon intensity" or "CI" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>e/MJ).

(18) "Carryback credits" means a credit that a regulated party acquires between January 1st and March 31st to meet its compliance obligation for the prior compliance period and that was generated during or before the prior compliance period. Credits generated between January 1st and March 31st may not be used as carryback credits to meet a regulated party's compliance obligation for the prior compliance period.

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(19) “CFP Online System” means the interactive, secured, internet web-based, electronic data tracking, reporting and compliance system that DEQ develops, manages and operates to support the Clean Fuels Program.

(20) “CFP Online System reporting deadlines” means the quarterly and annual reporting dates in OAR 340-253-0630 and in 340-253-0650.

(21) “Clean fuel” means a transportation fuel whose carbon intensity is lower than the applicable clean fuel standard for gasoline and gasoline substitutes listed in Table 1 under OAR 340-253-8010 or for diesel and diesel substitutes listed in Table 2 under OAR 340-253-8020.

(22) “Clean fuel standard” means the annual average carbon intensity a regulated party must comply with, as listed in Table 1 under OAR 340-253-8010 for gasoline and gasoline substitutes and in Table 2 under 340-253-8020 for diesel fuel and diesel substitutes.

(23) “Clear gasoline” means gasoline derived from crude oil that has not been blended with a renewable fuel.

(24) “Clear diesel” means a light middle or middle distillate grade diesel fuel derived from crude oil that has not been blended with a renewable fuel.

(25) “Compliance period” means the period of time within which regulated parties must demonstrate compliance under OAR 340-253-0100. The initial compliance period is for two calendar years, 2016 and 2017, and subsequent compliance periods are each for single calendar year.

(26) “Compressed natural gas” or “CNG” means natural gas stored inside a pressure vessel at a pressure greater than the ambient atmospheric pressure outside of the vessel.

(27) “Credit” means a unit of measure that is generated when the carbon intensity of a fuel that is produced, imported, dispensed, or used in Oregon is less than the clean fuel standard. Credits are expressed in units of metric tons of carbon dioxide equivalent and are calculated under OAR 340-253-1020.

(28) “Credit facilitator” means a person [in the CFP Online System that](#) a regulated party designates, ~~in the CFP Online System,~~ to initiate and complete credit transfers on behalf of the regulated party.

(29) “Credit generator” means a person eligible to generate credits by providing clean fuels for use in Oregon and who voluntarily registers to participate in the Clean Fuels Program, described in OAR 340-253-0100(2), and specified by fuel type under OAR 340-253-0320 through 340-253-0340.

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(30) “Crude oil” means any naturally occurring flammable mixture of hydrocarbons found in geologic formations.

(31) “Deficit” means a unit of measure that is generated when the carbon intensity of a fuel that is produced, imported, dispensed, or used in Oregon exceeds the clean fuel standard. Deficits are expressed in units of metric tons of carbon dioxide equivalent and are calculated under OAR 340-253-1020.

(32) “Denatured fuel ethanol” means fuel ethanol made unfit for beverage use by the addition of denaturants under formula(s) approved by the applicable regulatory agency to prevent the imposition of beverage alcohol tax and conforming to the specifications of ASTM D4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel” commonly identified as “E100.”

(33) "Diesel fuel" or “diesel” means either:

(a) A light middle distillate or middle distillate fuel suitable for compression ignition engines blended with not more than 5 volume percent biodiesel and conforming to the specifications of ASTM D975-15b, “Standard Specification for Diesel Fuel Oils” or;

(b) A light middle distillate or middle distillate fuel blended with at least 6 and not more than 20 volume percent biodiesel suitable for compression ignition engines conforming to the specifications of ASTM D7467-15b, “Standard Specifications for Diesel Fuel Oil, Biodiesel Blend (B6-B20).”

(34) “Diesel substitute” means a liquid fuel, other than diesel fuel, suitable for use as a compression-ignition piston engine fuel.

(35) “E10” means gasoline containing 10 volume percent fuel ethanol.

(36) “Energy economy ratio” or “EER” means the dimensionless value that represents the efficiency of a fuel as used in a powertrain as compared to a reference fuel, as listed in Table 7 under OAR 340-253-8070 for gasoline and gasoline substitutes and in Table 8 under 340-253-8080 for diesel fuel and diesel substitutes.

[“Emergency period” is the period of time in which an Emergency Action under OAR 340-253-2000 is in effect.](#)

(37) “Ethanol” means ethyl alcohol, the chemical compound C<sub>2</sub>H<sub>5</sub>OH.

(38) “Export” means to have ownership title to transportation fuel from locations within Oregon, at the time it is delivered to locations outside Oregon by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle. Fuel exported from Oregon does not carry any obligation except for recordkeeping under OAR 340-253-0600.

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(39) “Finished fuel” means a transportation fuel used directly in a motor vehicle without requiring additional chemical or physical processing.

“Fixed guideway” means a public transportation facility using and occupying a separate right-of-way for the exclusive use of public transportation using rail, using a fixed catenary system, using an aerial tramway, or for a bus rapid transit system.

(40) “Fossil” means any naturally-occurring flammable mixture of hydrocarbons found in geologic formations such as rock or strata.

(41) “Fuel ethanol” means undenatured ethanol with other components common to its production that do not affect the use of the product as a blending component for automotive spark-ignition engine fuels.

(42) “Fuel pathway” means a detailed description of all stages of fuel production and use for any particular transportation fuel, including feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer. The fuel pathway is used to calculate the carbon intensity of each transportation fuel.

(43) “Fuel pathway code” or “FPC” means the identifier used in the CFP Online System that applies to a specific fuel pathway as approved or issued under OAR 340-253-~~0500(3)~~-0400 through -0500.

(44) “Fuel transport mode” means the applicable combination of actual fuel delivery methods, such as truck routes, rail lines, pipelines and any other fuel distribution methods through which the regulated party reasonably expects the fuel to be transported under contract from the entity that generated or produced the fuel, to any intermediate entities and ending in Oregon.

(45) “Gasoline” means a spark ignition engine fuel conforming to the specifications of ASTM D4814-15a, “Standard Specification for Automotive Spark-Ignition Fuel.”

(46) “Gasoline substitute” means a liquid fuel, other than gasoline, suitable for use as a spark-ignition engine fuel.

(47) “Heavy duty motor vehicle” or “HDV” means any motor vehicle rated at more than 10,000 pounds gross vehicle weight.

(48) “Hybrid electric vehicle” or “HEV” means any vehicle that can draw propulsion energy from both of the following on-vehicle sources of stored energy:

(a) A consumable fuel and

(b) An energy storage device such as a battery, capacitor or flywheel.

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(49) “Illegitimate credits” means credits that were not generated in compliance with this division.

(50) “Import” means to have ownership title to transportation fuel from locations outside of Oregon at the time it is brought into Oregon by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle.

(51) “Importer” means:

(a) With respect to any liquid fuel, the person who imports the fuel; or

(b) With respect to any biomethane, the person who owns the biomethane when it is either physically transported into Oregon or injected into a pipeline located outside of Oregon and delivered for use in Oregon.

(52) “Indirect land use change” means the average lifecycle greenhouse gas emissions caused by an increase in land area used to grow crops that is caused by increased use of crop-based transportation fuels, and expressed as grams of carbon dioxide equivalent per megajoule of energy provided (gCO<sub>2</sub>e/MJ). Indirect land use change for fuel made from corn feedstocks is calculated using the protocol developed by the Argonne National Laboratory. Indirect land use change for fuel made from sugarcane, sorghum, soybean, canola and palm feedstocks is calculated using the protocol developed by CARB. [Indirect land use change values are listed in table 9 of this division.](#)

(53) “Invoice” means the receipt or other record of a sale transaction, specifying the price and terms of sale, that describes an itemized list of goods shipped.

(54) “Large importer of finished fuels” means any person who imports into Oregon more than 500,000 gallons of finished fuels in a given calendar year.

(55) “Light-duty motor vehicle” or “LDV” means any motor vehicle rated at 8,500 pounds gross vehicle weight or less.

(56) “Lifecycle greenhouse gas emissions” are:

(a) The aggregated quantity of greenhouse gas emissions, including direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels;

(b) Measured over the full fuel lifecycle, including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer; and

(c) Stated in terms of mass values for all greenhouse gases as adjusted to CO<sub>2</sub>e to account for the relative global warming potential of each gas.

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(57) “Liquefied compressed natural gas” or “L-CNG” means natural gas that has been liquefied and transported to a dispensing station where it was then re-gasified and compressed to a pressure greater than ambient pressure.

(58) “Liquefied natural gas” or “LNG” means natural gas that has been liquefied.

(59) “Liquefied petroleum gas” or “propane” or “LPG” means a petroleum product composed predominantly of any of the hydrocarbons, or mixture thereof; propane, propylene, butanes and butylenes maintained in the liquid state.

(60) “Medium duty vehicle” or “MDV” means any motor vehicle rated between 8,501 pounds and 10,000 pounds gross vehicle weight.

(61) “Motor vehicle” means any vehicle, vessel, watercraft, engine, machine, or mechanical contrivance that is propelled by internal combustion engine or motor.

"Multi-family housing" means a structure or facility established primarily to provide housing that provides four or more living units, and where the individual parking spaces that an electric vehicle charger serves, and the charging equipment itself, are not deeded to or owned by a single resident. “Fixed guideway” means a public transportation facility using and occupying a separate right-of-way for the exclusive use of public transportation using rail, using a fixed catenary system, using an aerial tramway, or for a bus rapid transit system.

(62) “Natural gas” means a mixture of gaseous hydrocarbons and other compounds with at least 80 percent methane by volume.

(63) “OR-GREET” means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) [model developed by](#) Argonne National Laboratory ~~model~~ that DEQ ~~develops~~[modifies](#) and maintains for use in Oregon. The most current version is OR-GREET 2.0. ~~DEQ will provide a copy of OR-GREET 2.0 upon request.~~

(64) “Plug-In Hybrid Electric Vehicle” or “PHEV” means a hybrid vehicle with the capability to charge a battery from an off-vehicle electric energy source that cannot be connected or coupled to the vehicle in any manner while the vehicle is being driven.

(65) “Producer” means:

(a) With respect to any liquid fuel, the person who makes the fuel in Oregon; or

(b) With respect to any biomethane, the person who refines, treats or otherwise processes biogas into biomethane in Oregon.

(66) “Product transfer document” or “PTD” means a document, or combination of documents, that authenticates the transfer of ownership of fuel between parties and must include all information identified in OAR 340-253-0600(2). A PTD may include bills of

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loading, invoices, contracts, meter tickets, rail inventory sheets or RFS product transfer documents.

“Public transportation” means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include— intercity passenger rail by a national rail operator, intercity bus service, charter bus service, school bus service; sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, or intra-terminal or intra-facility shuttle services.

“Registered party” means a regulated party, credit generator, or aggregator.

(67) “Regulated fuel” means a transportation fuel identified under OAR 340-253-0200(2).

(68) “Regulated party” means a person responsible for compliance with requirements listed under OAR 340-253-0100(1).

(69) “Renewable hydrocarbon diesel”, also referred to as “renewable diesel”, means a hydrocarbon oil conforming to the specifications of ASTM D975-15b, “Standard Specification for Diesel Fuel Oils” produced from ~~renewable resources~~. biogenic feedstocks.

(70) “Renewable gasoline” means a spark ignition engine fuel conforming to the specifications of ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel” produced from renewable resources.

(71) “Small importer of finished fuels” means any person who imports into Oregon 500,000 gallons or less of finished fuels in a given calendar year. Any fuel imported by persons that are related, or share common ownership or control, shall be aggregated together to determine whether a person meets this definition.

~~(72) “Statutory PADD 5” means the Petroleum Administration for Defense District 5 states: Oregon, Washington, Arizona and Nevada.~~

"Streetcar" means a transit vehicle designed for local transportation operated on a rail fixed guideway, powered by electricity usually received from an overhead electric wire.

(73) “Tier 1 calculator” or “OR-GREET 2.0 Tier 1 calculator” means the tool used to calculate lifecycle emissions for common conventionally produced first-generation fuels (starch- and sugar-based ethanol, biodiesel, renewable diesel, CNG and LNG).

(74) “Tier 2 calculator” or “OR-GREET 2.0 Tier 2 calculator” means the tool used to calculate lifecycle emissions for next-generation fuels, including, but not limited to, cellulosic alcohols, hydrogen, drop-in fuels, or first-generation fuels produced using innovative production processes.

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(75) “Transaction date” means the title transfer date as shown on the PTD.

(76) “Transaction quantity” means the amount of fuel reported in a transaction.

