



# Five Year Rule Review

2025 Review of Rules Adopted in 2020

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# The purpose of the review

[ORS 183.405](#) of the Administrative Procedures Act requires agencies to review all newly adopted rules within five years after adopting them. This document meets DEQ's responsibilities under that law.

## Legal requirements

The statute requires agencies to review new rules to determine whether:

- The rule had the intended effect
- The agency over- or underestimated the rule's anticipated fiscal impact
- Subsequent changes in the law required the agency to amend or repeal the rule
- There is a continued need for the rule

Agencies are only required to use available information to conduct this review.

If the agency appointed an advisory committee in developing the rule, the agency must provide the committee members a copy of the review.

## Exemptions

Rules are exempt from this review if they:

- Consist only of the repeal of or an amendment to an existing rule
- Are adopted to implement court orders or to settle civil proceedings
- Only adopt federal laws or rules by reference
- Implement legislatively approved fee changes
- Only correct omissions or errors



## **Distribution of the review**

DEQ's Agency Rules Coordinator:

- Provides a copy of this review to DEQ's Leadership Team
- Provides a copy of this review to any advisory committee members
- Posts a copy of the review on DEQ's rulemaking website
- Preserves a copy of the review in DEQ's electronic rulemaking archives
- Sends a copy to the Oregon Secretary of State

## **EQC meetings in 2020**

On April 24, May 7 and Sep. 17, 2020, the EQC adopted rules subject to review.

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# **Rules subject to this review**

## **Cleaner Air Oregon Hazard Index**

**Adopted date:** April 24, 2020

**Rule numbers:** 340-245-0320

**Reviewer:** Susan MacMillan

### **Summary**

This rulemaking made the following changes to OAR 340, division 245 that:

- Adjusted the benchmark, or Risk Action Level, at which existing facilities regulated under the Cleaner Air Oregon program must take action to reduce excess noncancer risk from 158 noncancer toxic air contaminants. This action lowered noncancer Risk Action Level benchmarks for 158 toxic air contaminants from a Hazard Index of 5 to a Hazard Index of 3.
- Provided a calculation for existing facilities to estimate site-specific risk if they emit a mix of noncancer toxic air contaminants that are regulated at both a Risk Action Level of a Hazard Index of 3 and a Hazard Index of 5.

### **Did the rule have the intended effect?**

Yes. The rules were established to provide more protective human health standards under the Cleaner Air Oregon program for noncancer health effects from exposure to toxic air contaminants emitted from facilities in Oregon. The rule identified 158 noncancer toxic air contaminants to be regulated at a Hazard Index of 3, based on whether the contaminant caused developmental or other severe human health effects. Subsequently, these more protective excess noncancer standards were used in risk assessment work conducted by the Cleaner Air Oregon program for facilities emitting noncancer toxic air contaminants.

### **Did the agency over- or underestimate the rule's fiscal impact?**

DEQ accurately anticipated the fiscal impact of the rules and has not had to make any adjustment.

### **Do subsequent changes in the law require the agency to amend or repeal the rule?**

The Hazard Index Rulemaking of 2020 reduced the Risk Action Levels for existing sources emitting toxic air contaminants from a noncancer Hazard Index value of 5 to 3 if the chemical was expected to cause developmental or other severe human health effects. The Air Toxics

Alignment Implementation Rulemaking of 2021 created a new rule (OAR 340-247) to maintain the list of toxic air contaminants to report, as well as all the regulatory standards for toxic air contaminants for the Air Quality Division at DEQ. This rulemaking also updated CAO rules that were confusing or ambiguous, led to unintended outcomes in process, or could improve program efficiency for the agency and facilities. CAO is also in the process of reviewing Toxicity Reference Values as required by rule 340-247-0040.

## **Is there a continued need for the rule?**

Yes, the Oregon Legislature directed DEQ to administer risk assessment of emissions from facilities as part of the Cleaner Air Oregon program, and the Cleaner Air Oregon Hazard Index rules are necessary to maintain and implement the program. Because the CAO program is the only air quality permitting program that integrates public health directly into the establishment of permit conditions for industrial facilities, there is an ongoing need for these rules to issue health-protective air quality permits.

## **Greenhouse Gas Reporting and Third-Party Verification**

**Adopted date:** May 7, 2020

**Rule numbers:** 340-272-0010, 0020, 0100, 0110, 0120, 0210, 0220, 0300, 0350, 0355, 0405, 0410, 0415, 0420, 0425, 0430, 0435, 0440, 0445, 0450, 0455, 0460, 0465, 0470, 0495, 0500, 340-215-0032, 0034, 0042, 0044, 0046, 0105, 0110, 0115, 0120, 0125, 340-253-0700

**Reviewers:**

Liz Hardee, Third Party Verification Program Administrator

Elizabeth Elbel, GHG Reporting Program Lead

## **Summary**

This rulemaking established the Third-Party Verification Program rules and requirements and amended rules in the Greenhouse Gas Reporting Program and the Clean Fuels Program that included:

- Modifying the Greenhouse Gas Reporting Program in Oregon Administrative Rules Chapter 340, Division 215 to provide a better understanding of greenhouse gas emissions in the state, better inform greenhouse gas policy decision-making, and improve the ability to track progress toward meeting Oregon's emission reduction goals
- Streamlining the reporting requirements of the GHG RP in OAR Chapter 340 Division 215 and the Clean Fuels Program in OAR Chapter 340, Division 253 to enable entities that are subject to both programs to report into a single system
- Requiring that some data that is submitted to DEQ to comply with the GHG RP and the CFP be verified by independent third parties



- Amending OAR Chapter 340, Division 12 to classify violations and establish or clarify enforcement criteria for violations of the GHG RP, the CFP and third-party verification regulations

## **Did the rule have the intended effect?**

### **Amended GHG RP and CFP Rules:**

Yes, DEQ has implemented the changes to the GHG RP resulting in improved data collection. This includes collecting data from operators of natural gas systems and new data elements across all sectors that supports climate policy analysis and mitigation program development, including providing data needed for designing and implementing Oregon's Climate Protection Program.

Amendments to GHG RP and CFP rules, intended to streamline the reporting, have been implemented through modification of the Oregon Fuels Reporting System. At least 100 regulated fuel suppliers now comply with reporting for both the GHG and CFP programs through a single online system. Implementation of this combined reporting is supported through training and technical assistance by staff in both programs.

### **Third party verification program rules:**

Yes, OAR Chapter 340, Division 272 was adopted to ensure that data reported to the Greenhouse Gas Reporting Program under OAR Chapter 340, Division 215 and to the Clean Fuels Program under OAR Chapter 340, Division 253 is completely and accurately reported.

Reporters subject to third party verification include:

- Permitted stationary sources, electricity suppliers, electricity service suppliers, liquid fuel suppliers, natural gas suppliers and natural gas systems with annual reported emissions of 25,000 MT CO<sub>2</sub>e and above
- Clean Fuels Program participating entities that report 6,000 total combined credits and deficits generated for the program during the reporting year
- Holders of Oregon-specific Clean Fuels Program fuel pathways
- All entities subject to the Climate Protection Program rules under OAR Chapter 340, Division 273, regardless of emissions level

In the program's first five years, the quality of data reported to these programs has improved as anticipated as the result of the more detailed level of review third party verification bodies are able to provide, in addition to the audit work performed annually by DEQ staff. The program has excellent participation rates, with minimal enforcement needed annually.

The available supply of DEQ-approved verification bodies and verifiers has been able to meet the demand for verification services, and DEQ maintains rigorous oversight of services provided through desk audits, site visit observations, verifier trainings and other resources.



## **Did the agency over- or underestimate the rule's fiscal impact?**

DEQ accurately anticipated the fiscal impact of the rules. The fiscal impact statement anticipated minimal impacts related to the adopted recordkeeping and reporting rules for GHG RP and cost savings related to streamlining reporting of liquid fuels data.

The fiscal statement also stated a range of costs related to third party verification. Based on information provided by verifiers during implementation the actual costs of verification are within the range anticipated in the fiscal impact statement issued by the agency.

## **Do subsequent changes in the law require the agency to amend or repeal the rule?**

No subsequent changes in the law require the agency to amend or repeal the rules.

## **Is there a continued need for these rules?**

Yes, these rules are needed to support the implementation of the greenhouse gas reporting and clean fuels programs. These are foundational greenhouse gas emissions reduction programs and are essential components to reducing emissions in support of Oregon's climate goals. Third party verification helps to ensure the accuracy of the data underpinning DEQ's two large market-based emissions reduction programs, the Clean Fuels Program and Climate Protection Program.

## **Drug Take-Back**

**Adopted date:** Sept. 17, 2020

**Rule numbers:** 340-098-0000, 340-098-0010, 340-098-0300, 340-098-0350, 340-098-0370, 340-098-0390

**Reviewer:** Michael Lee

## **Summary**

This rulemaking made the following changes to OAR 340, division 98 that:

- Clarified the applicability of OAR 340-098-0300, 340-098-0350, 340-098-0370, 340-098-0390 and clarified the definitions for terms used in those rules
- Specified requirements for a drug take-back program plan or updated plan submitted to DEQ
- Specified what DEQ will consider when evaluating a program operator's request to provide services and collection events in place of a required drop-off site

- Specified that DEQ, on behalf of the Environmental Quality Commission, may undertake any action authorized by ORS 459A.239 related to enforcement
- Established DEQ's administrative fees, including the plan review fee, the annual fee and hourly fee

## **Did the rule have the intended effect?**

Yes. The rules were established to ensure that:

- Drug take-back programs, when providing services and collection events in place of a drop-off site required by law, will continue offering convenient statewide service
- DEQ can act on the Environmental Quality Commission's behalf to ensure compliance with the drug take-back law
- Fee revenue covers DEQ's costs of administering the Drug Take-Back Program

## **Did the agency over- or underestimate the rule's fiscal impact?**

DEQ accurately anticipated the fiscal impact of the rules and has not had to make any adjustment.

## **Do subsequent changes in the law require the agency to amend or repeal the rule?**

Not at this time.

## **Is there a continued need for the rule?**

Yes, the Oregon Legislature directed DEQ to administer the Drug Take-Back Program and these rules are necessary for DEQ to maintain oversight of the Program.