(77) “Transaction type” means the nature of the fuel transaction as defined below:

(a) “~~Production for use~~Produced in Oregon” means the transportation fuel was ~~designated for use only~~produced at a facility in Oregon ~~at production and acquired a compliance obligation under Clean Fuels Program regardless of production inside or outside of Oregon~~for use in Oregon;

(b) “Purchased with obligation” means the transportation fuel was purchased with the compliance obligation passing to the purchaser;

(c) “Purchased without obligation” means the transportation fuel was purchased with the compliance obligation retained by the seller;

(d) “Sold with obligation” means the transportation fuel was sold with the compliance obligation passing to the purchaser;

(e) “Sold without obligation” means the transportation fuel was sold with the compliance obligation retained by the seller;

(f) “Export” means a transportation fuel was reported with compliance obligation under the Clean Fuels Program but was later exported outside of Oregon;

(g) “Loss of inventory” means the fuel was produced in or imported into Oregon but was not used in Oregon due to volume loss such as through evaporation or due to different temperatures or pressurization;

(h) “Gain of inventory” means the fuel entered the Oregon fuel pool due to a volume gain, such as through different temperatures or pressurization;

(i) “Not used for transportation” means a transportation fuel was reported with compliance obligation under the Clean Fuels Program but was later not used for transportation purposes in Oregon or otherwise determined to be exempt under OAR 340-253-0250;

(j) “EV charging” means providing electricity to recharge EVs including BEVs and PHEVs;

(k) “LPGV fueling” means the dispensing of liquefied petroleum gas at a fueling station designed for fueling liquefied petroleum gas vehicles; or

(l) “NGV fueling” means the dispensing of natural gas at a fueling station designed for fueling natural gas vehicles.

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“Transit agency” means an entity providing public transportation.

(78) “Transmix” means a mixture of refined products that forms at the interface between batches of dissimilar liquid products when transported through pipelines. This mixture is typically a combination of gasoline, diesel or jet fuel.

(79) “Transportation fuel” means gasoline, diesel, any other flammable or combustible gas or liquid and electricity that can be used as a fuel for the operation of a motor vehicle. Transportation fuel does not mean unrefined petroleum products.

(80) “Unit of fuel” means fuel quantities expressed to the largest whole unit of measure, with any remainder expressed in decimal fractions of the largest whole unit.

(81) “Unit of measure” means either:

(a) The International System of Units defined in NIST Special Publication 811 (2008) commonly called the metric system;

(b) US Customer Units defined in terms of their metric conversion factors in NIST Special Publications 811 (2008); or

(c) Commodity Specific Units defined in either:

(A) The NIST Handbook 130 (2015), Method of Sale Regulation;

(B) OAR chapter 603 division 027; or

(C) OAR chapter 340 division 340.

#### NEW DEFINITIONS:

“Bulk Facility” means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

“Position holder” means an entity that holds an inventory position in a motor vehicle fuel such as gasoline, ethanol, distillate fuel, biodiesel, or renewable diesel as reflected in the records of the terminal operator or a terminal operator that owns motor vehicle fuel or diesel fuel in its terminal. “Position holder” does not include inventory held outside of a terminal, fuel jobbers (unless directly holding inventory at the terminal), retail establishments, or other fuel suppliers not holding inventory at a fuel terminal.

“Inventory position” means a contractual agreement with the terminal operator for the use of the storage facilities and terminaling services for the fuel.

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“Rack” means a mechanism for delivering motor vehicle fuel or diesel from a refinery or terminal into a truck, trailer, rail car, or other means of non-bulk transfer.

“Terminal” means a motor vehicle fuel or diesel fuel storage and distribution facility that is supplied by pipeline, vessel, or truck, and from which fuel may be removed at a rack. “Terminal” includes a fuel production facility where motor vehicle fuel is produced and stored and from which fuel may be removed at a rack.

“Above the rack” means sales of 10,000 gallons or more of transportation fuel at pipeline origin points, pipeline batches in transit, and at terminal tanks before the transportation fuel has been loaded into trucks or other means of non-bulk transfer.

“Below the rack” means sales of clear or blended gasoline or diesel fuel at terminals or other racks where the transportation fuel is being sold to an end user or to an entity which is directly transporting that product to an end user or retail facility.

“Clearance Market” means a market mediated by DEQ under OAR 340-253-1040 apart from the normal, year-round market for credits created by the Clean Fuels Program.

“Maximum price” means the maximum price which sellers agree to charge for credits pledged into the Clearance Market which DEQ sets under OAR 340-253-1040.

“Backstop aggregator” means a qualified entity selected by DEQ under OAR 340-353-0330 (6) to aggregate credits for electricity used as a transportation fuel that would not otherwise be generated.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec.

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## **340-253-0060**

### **Acronyms**

The following acronyms apply to this division:

(1) “ASTM” means ASTM International (formerly American Society for Testing and Materials).

(2) “BEV” means battery electric vehicle.

(3) “CARB” means the California Air Resources Board.

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- (4) “CFP” means the Clean Fuels Program established under OAR chapter 340, division 253.
- (5) “CNG” means compressed natural gas.
- (6) “CO<sub>2</sub>e” means carbon dioxide equivalents.
- (7) “DEQ” means Oregon Department of Environmental Quality.
- (8) “EER” means energy economy ratio.
- (9) “EQC” means Oregon Environmental Quality Commission.
- (10) “EV” means electric vehicle.
- (11) “FEIN” means federal employer identification number.
- (12) “FFV” means flex fuel vehicle.
- (13) “FPC” means fuel pathway code.
- (14) “gCO<sub>2</sub>e/MJ” means grams of carbon dioxide equivalent per megajoule of energy.
- (15) “HDV” means heavy-duty vehicle.
- (16) “HDV-CIE” means a heavy-duty vehicle compression ignition engine.
- (17) “HDV-SIE” means a heavy-duty vehicle spark ignition engine.
- (18) “HEV” means hybrid electric vehicle.
- (19) “L-CNG” means liquefied-compressed natural gas.
- (20) “LDV” means light-duty vehicle.
- (21) “LNG” means liquefied natural gas.
- (22) “LPG” means liquefied petroleum gas.
- (23) “LPGV” means liquefied petroleum gas vehicle.
- (24) “MDV” means medium-duty vehicle.
- (25) “mmBtu” means million British Thermal Units.
- (26) “NGV” means natural gas vehicle.

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(27) “PHEV” means partial hybrid electric vehicle.

(28) “PTD” means product transfer document.

(29) “RFS” means the US Environmental Protection Agency Renewable Fuel Standard.

(30) “scf” means standard cubic feet.

(31) “ULSD” means ultra low sulfur diesel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0100**

#### **Oregon Clean Fuels Program Applicability and Requirements**

(1) Regulated parties. All persons that produce in Oregon, or import into Oregon, any regulated fuel must comply with the rules in this division. The regulated parties for regulated fuels are designated under OAR 340-253-0310.

(a) Regulated parties must comply with sections (4) through (8) below; except that:

(b) Small importers of finished fuels are exempt from sections (6) and (7) below.

(2) Credit generators.

(a) The following rules designate persons eligible to generate credits for each fuel type:

(A) OAR 340-253-0320 for compressed natural gas, liquefied natural gas, liquefied compressed natural gas, and liquefied petroleum gas ~~and renewable diesel~~;

(B) OAR 340-253-0330 for electricity; and

(C) OAR 340-253-0340 for hydrogen fuel or a hydrogen blend.

(b) Any person eligible to be a credit generator, and that is not a regulated party, is not required to participate in the program. Any persons who chooses voluntarily to participate in the program to generate credits must comply with sections (4), (5), (7) and (8) below.

(3) ~~Broker~~Aggregator.

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(a) ~~Brokers~~Aggregators must comply with this section and sections (4), (5), (7) and (8) below.

(b) ~~Brokers~~Aggregators may hold and trade credits. ~~A broker also~~An aggregator may generate credits and facilitate credit generation and ~~credit~~ trading if a regulated party or a credit generator authorizes ~~a broker to~~an aggregator to act on its behalf by submitting a ~~Broker Designation~~an Aggregator Designation Form. A credit generator already registered with the program may also serve as an aggregator for other credit generators.

(4) Registration.

(a) A regulated party must submit a complete registration application to DEQ under OAR 340-253-0500 for each fuel type on or before the date upon which that party begins producing the fuel in Oregon or importing the fuel into Oregon. The registration application must be submitted using DEQ approved forms.

(b) A credit generator must submit a complete registration to DEQ under OAR 340-253-0500 for each fuel type before it may generate credits for fuel produced, imported, dispensed or used in Oregon. DEQ will not recognize credits allegedly generated by any person that does not have an approved, accurate and current registration.

(c) ~~A broker~~An aggregator must submit a complete registration to DEQ under OAR 340-253-0500 and ~~a broker~~an Aggregator Designation Form each time it enters into a new contract with a regulated party or credit generator, before ~~trading credits or~~ facilitating reporting, credit generation ~~or trading by a regulated party or credit generator. DEQ will not recognize the transfer, or trading on behalf of credits by a broker that does not~~a regulated party or credit generator. Aggregators must have a DEQ-approved, accurate, and current registration and a DEQ-approved ~~broker designation form.~~Aggregator Designation Form to act on behalf of a regulated party or credit generator. Aggregators who act on behalf of a regulated party take on all of the compliance responsibilities of this division for that regulated party, and any violations of this division by the aggregator may result in enforcement against both the aggregator and the regulated party it was acting on behalf of.

(5) Records. Regulated parties, credit generators and ~~brokers~~mustaggregators must develop and retain all records OAR 340-253-0600 requires.

(6) Clean fuel standards. Each regulated party must comply with the following standards for all transportation fuel it produces in Oregon or imports into Oregon in each compliance period. Regulated parties may demonstrate compliance in each compliance period either by producing or importing fuel that in the aggregate meets the standard or by obtaining sufficient credits to offset the deficits they have incurred for such fuel produced or imported into Oregon. The initial compliance period is for two years, 2016 and 2017, and after that compliance periods will be on an annual basis.

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(a) Table 1 under OAR 340-253-8010 establishes the Oregon Clean Fuel Standard for Gasoline and Gasoline Substitutes; and

(b) Table 2 under OAR 340-253-8020 establishes the Oregon Clean Fuel Standard for Diesel and Diesel Substitutes.

(7) Quarterly progress report. Unless exempt under subsection (1)(b), regulated parties, credit generators, and ~~brokers~~aggregators must submit quarterly progress reports under OAR 340-253-0630.

(8) Annual compliance report. Regulated parties, credit generators and ~~brokers~~aggregators must submit annual compliance reports under OAR 340-253-0650. Regulated parties must submit an annual compliance report for 2016 notwithstanding that the initial two-year compliance period is for 2016 and 2017.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0200**

#### **Regulated and Clean Fuels**

(1) Applicability. Producers and importers of transportation fuels listed in this rule, unless exempt under OAR 340-253-0250, are subject to division 253.

(2) Regulated fuels. Regulated fuels means:

(a) Gasoline;

(b) Diesel;

(c) Ethanol;

(d) Biodiesel;

(e) ~~E10~~Renewable hydrocarbon diesel;

(f) ~~B5~~Any blends of the above fuels; and

(g) Any other liquid or non-liquid transportation fuel not listed in section (3) or exempted under OAR 340-253-0250.

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(3) Clean fuels. Clean fuels means a transportation fuel with a carbon intensity lower than the clean fuel standard for gasoline and their substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and their substitutes listed in Table 2 under OAR 340-253-8020, as applicable, for that calendar year, such as:

- (a) Bio-CNG;
- (b) Bio-L-CNG;
- (c) Bio-LNG;
- (d) Electricity;
- (e) Fossil CNG;
- (f) Fossil L-CNG;
- (g) Fossil LNG;
- (h) Hydrogen or a hydrogen blend; [and](#)
- (i) LPG; ~~and~~.

~~(j) Renewable diesel.~~

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0250**

#### **Exemptions**

(1) Exempt fuels. The following fuels are exempt from the list of regulated fuels under OAR 340-253-0200(2):

(a) Fuels used in small volumes. A transportation fuel supplied for use in Oregon if the producer or importer documents that all providers supply an aggregate volume of less than 360,000 gallons of liquid fuel per year.

(b) Small volume fuel producer. A transportation fuel supplied for use in Oregon if the producer documents that:

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(A) The producer has an annual production volume of less than 10,000 gallons of liquid fuel per year; or

(B) The producer uses the entire volume of fuel produced in motor vehicles used by the producer directly and has an annual production volume of less than 50,000 gallons of liquid fuel; or

(C) The producer is a research, development or demonstration facility defined under OAR 330-090-0100.

~~(e) Fuels that are exported for use outside of Oregon.~~

(2) Exempt fuel uses.

(a) Transportation fuels supplied for use in any of the following motor vehicles are exempt from the definition of regulated fuels under OAR 340-253-0200:

(A) Aircraft;

(B) Racing activity vehicles defined in ORS 801.404;

(C) Military tactical vehicles and tactical support equipment;

(D) Locomotives;

(E) Watercraft;

(F) Motor vehicles registered as farm vehicles as provided in ORS 805.300;

(G) Farm tractors defined in ORS 801.265;

(H) Implements of husbandry defined in ORS 801.310;

(I) Motor trucks defined in ORS 801.355 if used primarily to transport logs; and

(J) Motor vehicles that are not designed primarily to transport persons or property, that are operated on highways only incidentally and that are used primarily for construction work.

(b) To be exempt, the regulated party must document that the fuel was supplied for use in a motor vehicle listed in subsection (2)(a). The documentation must:

(A) Establish that the fuel was sold through a dedicated source to use in one of the specified motor vehicles; or

(B) Be on a fuel transaction basis if the fuel is not sold through a dedicated source.

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Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## **Designation of Regulated and Opt-in Parties**

### **340-253-0310**

#### **Regulated Parties: Gasoline, ~~E10~~, Diesel Fuel, ~~B5~~, Ethanol~~and~~, Biodiesel, Renewable Hydrocarbon Diesel, and Blends Thereof**

- (1) Regulated party. The regulated party is the producer or importer of the regulated fuel.
- (2) Recipient notification requirement. If a regulated party intends to transfer ownership of fuel, it is the recipient's responsibility to notify the transferor whether the recipient is a producer, an importer of blendstocks, a large importer of finished fuels, a small importer of finished fuels or not an importer. The notification does not have to be in writing.
- (3) Recipient is an importer of blendstocks or a large importer of finished fuels. If a regulated party transfers the fuel to an importer of blendstocks or a large importer of finished fuels above the rack, the transferor and the recipient have the options and responsibilities under this section.
  - (a) Unless the transferor elects to remain the regulated party under (3)(b):
    - (A) The recipient is now the regulated party who:
      - (i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;
      - (ii) Is responsible for compliance with the clean fuel standard for the fuel under OAR 340-253-0100(6); and
      - (iii) Is eligible to generate credits for the fuel, as applicable.
    - (B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the recipient is now the regulated party.

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(C) The transferor is no longer the regulated party for such fuel, except for maintaining the product transfer documentation under OAR 340-253-0600.

(b) The transferor may elect to remain the regulated party for the transferred fuel. If the transferor elects to remain the regulated party:

(A) The transferor remains the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the transferor remains the regulated party.

(C) The recipient is not the regulated party. ↩

(4) Recipient is a large importer of finished fuels. If a regulated party transfers clear or blended gasoline or diesel to a large importer of finished fuels below the rack, the transferor remains the regulated party who:

(A) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel; and

(B) Is responsible for compliance with the clean fuel standard for such fuel under OAR 340-253-0100(6).

(C) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the transferor remains the regulated party.

(D) The recipient is not the regulated party.

(E) This provision does not apply if the fuel is meant for export.

(5) Recipient is a producer, a small importer of finished fuels or is not an importer. If a regulated party transfers the fuel to a producer, a small importer of finished fuels or a person who is not an importer, the transferor and the recipient have the options and responsibilities under this section.

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(a) Unless the recipient and the transferor agree the recipient is the regulated party under subsection (4)(b):

(A) The transferor remains the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the transferor remains the regulated party.

(C) The recipient is not the regulated party.

(b) The recipient may elect to be the regulated party for the transferred fuel. If the recipient elects to be the regulated party:

(A) The recipient is the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the recipient is now the regulated party.

(C) The transferor is not the regulated party, except for maintaining the product transfer documentation under OAR 340-253-0600.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef.

**This document is provided only for the purposes of soliciting comment and cannot be used for any other purpose. It does not change any existing legal obligations.**

1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0320**

#### **Credit Generators: Compressed Natural Gas, Liquefied Natural Gas, Liquefied Compressed Natural Gas, and Liquefied Petroleum Gas ~~and Renewable Diesel~~**

(1) Applicability. This rule applies to providers of compressed natural gas, liquefied natural gas, liquefied compressed natural gas, and liquefied petroleum gas ~~and renewable diesel~~ for use as a transportation fuel in Oregon.

(2) Compressed natural gas. For CNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil CNG. For fuel that is solely fossil CNG, the person that is eligible to generate credits is the owner of the compressor at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based CNG. For fuel that is solely bio-based CNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil CNG and bio-based CNG. For fuel that is a blend of fossil CNG and bio-based CNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil CNG and bio-based CNG in the blend.

(3) Liquefied natural gas. For LNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil LNG. For fuel that is solely fossil LNG, the person that is eligible to generate credits is the owner of the fueling equipment at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based LNG. For fuel that is solely bio-based LNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil LNG and bio-based LNG. For fuel that is a blend of fossil LNG and bio-based LNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil LNG and bio-based LNG in the blend.

(4) Liquefied compressed natural gas. For L-CNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

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(a) Fossil L-CNG. For fuel that is solely fossil L-CNG, the person that is eligible to generate credits is the owner of the compressor at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based L-CNG. For fuel that is solely bio-based L-CNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil L-CNG and bio-based L-CNG. For fuel that is a blend of fossil L-CNG and bio-based L-CNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil L-CNG and bio-based L-CNG in the blend.

(5) Liquefied petroleum gas. For propane used as a transportation fuel, the person that is eligible to generate credits is the owner of the fueling equipment at the facility where the liquefied petroleum gas is dispensed for use in a motor vehicle.

~~(6) Renewable diesel. For renewable diesel used as a transportation fuel, the person that is eligible to generate credits is the producer or importer of the fuel.~~

~~(7) Responsibilities to generate credits. Any person specified in sections (2) through (65) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.~~

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0330**

#### **Credit Generators: Electricity**

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

(2) For residential charging. For electricity used to charge a motor vehicle in a residence, subsections (a) through (e**b**) determine the person who is eligible to generate credits.

(a) Electric Utility. In order to generate credits for the following year, by October 1 of the current year, an electric utility ~~that is registered or has submitted a complete registration to DEQ under OAR 340-253-0500 may~~ must notify DEQ whether they will generate credits themselves for the following calendar year. or designate an aggregator

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to generate those credits and trade them on behalf of the utility. The utility or its aggregator must have an active registration approved by DEQ under OAR 340-253-0500. If a utility has previously made a designation under this section then that designation will remain in effect for future years unless the utility requests in writing a change to DEQ.

(b) ~~Broker.~~Backstop Aggregator. If an electric utility does not register ~~as the credit generator under subsection (a) or designate an aggregator~~, then ~~a broker may register to generate the~~ credits:

~~(c) Owner of electric-charging equipment. If an electric utility or a broker does not register as~~ will be deemed to the credit generator under subsection (a) or (b), then the owner of the electric-charging equipment may register to generate credits.backstop aggregator in section (6).

(3) For non-residential charging. For electricity used to charge a motor vehicle in non-residential settings, such as at publicly available charging stations, for a fleet, ~~or~~ at a workplace, or at multi-family housing subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Owner or ~~operator~~service provider of electric-charging equipment. By September 1 of the current year, the owner or ~~operator~~service provider of the electric-charging equipment ~~that is registered or has submitted a complete registration to DEQ under OAR 340-253-0500 by September 1 of the current year~~ may generate credits for the following calendar year if the owner or the service provider has an active registration approved by DEQ under OAR 340-253-0500.

(b) Electric utility ~~or its aggregator.~~ If the owner or ~~operator~~service provider of the electric-charging equipment does not register as the credit generator under subsection (a), then an electric utility or an aggregator designated by the utility may generate credits if, by October 1, the ~~electric utility or the aggregator~~ has registered or has submitted a complete an active registration ~~to~~approved by DEQ under OAR 340-253-0500.

(c) ~~Broker.~~Backstop aggregator. If the owner, ~~or operator~~service provider of the electric-charging equipment and the electric utility or a designated aggregator do not register as the credit generator under subsections (a) or (b), then ~~a broker~~the backstop aggregator under section (6) may generate the credits ~~if it~~.

(4) Public Transit. The transit agency operating an electrified public transit system using vehicles on fixed guideways, streetcars, aerial trams, or transit buses that has provided documentation submitted a complete registration to DEQ that it has an agreement with the owner or operator of the electric-charging equipment where electric vehicles are charged with transportation fuel under OAR 340-253-0500 is eligible to generate credits for the fuel supplied to those vehicles. Agencies may also designate an aggregator to act on their behalf.

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(45) Responsibilities to generate credits. Any person specified under sections (2) ~~or~~, (3), or (4) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

(6) Backstop Aggregator. The backstop aggregator serves as the credit generator of electricity credits that were not 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) An organization that meets the criteria to be a backstop aggregator under subsection (b) must submit an application by March 15<sup>th</sup>, 2018 to be selected to be the backstop aggregator for 2018 and beyond.

(b) To qualify 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) Be subject to annual independent financial audits.

(c) The application to be selected to be a backstop aggregator must include the following information:

(A) A general description of how the organization plans to participate in the Clean Fuels Program with special emphasis on how it would use the revenue from credit sales to promote transportation electrification statewide or in the service territories of the utilities for which it is the backstop aggregator. At a minimum that plan must include:

(i) The history of the organization;

(ii) How participation in the program fits into its existing activities and mission;

(iii) The qualifications of its existing staff to implement the plan;

(iv) Its plan for spending revenue from the credit sales in the utility service territories for which it is aggregating credits, which may include incentive programs for purchasing electric vehicles or categories of generic projects such as the installation of public chargers;

(v) How it plans to segregate any funds from credit sales from other monies controlled by the organization, the controls it would place on those funds, and what it believes its cost of administering its proposed plan would be.

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

(d) DEQ will evaluate any applicants based on the applications submitted and recommend a qualified organization to the EQC by May 31, 2018. DEQ reserves the right to not select any of the applicants and conduct another selection process at a later date.

(e) Once selected as a backstop aggregator, the organization must:

(A) Submit annual reports on its activity under the Clean Fuels Program, which must include detailed information on its activities and value provided to the specific utility service territories from which it is aggregating credits;

(B) Submit its most recent annual independent financial audit.

(C) Maintain records as required in OAR 340-253-0600 and provide upon request by DEQ any records relating to its participation in the program, its transportation electrification programs, or its financial records.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15;  
DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-0340**

#### **Credit Generators: Hydrogen Fuel or a Hydrogen Blend**

(1) Applicability. This rule applies to providers of hydrogen fuel and a hydrogen blend for use as a transportation fuel in Oregon.

(2) Credit generation. For a hydrogen fuel or a hydrogen blend, the person who owns the finished hydrogen fuel where the fuel is dispensed for use into a motor vehicle is eligible to generate credits.

(3) Responsibilities to generate credits. Any person specified in section (2) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

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Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## **340-253-0400**

### **Carbon Intensities**

(1) OR-GREET. Regulated parties, credit generators and [brokersaggregators](#) must calculate all carbon intensities using OR-GREET 2.0 or [another](#) model DEQ approves [in advance of an application under OAR 340-253-0450 being submitted](#).

(2) DEQ review of carbon intensities. Every three years, or sooner if DEQ determines that new information becomes available that warrants an earlier review, DEQ will review the carbon intensities used in the Clean Fuels Program and must consider, at a minimum, changes to:

(a) The sources of crude and associated factors that affect emissions such as flaring rates, extraction technologies, capture of fugitive emissions and energy sources;

(b) The sources of natural gas and associated factors that affect emissions such as extraction technologies, capture of fugitive emissions and energy sources;

(c) The statewide mix of electricity used in Oregon;

(d) Fuel economy standards and energy economy ratios;

(e) GREET, OR-GREET, CA-GREET, GTAP, AEZ-EF or OPGEE;

(f) Methods to calculate lifecycle greenhouse gas emissions;

(g) Methods to quantify indirect land use change; and

(h) Methods to quantify other indirect effects.

(3) Statewide carbon intensities.

(a) Regulated parties, credit generators and [brokersaggregators](#) must use the statewide average carbon intensities listed in Tables 3 and 4 under OAR 340-253-8030 and -8040 for the following fuels:

(A) Gasoline;

(B) E10;

(C) Diesel fuel;

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(D) B5;

(E) Fossil CNG;

(F) Fossil LNG;

(G) LPG; and

(H) Electricity, unless an electricity provider meets the conditions under subsection (4)(b) and chooses to obtain a different carbon intensity.

(b) For electricity, credit generators ~~and brokers~~ aggregators may obtain a carbon intensity different from the statewide average if the electricity provider:

(A) Is exempt from the definition of public utility under ORS 757.005 (1)(b)(H), and is not regulated by the Oregon Public Utility Commission; or

(B) Generates lower carbon electricity at the same location as it is dispensed into a vehicle; consistent with the conditions of the approved fuel pathway code.

(4) Carbon intensities for established fuel pathways. Except as provided in sections (3) or (5), regulated parties, credit generators and ~~brokers~~ aggregators can use a carbon intensity that:

(a) The California Air Resources Board has certified for use in the California Low Carbon Fuel ~~Standards~~ Standard program, adjusted for indirect land use change and approved by DEQ as being consistent with OR-GREET 2.0; or

(b) Matches the description of a fuel pathway listed in Table 3 or 4 under OAR 340-253-8030 or -8040.

(5) Primary alternative fuel pathway classifications. If it is not possible to identify an applicable carbon intensity under either section (3) or (4), then the regulated party, credit generator or ~~broker~~ aggregator has the option to develop a primary alternative fuel pathway. Fuel pathways shall fall into one of two tiers:

(a) Tier 1. Conventionally-produced alternative fuels of a type that has been in full commercial production for at least three years; produced using grid electricity, natural gas and/or coal for process energy; and do not ~~include~~ employ innovative production methods. Tier 1 fuels include:

(A) Starch- and sugar-based ethanol;

(B) Biodiesel produced from conventional feedstocks (plant oils, tallow and related animal wastes and used cooking oil);

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(C) Renewable diesel produced from conventional feedstocks (plant oils, tallow and related animal wastes and used cooking oil);

(D) Natural Gas; and

(E) Biomethane from landfill gas.

(b) Tier 2. All fuels not included in Tier 1 including:

(A) Cellulosic alcohols;

(B) Biomethane from sources other than landfill gas;

(C) Hydrogen;

(D) Renewable hydrocarbons other than renewable diesel produced from conventional feedstocks; ~~and~~

(E) Biogenic feedstocks co-processed at a petroleum refinery; and

(F) Tier 1 fuels using innovative methods or any other transportation fuel not included in the list of Tier 1 fuels.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

**340-253-0450**

### **Obtaining a Carbon Intensity**

(1) Out-of-state producers that are not a regulated party, credit generator or ~~broker~~aggregator can apply to obtain a carbon intensity by following the approval process to use a carbon intensity listed in OAR 340-253-0500(3).

(2) Applicants seeking approval to use a carbon intensity that is ~~approved by the California Air Resources Board must submit a link to the CARB-approved fuel pathway.~~currently approved by the California Air Resources Board must provide the CARB review report for the approved fuel pathway and upon request by DEQ provide the application package or any other supporting materials relating to the pathway. If the applicant is seeking to use provisional pathway that has been approved by the California Air Resources Board they must submit the same ongoing documentation to DEQ as is required to the California Air Resources Board and must inform DEQ within one week

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of any changes to the status of their CARB-approved provisional pathway. Failure to do so will result in the deactivation of the provisional fuel pathway code by DEQ.

(3) If it is not possible to identify an applicable carbon intensity under section (2) or (4), then an applicant can seek approval to use a carbon intensity that is listed in Table 3 or 4 under OAR 340-253-8030 or -8040. An applicant must propose to use the carbon intensity with the fuel pathway description that best meets the fuel pathway for the fuel.

~~(4)~~ (4) The producer of any fuel that has received a CI score under sections (1), (2), or (3) must register with the Alternative Fuel Registration System and provide proof through a physical pathway demonstration that the fuel has been transported to Oregon in the quarter in which the fuel is first being reporting in the CFP Online System. This section does not apply to electricity or fossil natural gas pathways.

(5) Temporary Fuel Pathway Codes for Fuels with Indeterminate CIs. A regulated party or credit generator that has purchased a fuel but is unable to determine its carbon intensity or the fuel has an indeterminate value must, in the case of a regulated party, or may, in the case of a credit generator, petition DEQ for permission to use a temporary fuel pathway code for reporting purposes. The petition will only be timely if it is submitted within six weeks of the end of the calendar quarter for which the applicant is seeking to use a temporary fuel pathway code.

(a) To be assigned a temporary fuel pathway code the regulated party or credit generator must show that:

(A) The production facility cannot be identified; or

(B) The production facility is known but there is no approved fuel pathway code application.

(b) Based on the above showing, DEQ may grant a regulated party or credit generator permission to use a temporary fuel pathway code in Table 9 under OAR 340-253-8090.

(c) Credits and deficits may be generated from the use of the temporary fuel pathway code subject to the normal quarterly reporting provisions.

(d) Approval to use a temporary fuel pathway code may only be given for one or two quarters, at the discretion of DEQ. If granted, it will only be applicable for the quarter for which it was applied for and, if allowed, the following quarter.

(6) Applicants seeking to obtain a carbon intensity using either the Tier 1 or Tier 2 calculator must submit the following information:

(a) Company name and full mailing address.

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(b) Company contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address and website URL.

(c) Facility name (or names if more than one facility is covered by the application).

(d) Facility address (or addresses if more than one facility is covered by the application).

(e) Facility ID for facilities covered by the RFS program.

(f) Facility geographical coordinates (for each facility covered by the application).

(g) Facility contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number and email address.

(h) Facility nameplate production capacity in million gallons per year (for each facility covered by the application).

(i) Consultant's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address and website URL.

(j) Declaration whether the applicant is applying for a carbon intensity using either the Tier 1 or Tier 2 calculator.

| ~~(57)~~ In addition to the items in section (4), applicants seeking to obtain a carbon intensity using the Tier 1 calculator must submit the following:

(a) The Tier 1 calculator with the "T1 Calculator" tab completed;

(b) A summary of invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases and all co-products sold for the previous two years; and

(c) RFS third party engineering report, if available.

| ~~(68)~~ In addition to the items in section (4), applicants seeking to obtain a carbon intensity using the Tier 2 calculator must submit the following:

(a) A summary of invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases and all co-products sold for the previous two years;

(b) The geographical coordinates of the fuel production facility;

(c) A copy of the Tier 2 spreadsheet;

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- (d) Process flow diagrams that depict the complete fuel production process;
- (e) Applicable air permits issued for the facility;
- (f) A copy of the RFS third party engineering report, if available;
- (g) A copy of the RFS fuel producer co-products report; and
- (h) A lifecycle analysis report that describes the fuel pathway and describes in detail the calculation of carbon intensity for the fuel. The report shall contain sufficient detail to allow staff to replicate the carbon intensity the applicant calculated. The applicant must describe all inputs to, and outputs from, the fuel production process that are part of the fuel pathway.

(79) Applicants seeking a provisional carbon intensity.

(a) Applicants that are seeking to obtain a carbon intensity for a fuel production facility that has not been in full commercial operation for two years may seek a provisional carbon intensity. Applicants may request a provisional carbon intensity for Tier 1 and Tier 2 facilities provided they have been in full commercial production for at least one full calendar quarter. The applicant shall submit operating records covering all prior periods of full commercial operation, provided those records cover at least one full calendar quarter. DEQ will use the approval process described in sections (1) through (68) of this rule, as applicable.

(b) After DEQ approves the provisional carbon intensity, the applicants shall submit copies of receipts for all energy purchases each calendar quarter until two full calendar years of commercial production receipts are submitted. Based on timely reports, the applicant may generate provisional credits. At any time during the two year period, DEQ may revise as appropriate the operational carbon intensity based on the receipts submitted.

(c) If, after a plant has been in full commercial production for more than two years, the facility's operational carbon intensity is higher than the provisionally-certified carbon intensity, DEQ will replace the certified carbon intensity with the operational carbon intensity in the CFP Online System and adjust the credit balance accordingly.

(d) If the facility's operational carbon intensity appears to be lower than the certified carbon intensity, DEQ will take no action. The applicant may, however, petition DEQ for a provisional carbon intensity reduction to reflect operational data. In support of such a petition, the applicant must submit a revised application packet that fully documents the requested reduction. ~~(10) Recertified CARB fuel pathways. Beginning on January 1, 2016, CARB will recalculate carbon intensities as it transitions from CA-GREET 1.8 to CA-GREET 2.0.~~

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~~(a) For applicants that rely on CARB-approved fuel pathways to be used in Oregon, no additional information will be required. DEQ will confirm that the CARB fuel pathways are consistent with OR GREET 2.0 after they are recertified by CARB and will update the CFP Online System to reflect the updated fuel pathways. The effective dates for the recertified fuel pathways will be identical to those approved by CARB, once approved by DEQ.~~

~~(b) Fuel pathways that are not recertified or that are not approved by DEQ will be removed from the CFP Online System on December 31, 2016.~~

(10) Additional requirements for applicants employing co-processing at a petroleum refinery. In addition to submitting a Tier 2 calculator and the information required above under (6) and (8), applicants seeking to obtain a Fuel Pathway Code for renewable diesel or gasoline produced through co-processing at a petroleum refinery must submit the quantity of biogenic feedstocks to be processed at the refinery under the fuel pathway code and a detailed methodology for the attribution of biogenic feedstocks to renewable streams produced by the refinery and the corresponding carbon-intensity scores for renewable fuels produced from these biogenic feedstocks.

(a) This methodology will be subject to separate verification and approval by DEQ, and may be modified at the agency's discretion based on ongoing quarterly reporting of production data at that refinery. DEQ may also require the applicant to use a different methodology.

(b) Any fuel pathway code for renewable fuels co-processed at a refinery will include as a condition that the quantities of biogenic feedstocks and the amount of energy and hydrogen used at the refinery versus the refinery's baseline be reported on a quarterly basis for at least two years. Based on that reporting the agency may choose to revise the carbon-intensity score similar to the process in (9). The agency may extend the period where quarterly reporting is required at its own discretion.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### 340-253-0470

#### Carbon Intensity of Electricity

(1) Starting in 2018, both the statewide mix carbon-intensity score and any utility-specific scores will be based on a rolling five-year average for the applicable electricity-related emissions based on information submitted to DEQ under OAR 340-215.

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(a) Statewide mix. No later than December 31<sup>st</sup>, DEQ will post the updated electricity mix CI score for the next year.

(b) Utility-specific scores. Utilities able to register a specific carbon-intensity score may do so by indicating that they wish to have a utility-specific score generated for them on their application form to register for the program, or in writing to DEQ. DEQ will generate utility-specific carbon-intensity scores for those utilities through the data they report to DEQ under OAR 340-215. A utility that does not wish to continue receiving a utility-specific score may request, prior to the start of a new year, to not have a score generated for them for that new year.

## **340-253-0500**

### **Registration**

(1) Registration information. To register, regulated parties, credit generators and ~~brokers~~must aggregators must submit a registration application containing the following information to DEQ:

(a) Company identification, including physical and mailing addresses, phone numbers, e-mail addresses, and contact names;

(b) The status of the registrant as a producer, importer of blendstocks, small importer of finished fuels, large importer of finished fuels, credit generator or ~~broker~~aggregator;

(c) For each transportation fuel that will be produced, imported, dispensed, or used in Oregon:

(A) If the fuel has a statewide carbon intensity under OAR 340-253-0400(3) or has a CARB-approved fuel pathway, no fuel-specific information is required.

(B) If the fuel does not have a CARB-approved fuel pathway, the proposed carbon intensity, the documentation for the proposal (Tier 1 or Tier 2 calculator, OR\_GREET 2.0 or default value from OAR 340-253-8030 or -8040) and the physical transport mode.

(C) An estimate for the annual volume of fuels to be supplied to Oregon under (A) and (B).

(d) Other information requested by DEQ related to registration.

~~(2) Completeness determination process.~~

~~(a) For applications using carbon intensities that are either (i) CARB approved fuel pathways, (ii) listed in Table 3 or 4 under OAR 340-253-8030 or -8040, or (iii)~~

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~~calculated using the Tier 1 calculator, DEQ will determine whether the proposal is complete within 14 calendar days after receiving a registration application.~~

~~(b) If DEQ determines the proposal is complete, DEQ will notify the applicant in writing of the completeness determination.~~

~~(c) If DEQ determines the proposal is incomplete, DEQ will notify the applicant of the deficiencies. The applicant has 30 calendar days to address the deficiencies or DEQ will deny the application.~~

~~(d) If the applicant submits supplemental information, DEQ has 30 calendar days to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies. This process may repeat until the application is deemed complete or 180 calendar days have elapsed from the date that the applicant first submitted the registration application.~~

~~(3)(2)~~ Approval process to use carbon intensities.

(a) For applications proposing to use CARB-approved fuel pathways, DEQ will confirm that CARB approved the proposed fuel pathway and that it is consistent with OR-GREET 2.0. DEQ shall approve the registration application within 14 calendar days ~~after the completeness determination.~~

~~(b)~~ (b) For applications proposing to use a CARB-approved fuel pathway where delivery of the fuel to Oregon would increase the carbon intensity score by at least 10% or 5g CO<sub>2</sub>e/MJ threshold, the applicant must submit a both the original CARB-approved Tier 1 or Tier 2 CA-GREET calculator and review report and a modified version of the calculator that accounts for the difference.

~~(c)~~ (c) For applications proposing to use a carbon intensity listed in Table 3 or 4 under OAR 340-253-8030 or -8040, DEQ will confirm that the fuel's proposed fuel pathway meets the general description of the fuel pathway in the tables and is within 5 gCO<sub>2</sub>e/MJ or 10 percent of the listed carbon intensity. ~~DEQ shall approve the registration application within 14 calendar days after the completeness determination.~~

~~(d)~~ (d) For applications proposing to use the Tier 1 calculator, DEQ will confirm that the Tier 1 calculator and the supporting documentation are accurate. ~~DEQ shall approve the registration application within 14 calendar days after the completeness determination.~~

~~(e)~~ (e) For applications proposing to use the Tier 2 calculator, DEQ will review the proposed carbon intensity as follows:

(A) Once a proposal is deemed complete, DEQ will determine whether the requirements for approval have been met according to the following criteria:

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(i) Replication of the Tier 2 calculator outputs, using the modifications contained in the application;

(ii) Verification of the energy consumption inputs; and

(iii) Evaluation of the validity of the remaining inputs.

(B) Once DEQ has approved the carbon intensity, DEQ will notify the applicant of its determination. DEQ will confirm the determination through the registration approval process. (C) If DEQ determines the proposal for the carbon intensity has not met the criteria in subsection (A), DEQ will notify the applicant that the proposal is denied and identify the basis for the denial.

(f) DEQ may impose additional conditions on any approval of an application that the fuel producer must meet in order for the approved fuel pathway code to remain valid and active. Those conditions include may include special limitations, recordkeeping and reporting requirements, or operational conditions that DEQ determines should apply to assure the ongoing validity of the carbon intensity. Failure to meet those conditions may result in the application's approval being revoked at the discretion of DEQ.

(4) Registering as a user in the CFP Online System. After DEQ provides written approval of the registration application, the regulated party, credit generator or ~~broker~~[aggregator](#) must establish an account in the CFP Online System.

(5) Modifications to the registration.

(a) The registrant must submit an amended registration to DEQ within 30 days of any change occurring to information described in section (1).

(b) DEQ may require a registrant to submit an amended registration based on new information DEQ receives.

(c) If a registrant amends its registration under this section, the registrant must also update the registrant's account in the CFP Online System to accurately reflect the amended information, as appropriate.

(6) Cancellation of the registration.

(a) If a regulated party no longer meets the applicability of the program under OAR 340-253-0100(1), then it must notify DEQ of such change.

(b) If a credit generator or ~~broker~~[aggregator](#) wishes to voluntarily opt-out of the Clean Fuels Program, the credit generator or ~~broker~~[aggregator](#) must provide a 90-day notice of intent to opt out of the Clean Fuels Program and a proposed effective date for the completion of the opt-out process.

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(c) The regulated party, credit generator or ~~broker~~[broker aggregator](#) must submit any outstanding quarterly progress reports and an annual compliance report. Any credits that remain shall be forfeited and the account in the CFP Online System shall be closed.

(d) Once DEQ determines that the above actions are complete, DEQ will notify the registrant in writing of the cancellation of its registration.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

**340-253-0600**

## **Records**

(1) Records Retention. Regulated parties, credit generators and ~~brokers~~[broker aggregators](#) must retain the following records for at least 5 years:

- (a) Product transfer documents as described in section (2);
- (b) Records related to obtaining a carbon intensity described in OAR 340-253-0450;
- (c) Copies of all data and reports submitted to DEQ;
- (d) Records related to each fuel transaction; and
- (e) Records used for compliance or credit calculations.

(2) Documenting Fuel Transactions. A product transfer document must prominently state the information specified below.

- (a) Transferor company name, address and contact information;
- (b) Recipient company name, address and contact information;
- (c) Transaction date;
- (d) Fuel pathway code;
- (e) Carbon intensity;
- (f) Volume/amount;

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(g) A statement identifying whether the transferor or the recipient has the compliance obligation; and

(h) The EPA fuel production company ID and facility ID as registered with the RFS program.

(3) For transactions of clear and blended gasoline and diesel below the rack, only subsections (a), (b), (c), (f), and (g) under section (2) are required unless the fuel is destined for export.

(4) Documenting credit transactions. Regulated parties, credit generators, and aggregators must retain the following records for at least 5 years:

(a) The contract under which the credits were transferred;

(b) Documentation on any other commodity trades or contracts between the two parties conducting the transfer that are related to the credit transfer or transfers in any way;

(c) Any other records relating to the credit transaction, including the records of the financial transaction or transactions.

(4) Review. All data, records, and calculations used by a regulated party, a credit generator or ~~a broker~~ an aggregator to comply with the Oregon Clean Fuels Program or transfer credits within the program's market are subject to inspection and verification by DEQ. Regulated parties, credit generators and ~~brokers~~ aggregators must provide records retained under section (1) within 60 calendar days after the date DEQ requests a review of the records, unless DEQ specifies otherwise.

(5) Initial 2016 Inventory. All regulated fuels held in bulk storage in the state on January 1, 2016 are subject to the program and must be reported as the initial inventory of fuels by regulated parties.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

**340-253-0620**

### **CFP Online System**

(1) Online reporting.

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(a) Except as provided in subsection (b), regulated parties, credit generators and ~~brokers~~aggregators must use the CFP Online System to submit all required reports, including quarterly progress reports under OAR 340-253-0630 and annual compliance reports under OAR 340-253-0650.

(b) Small importers of finished fuels may submit annual compliance reports using the EZ-Fuels Online Reporting Tool for Fuel Distributors in lieu of using the CFP Online System.

(2) Credit transactions. Regulated parties, credit generators and ~~brokers~~must aggregators must use the CFP Online System to transact credits.

(3) Establishing an account. After DEQ approves a registration application, the regulated party, credit generator or ~~broker~~aggregator must establish an account in the CFP Online System and must include the following information to register as a user in the CFP Online System:

(a) Business name, address, state and county, date and place of incorporation and FEIN;

(b) The name of the person who will be the primary contact, and that person's business and mobile phone numbers, email address, CFP Online System username and password;

(c) Name and title of a person who will act as the Administrator for the account;

(d) Optionally the name and title of one or more persons who will be Contributors on the account, ~~optional~~;

(e) Optionally the name and title of one or more persons who will be Reviewers on the account, ~~optional~~; and

(f) Any other information DEQ may require in the CFP Online System.

(4) Account management roles.

(a) ~~Administrator:~~Administrators are:

(A) Authorized to sign for the account;

(B) Responsible for submitting quarterly progress and annual compliance reports;

(C) Makes changes to the company profile; and

(D) May designate other persons who can review and upload data, but not submit reports.

(b) ~~Contributor:~~Contributors are:

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(A) Authorized to submit quarterly progress and annual compliance reports, if given signature authority; but

(B) Cannot make changes to the account profile.

(c) ~~Reviewer:~~Reviewers are:

(A) Provided read-only access; but

(B) Cannot submit quarterly progress and annual compliance reports.

(d) Credit Facilitators are:

(A) Authorized to initiate and complete credit transfers on behalf of the registered party;

(B) Add postings to the CFP Online System's "Buy/Sell Board";

(C) Provided read-only access to quarterly and annual reports.

(5) Signature. ~~The~~An Administrator or a Contributor authorized by the registered party to sign reports on its behalf must sign each report to certify that the submitted information is true, accurate and complete.

(6) Information exempt from disclosure. Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to DEQ is subject to inspection upon request by any person unless such information is determined to be exempt from disclosure under the Oregon public records law, ORS 192.410 through 192.505, or other applicable Oregon law.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

**340-253-0630**

### **Quarterly Progress Reports**

(1) Quarterly progress reports. Except for persons exempt from this requirement under OAR 340-253-0100, regulated parties, credit generators and ~~brokers~~ aggregators must submit a quarterly progress report using the CFP Online System by:

(a) June 30 — for January through March of each year;

(b) September 30 — for April through June of each year;

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(c) December 31 — for July through September of each year; and

(d) March 31 — for October through December of each previous year.

(2) General reporting requirements for quarterly progress reports.

(a) Quarterly progress reports must contain the information specified in Table 5 under OAR 340-253-8050 for each transportation fuel subject to the Clean Fuels Program.

(b) Reporters must upload the data for the quarterly reports in the CFP Online System within the first 45 days after the end of the quarter.

(c) During the second 45 days, reporters must work with each other to resolve any fuel transaction discrepancies between different reporters' reported transactions.

(3) Conditions of submitting a quarterly report. In order to submit a quarterly report, a registered party must agree to the following statement:

“I, [Name of real person], as person with Signatory Authority, am submitting this report on behalf of [Company Name], with the understanding that the information contained in this report is considered an official submission to Oregon Department of Environmental Quality for purposes of compliance with the Clean Fuels Program (CFP) regulation. Furthermore, by submitting this report, I understand that I am bound by, and authenticate this record, and attest to the statements contained within. I also understand that submitting or attesting to false statements may constitute a serious crime, punishable under the Oregon Penal Code, or other criminal offenses punishable under state, municipal, or federal law. I certify that information supplied herein is correct and that I have the authority by the company identified herein to submit this report. As a condition of participating in the program, I acknowledge that credits are regulatory instruments that do not constitute personal property, instruments, securities or any other form of property, per OAR 340-253-1050(1)(a). Credits and deficit calculations are subject to the provisions of the OAR 340-253-0670, which DEQ may use to correct errors should a regulated party or credit generator not do so themselves, place holds on credits and/or accounts as part of an inquiry, and invalidate credits or fuel pathway codes that were illegitimately generated or otherwise created in error. Credits and accounts may be placed on hold at the discretion of the agency while an inquiry is underway. Suspension, revocation, and/or modification actions may be contested pursuant to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700.”

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. ~~1-1-16~~

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## 340-253-0640

### Specific Requirements for Quarterly Reporting

(1) Any reporter that is generating credits by importing or producing natural gas (including CNG, LNG and L-CNG) must report:

(a) For CNG and L-CNG, the amount of fuel (in therms) dispensed per reporting period for all LDV and MDV, HDV-CIE and HDV-SIE. To convert pounds OF CNG to SCF use the formula below:

$$100 \text{ lbs CNG} \times \text{SCF} 20.4 \text{ grams} \times 453.59 \text{ grams/lb} = 22.23 \text{ SCF}$$

(b) For LNG, the amount of fuel dispensed (in gal) per compliance period for all LDV and MDV, HDV-CIE and HDV-SIE.

(c) For CNG, L-CNG and LNG, the carbon intensity as listed in Table 3 or 4 under OAR 340-253-8030 or -8040.

(d) For bio-CNG, bio-LNG and bio-L-CNG, the carbon intensity as approved under OAR 340-253-0500 and the EPA production company ID and facility ID.

(2) Any reporter that is generating credits by providing electricity used as a transportation fuel must report the following:

(a) The information specified for electricity in Table 5 under OAR 340-253-8050;

(b) The carbon intensity of the electricity as listed in Table 3 or 4 under OAR 340-253-8030 or -8040 or as approved under OAR 340-253-0500; and

(c) For residential charging, the total electricity dispensed (in kWh) 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 will develop a methodology to estimate the total electricity dispensed as a transportation fuel that is based on an estimate of:

(i) The total number of BEVs and PHEVs in a utility's service territory based on Oregon Department of Motor Vehicles records; and

(ii) An estimate of the amount of electricity the BEVs and PHEVs will consume in a year that DEQ finds is appropriate.

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(C) A credit generator or aggregator may apply to use an alternative method that the credit generator or aggregator demonstrates is substantially similar to the use of direct metering, subject to the approval of DEQ.

(D) Credits generated under this subsection will be calculated and issued by DEQ once per compliance year.

(d) For each public access charging facility, fleet charging facility, workplace private access charging facility, or multi-family dwelling, the amount of electricity dispensed (in kWh) to vehicles.

(e) For each public transit agency, the amount of electricity dispensed to or consumed by vehicles used for public transportation (in kWh). The report must be:

(A) Separated by fixed guideway, streetcars, aerial tram, or electric transit buses; and

(B) Separated by electricity used in portions of their system placed in service before and after January 1<sup>st</sup>, 2012.

(3) Any reporter that is generating credits from renewable diesel or gasoline co-processed at a petroleum refinery must report:

(a) If the reporter is also the producer, it must be in compliance with the condition required under OAR 340-253-0450 (10) (b) unless the applicable reporting period has passed. If the reporter is not in compliance DEQ may require the reporter to report the volume of fuel under a temporary fuel pathway code or the fuel pathway code for clear gasoline or diesel, as applicable.

(b) If the reporter is not the producer, and the producer has not met its obligations under OAR 340-253-0450 (10) (b), DEQ may require the reporter to report the volume of fuel under a temporary fuel pathway code or the fuel pathway code for clear gasoline or diesel, as applicable.

**340-253-0650**

### **Annual Compliance Reports**

(1) Annual compliance reports.

(a) Except as providing in subsection (b), regulated parties, credit generators and ~~brokers~~ aggregators must use the CFP Online System to submit an annual compliance report to DEQ not later than April 30 for the compliance period ending on December 31 of the previous year.

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(b) Small importers of finished fuels may submit annual compliance reports using the EZ-Fuels Online Reporting Tool for Fuel Distributors under OAR 340 division 215, in lieu of using the CFP Online System, not later than March 31 for the compliance period ending on December 31 of the previous year.

(2) General reporting requirements for annual compliance reports. Regulated parties, credit generators and ~~brokers~~[aggregators](#) must submit annual compliance reports that meet, at minimum, the general and specific requirements for quarterly progress reports and include the following information:

(a) The total credits and deficits generated by the regulated party, credit generator or ~~broker~~[aggregator](#) in the current compliance period, calculated in the CFP Online System as per equations in OAR 340-253-1020;

(b) Any credits carried over from the previous compliance period;

(c) Any deficits carried over from the previous compliance period;

(d) The total credits acquired from other regulated parties, credit generators and ~~brokers~~[aggregators](#);

(e) The total credits sold or otherwise transferred; and

(f) The total credits retired within the CFP Online System to meet the compliance obligation.

(3) All pending credit transfers initiated during a compliance period must be completed prior to submittal of the annual compliance report.

(4) Correcting a previously submitted report. A regulated party, credit generator or ~~broker~~[aggregator](#) may ask DEQ to re-open a previously submitted quarterly progress or annual compliance report for corrective edits and re-submittal. The requestor must submit an “Unlock Report Request Form” using the CFP Online System. The requestor is required to provide justification for the report corrections and must indicate the specific corrections to be made to the report. Each submitted request is subject to DEQ approval. DEQ approval of a corrected report does not preclude DEQ enforcement based on misreporting.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

[OAR 340-253-0670](#)

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### Authority to Suspend, Revoke, or Modify

(1) If DEQ determines that any basis for invalidation set forth in section (2)(a) below occurred, in addition to any enforcement action, the agency may: suspend, restrict, modify, or revoke an account in the CFP Online System; modify or delete an approved carbon-intensity score; restrict, suspend, or invalidate credits; or recalculate the deficits in a regulated party's CFP Online System account. For the purposes of this section an approved carbon-intensity score refers both to those approved by DEQ under 340-253-0450 or that are approved by DEQ under 340-253-0400 (4)(a).

(2) DEQ may modify or delete an approved carbon-intensity score and invalidate credits or deficits based on any of the following:

(a) Any of the information used to generate or support the approved carbon-intensity score was incorrect, including if material information was omitted or the processed changed following the submission of the score;

(b) Any material information submitted in connection with the approved carbon intensity score or a credit transaction was incorrect;

(c) Fuel reported under a given pathway was produced or transported in a manner that varies in any way from the methods set forth in any corresponding pathway application documents submitted under OAR 340-253-0400 and OAR 340-253-0450;

(d) Fuel transaction or other data reported into the CFP Online System and used to calculate credits and deficits was incorrect or omitted material information;

(e) Credits or deficits were generated or transferred in violation of any provision of this division or in violation of other laws, statutes, or regulations; and

(f) A party obligated to provide records under this division refused to provide such records or failed to do so within the required timeframe.

(g) For the purposes of this section, "material information" means:

(A) Information that would affect by any amount DEQ's determination of the carbon-intensity score, expressed in a gCO<sub>2</sub>e/MJ basis to two decimal places, or

(B) Information that would affect by any whole integer the number of credits or deficits generated under OAR 340-253-1000 through OAR 340-253-1050.

(3) Notice. Upon making an initial determination that a credit calculation (excepting provisional credits), deficit calculation, or an approved carbon-intensity score (excepting provisional carbon-intensity scores) may be subject to modification, deletion, recalculation, or invalidation under section (2) above, DEQ will notify all potentially affected parties, including those who hold credits or deficits generated based

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on the approved carbon-intensity score that may be invalidated, and may notify any linked program. The notice shall state the reason for the initial determination, and may be distributed over email or through the CFP Online System. Any party receiving the notice may submit, within 20 calendar days, any information it wants DEQ to consider. DEQ may request information or documentation from any party likely to have information or records relevant to the validity of a credit or deficit calculation, or an approved carbon-intensity score. Within 20 days of any such request, the regulated party, credit generator, or aggregator shall make records and personnel available to assist DEQ in determining the validity of the credit or deficit calculation, or an approved carbon-intensity score.

(4) Interim Account Suspension. When DEQ makes an initial determination under the previous section, it may immediately take steps to suspend an account or an approved carbon-intensity score as needed in order to prevent the additional accrual of credits or deficits under the approved carbon-intensity score and to prevent the transfer of potentially invalid credits or deficits. Suspension of an account may include locking that account within the CFP Online system to prevent credit transactions or alterations to quarterly or annual reports.

(5) Final determination. Within 50 calendar days after making an initial determination under sections (2) and (3) above, the DEQ shall make a final determination based on the available information whether, in the agency's judgment, any of the bases for invalidation in section (2) exist, and notify affected parties and any linked program. If the final determination invalidates credits or deficit calculations, the corresponding credits and deficits will be added or subtracted from the appropriate accounts in the CFP Online System. The final determination will contain an opportunity for an affected regulated party, credit generator, or aggregator to elect to contest it by providing a written request for a hearing within 20 calendar days. The hearing will be conducted as a contested case hearing under ORS 183.413 through 183.470 and OAR 340-011. Any suspension of accounts, carbon-intensity scores, or holds on quarterly or annual reports put in place under section (3) will remain in place pending the outcome of the contested case for the regulated party, credit generator, or aggregator that requested the hearing and for any others whose accounts would be affected pending the outcome of the case.

(6) Responsibility for invalidated credits or miscalculated deficits. Any party that generated, previously held, or holds invalidated credits or whose account reflects an invalid deficit calculation is responsible for returning its account to compliance without regard to fault.

**340-253-1000**

## **Credit and Deficit Basics**

(1) Carbon intensities.

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(a) Except as provided in subsections (b) or (c), when calculating carbon intensities, regulated parties, credit generators and ~~brokers~~ [aggregators](#) must:

(A) Use a carbon intensity approved by DEQ under OAR 340-253-0500(3); and

(B) Express the carbon intensity to the same number of significant figures as shown in Table 3 or 4 under OAR 340-253-8030 or -8040.

(b) If a regulated party, credit generator or ~~broker~~[aggregator](#) has an approved provisional carbon intensity approved under OAR 340-253-0450(8), the regulated party, credit generator or ~~broker~~[aggregator](#) must use the provisional carbon intensity DEQ approved.

(c) If a regulated party, credit generator, or aggregator has an approved temporary CI under OAR 340-253-0450(4) for a fuel then they must use that temporary CI, subject to the conditions of the approval for that temporary CI.

(2) Fuel quantities. Regulated parties, credit generators and ~~brokers~~ [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 that the initial compliance period is January 1, 2016, through December 31, 2017.

(4) Metric tons of CO<sub>2</sub> equivalent. Regulated parties, credit generators and ~~brokers~~ [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, dispensed or used in Oregon, as applicable, and the carbon intensity of the fuel approved under OAR 340-253-0500(3) is less 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 340-253-8020. Credits are only generated and recognized by DEQ and available for compliance or trading upon the submission of a valid and accurate quarterly report. Credit generation is also subject to the applicable requirements of OAR 340-253-1050.

(b) Deficit generation. A clean fuel deficit is generated when fuel is produced, imported, dispensed or used in Oregon, as applicable, and the carbon intensity of the fuel approved under OAR 340-253-0500(3) 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 340-253-8020.

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(c) Banking deficits and credits. Upon submission and acceptance of a timely quarterly progress report, the total number of deficits and credits generated will be placed in the CFP Online System account of the regulated party, credit generator or ~~broker~~aggregator.

(d) Once banked, regulated parties, credit generators and ~~brokers~~ aggregators may retain credits indefinitely, retire them to meet a compliance obligation, or transfer them to another regulated party, credit generator, or ~~broker~~aggregator.

(e) No credits may be generated or claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has ~~passed~~Stat. passed, unless the credits are being generated for residential charging of electric vehicles or under an alternative methodology for a credit-generating transportation fuel which has been approved by DEQ. ~~Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3~~

~~Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15;  
DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16~~

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15;  
DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## **340-253-1010**

### **Fuels to Include in Credit and Deficit Calculation**

(1) Fuels included. Credits and deficits must be calculated for all regulated fuels and clean fuels except that:

(a) Credits may be generated only for biodiesel blends (B6 through B20) that can comply with an oxidation stability induction period of not less than 20 hours as determined by the test method described in the European standard EN 15751;

(b) Credits may be generated only for B100 that can comply with an oxidation stability induction period of not less than 8 hours as determined by the test method described in the European standard EN 15751; ~~and~~

(c) Biodiesel blends and biodiesel that do not comply with subsections (a) or (b) can still be imported into Oregon and must be reported, but cannot generate credits for the Clean Fuels Program.

(2) Fuels exempted. Except as provided in section (3), credits and deficits may not be calculated for fuels: exempted under OAR 340-253-0250.

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~~(a) Exported outside Oregon; or~~

~~(b) Exempt under OAR 340-253-0250.~~

(3) Voluntary inclusion. A regulated party, credit generator, or ~~broker~~ aggregator may choose to include in its credits and deficits calculations fuel that is exempt under OAR 340-253-0250(1) and fuel that is sold to an exempt fuel user in Oregon under 340-253-0250(2), provided that the credit and deficit calculation includes all fuel listed on the same delivery invoice.

(4) Fuels that are exported from Oregon. Any fuel that is exported must be reported by regulated parties. Exported fuels will not incur compliance obligations or generate credits, unless the exporter has purchased the fuel without obligation. If the exporter has purchased the fuel without obligation in Oregon then the export will incur credits or deficits as appropriate to balance out the deficits or credits detached from the fuel by the entity that initially sold the fuel without obligation inside of Oregon.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15;

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## **340-253-1020**

### **Calculating Credits and Deficits**

Regulated parties, credit generators and ~~brokers~~ aggregator must calculate credits or deficits for each fuel included under 340-253-1010 by:

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

(2) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8060;

(3) 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 340-253-8070 or -8080, as applicable;

(4) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity as approved under OAR 340-253-0500(3) 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 340-253-8020, as applicable;

(5) 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);

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

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

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15;

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-1030**

#### **Demonstrating Compliance**

(1) Compliance demonstration. Each regulated party must meet its compliance obligation for the compliance period by demonstrating via its annual compliance report that it possessed and has retired a number of credits from its credit account that is equal to its compliance obligation calculated under section (2). [Regulated parties who do not meet their compliance obligation by retiring a sufficient number of credits in the annual report to equal their obligation, or their remaining obligation after carrying forward a small deficit under \(4\), may still be found in compliance if they enter and the Credit Clearance Market under OAR 340-253-1040.](#)

(2) Calculation of compliance obligation. A regulated party's compliance obligation is the sum of deficits generated in the compliance period plus deficits carried over from the prior compliance period, represented in the following equation:

$$\textit{Compliance Obligation} = \textit{Deficits Generated} + \textit{Deficits Carried Over}$$

(3) Calculation of credit balance.

(a) Definitions. For the purpose of this section:

(A) Deficits Generated are the total deficits generated by the regulated party for the current compliance period;

(B) Deficits Carried Over are the total deficits carried over by the regulated party from the previous compliance period;

(C) Credits Generated are the total credits generated by the regulated party in the current compliance period;

(D) Credits Acquired are the total credits acquired by the regulated party in the current compliance period from other regulated parties, credit generators and ~~broker~~[aggregators](#), including carryback credits;

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(E) Credits Carried Over are the total credits carried over by the regulated party from the previous compliance period;

(F) Credits Retired are the total credits retired by the regulated party within the CFP Online System for the current compliance period;

(G) Credits Sold are the total credits sold by, or otherwise transferred from, the regulated party in the current compliance period to other regulated parties, credit generators and ~~brokers~~[aggregators](#); and

(H) Credits on Hold are the total credits placed on hold due to enforcement or an administrative action. While on hold, these credits cannot be used for meeting the regulated party's compliance obligation.

(b) A regulated party's credit balance is calculated using the following equation:

$$\begin{aligned} \text{Credit Balance} &= (\text{Credits Gen} + \text{Credits Acquired} + \text{Credits Carried Over}) \\ &- (\text{Credits Retired} + \text{Credits Sold} + \text{Credits on Hold}) \end{aligned}$$

(4) Small deficits. At the end of a compliance period, a regulated party that has a net deficit balance may carry forward a small deficit to the next compliance period without penalty if the regulated party does not have any credits to offset its deficits. A small deficit exists if the amount of credits the regulated party needs to meet its compliance obligation is ~~5~~<sup>10</sup> percent or less than the total amount of deficits the regulated party generated for the compliance period.

(5) Extended credit acquisition period. A regulated party may acquire carryback credits between January 1st and March 31st to be used for meeting its compliance obligation for the prior compliance period. A regulated party must initiate all carryback credit transfers in the CFP Online System by March 31st and complete them by April 15th to be valid for meeting the compliance obligation for the prior compliance period.

(6) Extended compliance period for large importers of finished fuels. If a large importer of finished fuels cannot meet its compliance obligation for a compliance period, it can choose to carry over its deficit balance to the following compliance period. Deficits accrued in 2016 and 2017 may be carried over to 2018 when compliance with the aggregate deficit balance must be met.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15;  
DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-~~16~~<sup>16</sup>

[340-253-1040](tel:340-253-1040)

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### Credit Clearance Market

(1) If a regulated party did not retire sufficient credits to meet its compliance obligation under OAR 340-253-1030, exclusive of any deficits carried forward to the next compliance period under 1030 (4), it must enter and purchase its pro-rata share of credits in the Clearance Market if one occurs.

(a) The Clearance Market is separate from the normal year-round market for Credits in the Clean Fuels Program.

(b) A regulated party that fails to comply under OAR 340-243-1030 is still in compliance with the rules if they:

(A) Acquire their Pro-Rata Obligation in the Clearance Market and retires that number of credits within 30 days of the end of the Clearance Market; and

(B) Retires any remaining balance of its annual obligation, which will increase at 5% per year, within five years.

(C) If no Clearance Market occurs, DEQ will record any regulated party's unmet compliance obligation in that regulated party's Accumulated Deficits account, and the regulated party will be deemed in compliance for that year, so long as it retires that Accumulated Deficit balance, with interest as proscribed in (B), within five years.

(2) The maximum price for the credit clearance market will be set as follows:

(a) \$250/t in 2018-2024;

(b) \$200/t in 2025 and thereafter;

(c) With the numbers in (a) and (b) adjusted annually for inflation at the end of each January by DEQ using the inflation rate as provided by the last twelve months of data from the US Bureau of Labor Statistics 'CPI-U, US City Average, All Items, Not Seasonally Adjusted, 12 Month Percent Change' series. The formula for that adjustment is as follows: Maximum Price = [Last year's Maximum Price] \* (1 + [CPI-U]). DEQ will publish a notice of the new maximum price on its website each year once it has been calculated.

(3) Acquisition of Credits in the Clearance Market. The Clearance Market will operate from June 1st to July 31st if needed.

(a) Regulated parties subject to section (1) must acquire their pro-rata share of the credits in the clearance market while it is active.

(b) Credits acquired in the Clearance Market can only be used for the purposes of retiring them against their compliance obligation from the prior year.

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(c) To qualify for compliance through the Credit Clearance Market, the regulated party in question must have:

(A) Retired all credits in their possession; and

(B) Have an unmet compliance obligation for the prior year that has been reported to DEQ through their annual report.

(4) Selling Credits in the Clearance Market. On the first Monday in April, DEQ shall issue a call to all parties in the CFP Online System to pledge credits into the Clearance Market. Parties wishing to pledge credits into the Clearance Market will indicate to DEQ that they wish to do so through their annual report on or before April 30th.

(a) DEQ will announce if a Clearance Market will occur by May 15th of each year.

(b) In order to participate in the Clearance Market, sellers must:

(A) Agree to sell their credits at or below the maximum price set out in section (2) for that year by July 31st;

(B) Agree to withhold any pledged credits from sale in the normal year-round credit market until the end of the Clearance Market on July 31st, or if no Clearance Market is held in a given year, then on the date which DEQ announces it will not be held;

(C) Parties that pledge credits into the Clearance Market cannot reject an offer to purchase the credits at the maximum price for that year, unless they have already sold or agreed to sell those pledged credits.

(5) Operation of the Clearance Market. DEQ will inform each regulated party that failed to meet their Annual Compliance obligation under OAR 340-253-1030 of their pro-rata share of the credits pledged into the Clearance Market.

(a) Calculation of pro-rata shares.

(A) Each regulated party's pro-rata share of the credits pledged into the Clearance Market will be calculated by the following formula:

Regulated Party A's pro-rata share =

$$\left[ \frac{A's\ total\ deficit}{All\ parties'\ total\ deficits} \right] \times [the\ lesser\ of\ (pledged\ credits)\ or\ (total\ deficits)]$$

Where: Total deficit refers to the regulated party's total obligation for the prior compliance year that has not been met under OAR 340-253-1030; all parties' total deficit refers to the sum of all of the unmet compliance obligations for regulated parties in the Clearance Market; and pledged credits refers to the sum of all credits pledged for sale into the Clearance Market.

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(B) If there is one or more large finished fuel suppliers participating in the credit clearance market, DEQ will determine the pro-rata share of the available credits in a two round process. The first round will be limited to the total deficits from large finished fuel suppliers and all of the credits pledged into the market, and the second round will include all other regulated parties and the remainder of the pledged credits. The calculation for each round will be done as in (A).

(b) On or before June 1st, DEQ will post the following information to the program's website:

(A) The name of each party that is required to purchase credits;

(B) The name of each party that has pledged credits for sale, and how many credits they pledged.

(c) Following the close of the credit market, regulated parties which purchased credits in the Clearance Market must submit to DEQ an amended Annual Compliance Report by August 31st which shows the acquisition and retirement of their pro-rata share of credits in the Clearance Market, and any remaining deficits carried over.

(d) If a regulated party has unmet deficits after acquiring and retiring credits in the Credit Clearance Market, DEQ shall record the remaining unmet deficits from that compliance year into that regulated party's Accumulated Deficit account.

(6) Regulated parties that have deficits in their Accumulated Deficit account will be charged interest annually in the form of additional deficits. Each May 1st DEQ will charge the interest rate under section (1)(b)(B) to the number of deficits remaining in the Accumulated Deficit account following the submission of the Annual Reports.

(a) Regulated parties must repay all Accumulated Deficits within five years of the end of the compliance period in which any such deficit occurred.

(b) Regulated parties may repay unmet deficits during any subsequent annual report before the end of the five years in (a), so long as they have fully met their compliance obligation for that year and are not carrying forward deficits under OAR 340-253-1030(4).

(c) Regulated Parties that have an Accumulated Deficit cannot transfer or sell credits to another registered party through the normal year-round credit market or through a subsequent Clearance Market.

**340-253-1050**

**Credit Basics**

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(1) General.

(a) Credits are a regulatory instrument and do not constitute personal property, instruments, securities or any other form of property.

(b) Regulated parties, credit generators and ~~brokers~~[aggregators](#) may:

(A) Retain credits without expiration for use within the Clean Fuels Program in compliance with this division; and

(B) Acquire or transfer credits from or to other regulated parties, credit generators and ~~brokers~~[aggregators](#) that are registered under OAR 340-253-0500.

(c) Regulated parties, credit generators and ~~brokers~~[aggregators](#) may not:

(A) Use credits that have not been generated in compliance with this division; or

(B) Borrow or use anticipated credits from future projected or planned carbon intensity reductions.

(2) Mandatory retirement of credits. [When filing the annual report](#) at the end of a compliance period, a regulated party that possesses credits must retire a sufficient number of credits so that:

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

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

(3) Credit Retirement Hierarchy. The CFP Online System will use the following default hierarchy to retire credits for the purposes of meeting a compliance obligation:

(a) The System will retire credits acquired or generated in a previous compliance period prior to credits generated or acquired in the current compliance period;

(b) The System will retire credits with an earlier completed transfer "~~recording~~[recorded](#) date" before credits with a later completed transfer "~~recording~~[recorded](#) date;"

(c) The System will retire credits generated in an earlier quarter before credits generated in a later quarter.

(4) Credit transfers between [registered](#) parties.

(a) "Credit seller," as used in this rule, means a regulated party, credit generator or ~~broker~~[aggregator](#) who wishes to sell or transfer credits.

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(b) “Credit buyer,” as used in this rule, means a regulated party, credit generator or ~~broker~~aggregator who wishes to acquire credits.

(c) A credit seller and a credit buyer may enter into an agreement to transfer credits.

(d) A credit seller may only transfer credits up to the number of credits in the credit seller’s CFP Online System account on the date of the transfer.

(5) Credit seller requirements. When ~~a credit~~the parties wish to transfer ~~agreement has been reached, within 10 business days~~credits, the credit seller must initiate an online “Credit Transfer Form” provided in the CFP Online System and must include the following:

(a) The date on which the credit buyer and credit seller reached their agreement;

(b) The names and FEINs of the credit seller and credit buyer;

(c) The first and last names and contact information of the persons who performed the transaction on behalf of the credit seller and credit buyer;

(d) The number of credits proposed to be transferred; and

(e) The price or equivalent value of the consideration (in US dollars) to be paid per credit proposed for transfer, excluding any fees. If no clear dollar value can be easily arrived at for the transfer, a price of zero must be entered.

(6) Credit buyer requirements. Within 10 days of receiving the “Credit Transfer Form” from the credit seller in the CFP Online System, the credit buyer must confirm the accuracy of the information therein by signing and dating the form using the CFP Online System.

(7) If the credit buyer and credit seller have not fulfilled the requirements of sections (5) and (6) within 20 days of reaching an agreement, the transaction will be voided. If a transaction has been voided, the credit buyer and credit seller may reinitiate the process to confirm the transaction, but the date of transfer that will be approved will in no event be earlier than ten days before the date that the credit seller initiates the online Credit Transfer Form.

~~(8) Broker. A broker~~Aggregator An aggregator may only act as a credit seller or credit buyer if that ~~broker~~ aggregator:

(a) Has an approved and active registration under OAR 340-253-0500;

(b) Has an account in the CFP Online System; and

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(c) Has an approved ~~Broker~~Aggregator Designation Form from a regulated party or credit generator for whom the ~~broker~~aggregator is acting in any given transaction.

(9) Illegitimate credits.

(a) A regulated party, credit generator ~~violates these rules if~~ aggregator must report accurately when it submits information into the CFP Online System ~~indicating. If inaccurate information is submitted~~ that causes one or more credits ~~have been to be~~ generated when such an assertion is inconsistent with the requirements of OAR 340-253-1000 through 340-253-1020, or a party otherwise causes credits to be generated in violation of the rules of this division, those credits are illegitimate. If DEQ determines that one or more credits ~~a credit generator claims~~ that a party has to have generated are illegitimate credits, then the ~~credit generator:~~ party that generated the illegitimate credits:

~~(A)~~(A) If the party still has the illegitimate credits in their account, is subject to those credits being canceled by DEQ;

(B) If the party has retired the credits for its own compliance or transferred them to another party, it must provide an approved credit to replace each credit that was not properly generated, if available; and

~~(B)~~ C) Is also subject to enforcement for the violation.

(b) A regulated party, credit generator or ~~broker~~that aggregator that has acquired one or more illegitimate credits ~~is subject to:~~

(A) Is subject to having those credits canceled if still in their account, or must replace them if used for compliance, when the initial generator of the illegitimate credits has not replaced them and the agency determines that that initial generator is unlikely to be able to do so;

(B) May be subject to enforcement unless DEQ determines: that the party they were acquired from engaged in false, fraudulent, or deceptive trading practices.

(10) Prohibited credit transfers

(a) A credit transfer involving, related to, in service of, or associated with any of the following is prohibited:

(A) Fraud, or an attempt to defraud or deceive using any device, scheme or artifice;

(B) Either party employed any unconscionable tactic in connection with the transfer;

(C) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the

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credits being transferred. A fact is material if it is reasonably likely to influence a decision by a counterparty or by the agency;

(D) Where the intended effect of the activity is to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition;

(E) A conspiracy in restraint of trade or commerce; or

(F) An attempt to monopolize, or combine or conspire with any other person or persons to monopolize.

(A) The credits were acquired from a registered regulated party, credit generator or ~~broker~~aggregator; and

(B) The carbon intensity of the fuel for which the credits were generated matches the carbon intensity listed in the CFP Online System for that producer.

~~(1011)~~ Public disclosure.

(a) List of DEQ-approved registered parties. DEQ will maintain a current list of regulated parties, credit generators and ~~brokers~~aggregators whose registrations DEQ has approved under OAR 340-253-0500 and will make that list publicly available electronically on its website. The list will include, at a minimum, the name of the party and whether the regulated party is an importer of blendstocks, a large importer of finished fuels, a small importer of finished fuels, a producer, a credit generator or a ~~broker~~aggregator.

(b) Quarterly data summary. DEQ will publish at least quarterly:

(A) An aggregate data summary of credit and deficit generation for the: most recent quarter and all prior quarters; and

~~(i) Most recent quarter,~~

~~(ii) Previous quarters of the current compliance period, and~~

~~(iii) Previous compliance periods; and~~

(B) Information on the contribution of credit generation by different fuel types.

(c) Credit trading activity report. DEQ will publish at least monthly:

(A) A credit trading activity report that summarizes the aggregate credit transfer information for the:

(i) Most recent month,

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(ii) Previous three months,

(iii) Previous three quarters, and

(iv) Previous compliance periods; and

(B) Information on the credits transferred during the most recent month including the total number of credits transferred, the number of transfers and the number of parties making transfers. ~~If more than three transfers have occurred during, and the month, the report will also include the monthly~~ volume-weighted average ~~credit~~ price ~~for~~ of that month's transfers exclusive of those with a price of zero.

(d) DEQ will base its reports on the information submitted into the CFP Online System.

(e) DEQ reports under this section will ~~represent~~ present aggregated information ~~aggregated for~~ on all fuel transacted within the state; and will not ~~by~~ disclose individual ~~parties~~ parties' transactions.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## **Deferrals**

### Cost Containment

#### **340-253-2000**

#### **Emergency ~~Deferral Due to Clean Fuel Supply~~ Action**

(1) Determining whether to issue an emergency ~~deferral~~ action. DEQ will issue an order declaring an emergency ~~deferral from the clean fuel standard~~ action, if DEQ determines:

(a) There is a shortage of fuel that is needed for regulated parties to comply with the clean fuel standard, due to:

(A) A natural disaster; or

(B) An unanticipated disruption in production or transportation of clean fuels used for compliance, except disruptions for routine maintenance of a fuel production facility or fuel transmission system; and

(b) The magnitude of the fuel supply shortage is greater than the equivalent of five percent of the total credits generated by all regulated parties and providers of clean fuels

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under OAR 340-253-1020 in the previous compliance period. To determine the magnitude of the shortage, DEQ will consider the following:

(A) The volume and carbon intensity of the fuel determined to be not available under subsection (1)(a);

(B) The estimated duration of the shortage;

(C) Whether one of the following options could mitigate compliance with the clean fuel standard:

(i) The same fuel from other sources is available;

(ii) Substitutes for the affected fuel and the carbon intensities of those substitutes are available; or

(iii) Banked clean fuel credits are available; and

(D) Any other information DEQ may need to determine the magnitude of the shortage.

(c) There is a disruption to the program or its credit market such that it will, or is, creating undue burdens on regulated parties and Oregon fuel consumers. In determining the magnitude of the disruption and its effects, DEQ will consider the following:

(A) The root cause and the likely duration of the disruption;

(B) The effect of the disruption on retail fuel prices;

(C) The effect on retail availability of transportation fuels; and

(D) The effect to the program of issuing the emergency action;

(2) Content of an emergency ~~deferral~~action.

(a) If DEQ determines under section (1)(a) that it must issue a ~~deferral~~an emergency action, then DEQ will determine:

(A) The start date and end date of the emergency ~~deferral~~period, which may not exceed one year ~~+~~, but which may be renewed if DEQ makes a subsequent determination under section (1);

(B) If one or both of the fuel ~~deferred from complying with~~ pools regulated by the Clean fuel standard Fuels Program are subject to the emergency action; and

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(C) Which of the following ~~methods DEQ selects to defer compliance with the clean fuel standard~~ actions DEQ will put into effect during the ~~temporary deferral~~ emergency period:

(~~Ai~~) Allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(4) through (6); or

(~~Bii~~) Suspending deficit accrual ~~during the emergency deferral period.~~

(D) Credits will continue to accrue during the emergency ~~deferral~~ period.

(b) If DEQ determines under section (1)(c) that it must issue an emergency action, then DEQ will determine:

(A) The start date and end date of the emergency period-, which may not exceed one year, but which may be renewed if DEQ makes a subsequent determination under section (1);

(B) Which of the following methods DEQ has selected to put in place during the emergency period. DEQ may select one or more of the following:

(i) Suspend the ability to transfer credits, except as part of the operation of a normal-called or an emergency credit clearance market;

(ii) Allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(4) through (6);

(iii) Suspend deficit accrual during the emergency deferral period; or

(iv) Call an emergency Credit Clearance Market following the procedures under OAR 340-253-1040, except that;

(I) The agency will set and publicly notice new dates for the various steps in the Clearance Market. At that time it may also set a new maximum credit price and include it in the notice;

(II) No regulated party is compelled to participate in the emergency Clearance Market as a buyer. Regulated parties wishing to participate and purchase credits in the emergency Clearance Market will indicate interest to participate in the Clearance Market and specify the number of credits they wish to purchase to the agency in writing by the same date sellers in the Clearance Market must indicate their interest to sell a certain quantity of credits in the market. Credit generators and aggregators may only act as sellers in an emergency Clearance Market.;

(III) DEQ may choose to waive the pro-rata calculations for buyers in the Clearance Market;

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(IV) DEQ may include in the posting of the list of buyers the number of credits buyers have indicated they are interested in purchasing; and

(V) If the emergency Clearance Market will conclude prior to the due date for Annual Reports, the deficit roll-over provisions of the Clearance Market under 340-253-1040(1) will be suspended.

(3) Issuing an emergency ~~deferral~~action. An emergency ~~deferral~~action order DEQ issues under this rule must notify the affected parties and must contain at least the following information:

- (a) DEQ's determination under section (1);
- (b) The ~~deferral~~action's effective period as established under section (2);
- (c) The fuel ~~deferred~~pool or pools affected by the action as established under section (2); and
- (d) The method selected by DEQ to comply as established under section (2).

(4) Rescinding an emergency action before the end of the specified period. If DEQ determines that the root causes of a disruption under (1) (a) or (1) (c) have been dealt with or dissipated sooner than it expected when issuing the emergency action, it may issue a notice that it will rescind the emergency action. The notice will contain on which the action is rescinded, which must be at least five business days after the date which the notice is issued.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-2100**

#### **Forecasted ~~Deferral Due to Clean Fuel Supply~~ Deferral**

(1) DEQ forecast. DEQ will use available data under section (2) to develop a fuel supply forecast for the next calendar year that includes:

- (a) The potential volumes of gasoline ~~substitutes~~ and diesel fuel substitutes and alternatives available ~~into~~ Oregon;
- (b) The estimated total aggregate credits available;

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(c) The estimated number of credits needed to meet the clean fuel standard based on forecasts of transportation fuel demand; and

(d) A comparison of the estimates under subsections (1)(a) and (b) with (1)(c) to indicate the availability of fuel needed for compliance.

(2) Available data. DEQ will consider available data to develop the forecast including:

(a) Past Oregon fuel consumption volumes and trends;

(b) Oregon and nationwide trends in alternative fuel use;

(c) Information on ~~numbers~~the number of alternative-fueled vehicles in Oregon and the trend in purchases for such vehicles;

(d) Banked clean fuel credits;

(e) Projected total transportation fuel consumption volumes in Oregon, including gasoline and diesel fuel;

(f) Planned projects in or near Oregon that will have an effect on the supply and distribution of clean fuel, such as electric vehicle charging or natural gas fueling stations;

(g) The status of existing and planned clean fuel production facilities nationwide;

(h) Applicable updates to the carbon intensities of fuels;

(i) Nationwide volumes for fuels required under the federal renewable fuel standard; and

(j) Any other information DEQ may need to develop the forecast.

(3) Determining whether to issue a forecasted deferral. If DEQ forecasts a shortfall in clean fuel credits under subsection (1)(d), and the shortfall is greater than the equivalent of five percent of the credits needed under (1)(c) to comply with the clean fuel standard, then DEQ will determine whether a forecasted deferral is needed by considering the following:

(a) Timing of fuel availability;

(b) Timing, duration and magnitude of the estimated clean fuel shortfall;

(c) Information in addition to material considered under section (2), on potential and current gasoline ~~substitutes~~ and diesel fuel substitutes and alternatives, including:

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(A) Production nationwide;

(B) Use in Oregon; and

(C) Clean fuel infrastructure development in Oregon; and

(d) Any other information DEQ may need in ~~the~~its analysis.

(4) Content of a forecasted deferral. If DEQ determines under section (3) that it must issue a forecasted deferral, DEQ will determine:

(a) The start date and end date of the forecasted deferral period, which may not exceed one year except that DEQ may renew that period if DEQ makes a subsequent determination under section (3);

(b) The fuel deferred from complying with the clean fuel standard; and

(c) Which of the following methods DEQ will use to defer compliance with the clean fuel standard during the forecasted deferral period:

(A) Defer the requirement to comply with the clean fuel standard for up to one year, and allow credits to accrue during the deferral period; or

(B) Propose that EQC revise the Clean Fuels Program through a rulemaking to:

(i) Amend the clean fuel standard for that year;

(ii) Amend the clean fuel standard for that year and future years, and to extend the standards beyond 2025, ~~the year when Oregon must meet the lowest average carbon intensities~~ to allow for less stringent annual reductions for an interim period while still reaching the same average carbon intensity at the end of the period; or

(iii) Otherwise amend the Clean Fuels Program to address the forecasted fuel supply shortage, such as by adopting a multi-year deferral: or modification of the Clean Fuel Standards.

(5) Issuing a forecasted deferral. DEQ will issue a forecasted deferral order to the affected parties with the following information:

(a) DEQ's determination under section (3);

(b) The deferral period as established under section (4);

(c) The fuel deferred as established under section (4); and

(d) The method selected by DEQ to comply as established under section (4).

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Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

## ~~340-253-2200~~

### ~~Monthly Fuel Price Deferral~~

~~(1) Definitions. As used in this rule:~~

~~(a) “Diesel Blends” means diesel fuel and diesel fuel blended with biodiesel.~~

~~(b) “Gasoline Blends” means gasoline and gasoline blended with ethanol.~~

~~(c) “Price evaluation threshold” means that the 12-month rolling weighted average price of gasoline blends or diesel blends in Oregon is more than five percent higher than the 12-month rolling weighted average price in the:~~

~~(A) Statutory PADD 5 for gasoline; or~~

~~(B) Statutory PADD 5 or, if unavailable, Actual PADD 5, for diesel fuel.~~

~~(2) Average price. Each month, DEQ will calculate the 12-month rolling average price for gasoline blends and diesel blends using data available from the U.S. Energy Information Administration or a comparable source, as follows:~~

~~(a) Oregon’s 12-month rolling average price. Each month, DEQ will calculate the Oregon 12-month rolling average price for gasoline blends and diesel blends.~~

~~(b) Gasoline 12-month rolling weighted average price for PADD 5. Each month, DEQ will calculate the PADD 5 12-month rolling volume weighted average price for gasoline blends using the statutory PADD 5 data.~~

~~(c) Diesel 12-month rolling weighted average price for PADD 5. Each month, DEQ will calculate the PADD 5 12-month rolling volume weighted average price for diesel blends using the actual PADD 5 or, if available, the statutory PADD 5 data.~~

~~(3) Determining need for cost mitigation. If the price of gasoline blends or diesel blends in Oregon exceeds the price evaluation threshold:~~

~~(a) DEQ will provide fuel data and analysis to EQC that includes the applicable information under sections (4) and (5);~~

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~~(b) EQC will determine the need to mitigate the costs of complying with the clean fuel standard after considering the DEQ fuel data and analysis. EQC will direct DEQ to implement one or more cost mitigation strategies if EQC determines that:~~

~~(A) The price of Oregon gasoline blends or diesel blends exceeds the price evaluation threshold due to the costs of complying with the clean fuel standard; and~~

~~(B) Implementing one of the strategies under section (6) is necessary to mitigate the costs of compliance with the clean fuel standard.~~

~~(4) Determining whether the clean fuel standard caused the price evaluation threshold exceedance. EQC will determine whether the price of Oregon gasoline blends or diesel blends exceeds the price evaluation threshold due to the costs of complying with the clean fuel standard. DEQ will analyze and provide the following information to EQC:~~

~~(a) Whether fuel volume and price data is faulty or incomplete;~~

~~(b) Price of gasoline substitutes and diesel substitutes;~~

~~(c) Changes in demand for gasoline blends and diesel blends such as changes caused by:~~

~~(A) An increase in population; or~~

~~(B) An increase in fuel usage.~~

~~(d) A decrease in retail outlets for gasoline blends and diesel blends in Oregon;~~

~~(e) Natural or manmade disasters affecting Oregon but not the statutory PADD 5 as a whole;~~

~~(f) Regulatory change that affects Oregon but not the statutory PADD 5 as a whole;~~

~~(g) Change in the usage of reformulated gasoline or other special fuel in any state in the statutory PADD 5; and~~

~~(h) Any other information DEQ or EQC may need to determine whether the clean fuel standard caused the price of Oregon gasoline blends or diesel blends to exceed the price evaluation threshold.~~

~~(5) Factors in determining whether a price mitigation strategy is necessary. EQC will consider the following factors to determine whether it is necessary to mitigate the costs of compliance with the clean fuel standard, or whether the price of gasoline blends or diesel blends will fall below the price evaluation threshold within six months without implementing a cost mitigation strategy:~~

~~(a) Fuel price trends;~~

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- ~~(b) Price of gasoline substitutes and diesel substitutes;~~
- ~~(c) Availability and use of gasoline substitutes and diesel substitutes in Oregon;~~
- ~~(d) Compliance schedule for the fuel;~~
- ~~(e) Future supply of gasoline substitutes and diesel substitutes; and~~
- ~~(f) Any other information DEQ or EQC may need to determine whether implementing standard cost mitigation strategy is necessary.~~
- ~~(6) Cost mitigation strategies. If EQC determines under subsection (3)(b) that mitigating the cost of compliance is necessary, it will order, and DEQ will implement, one of the following cost mitigation strategies with EQC approved start and end dates:~~
  - ~~(a) Suspending deficit accrual during a cost mitigation period and allowing credits to accrue during that period;~~
  - ~~(b) Allowing credits to accrue and allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(4) through (6), during a cost mitigation period. EQC may allow deficits to be carried over for one, two, or three future compliance periods before the deficits must be reconciled;~~
  - ~~(c) Suspending deficit accrual for a percentage of the fuel during the cost mitigation period and allowing credits to accrue during the period;~~
  - ~~(d) Eliminating the requirement to comply with the clean fuel standard for up to one year; or~~
  - ~~(e) Adopting any other price mitigation strategy that EQC determines to be necessary to effectively mitigate the cost of compliance.~~
- ~~(7) EQC reconsideration. EQC may reconsider and revise its determinations under sections (4) and (5) if the information it considered under those sections has changed. Based on that reconsideration, EQC may reconsider and revise or withdraw any cost mitigation strategies ordered under section (6).~~
- ~~(8) DEQ implementation. In implementing a cost mitigation strategy as EQC directs, DEQ will notify the affected parties with the following information:~~
  - ~~(a) EQC's determinations under sections (4) through (6);~~
  - ~~(b) The start date and end date for the cost mitigation strategy period;~~
  - ~~(c) The fuel(s) affected by the price mitigation strategy; and~~
  - ~~(d) The cost mitigation strategy that EQC adopted under section (6).~~

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Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

**340-253-3010** [Renumbered to **340-253-8030**]

**340-253-3020** [Renumbered to **340-253-8040**]

**340-253-3030** [Renumbered to **340-253-8060**]

**340-253-3040** [Renumbered to **340-253-8070**]

**340-253-3050** [Renumbered to **340-253-8080**]

**340-253-8010**

### **Table 1 — Oregon Clean Fuel Standard for Gasoline and Gasoline Substitutes**

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16; DEQ 5-2016(Temp), f. & cert. ef. 4-22-16 thru 9-1-16

**340-253-8020**

### **Table 2 — Oregon Clean Fuel Standard for Diesel Fuel and Diesel Substitutes**

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16; DEQ 5-2016(Temp), f. & cert. ef. 4-22-16 thru 9-1-16

**340-253-8030**

### **Table 3 — Oregon Carbon Intensity Lookup Table for Gasoline and Gasoline Substitutes**

**This document is provided only for the purposes of soliciting comment and cannot be used for any other purpose. It does not change any existing legal obligations.**

**NOTE:** DEQ recognizes that indirect effects, including indirect land use change, are real. However the methodologies to quantify these effects are still in development. DEQ intends to monitor the science of indirect effect and will adjust carbon intensity values through future rulemaking as methodologies improve.

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; Renumbered from 340-253-3010 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16; DEQ 5-2016(Temp), f. & cert. ef. 4-22-16 thru 9-1-16

### **340-253-8040**

#### **Table 4 — Oregon Carbon Intensity Lookup Table for Diesel and Diesel Substitutes**

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; Renumbered from 340-253-3020 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16; DEQ 5-2016(Temp), f. & cert. ef. 4-22-16 thru 9-1-16

### **340-253-8050**

#### **Table 5 — Summary Checklist of Quarterly Progress and Annual Compliance Reporting Requirements**

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

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### **340-253-8060**

#### **Table 6 — Oregon Energy Densities of Fuels**

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3030 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-8070**

#### **Table 7 — Oregon Energy Economy Ratio Values for Fuels Used as Gasoline Substitutes**

**NOTE:** Renumbered from 340-253-3040.

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3040 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

### **340-253-8080**

#### **Table 8 — Oregon Energy Economy Ratio Values for Fuels Used as Diesel Substitutes**

**NOTE:** Renumbered from 340-253-3050.

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3050 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

#### [Table 9 – Temporary Fuel Pathway Codes](#)

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[Table 10 – ILUC values](#)