



Oregon Department of Environmental Quality

Reporting Workshop

CFP Expansion 2022 Rulemaking

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Background

Stakeholders proposed several topics during the listening session preceding the start of this rulemaking. These topics were briefly discussed at the first rulemaking advisory committee meeting, but several require more detailed discussion. These topics are categorized into three areas, with a workshop to cover each: reporting, electricity, and pathways.

For each workshop, CFP staff will provide background, context, introduce concepts and a set of key questions, as well as proposals for discussion in some cases. CFP staff will consider the feedback received and determine whether and how to move forward with action during this rulemaking or not.

The following document provides background on the topics related to reporting.

Reporting topics with a DEQ proposal:

1. Streamline rule language about entities that can designate an aggregator

- **Problem:** Several places in the regulation discuss when a credit generator can appoint an aggregator but it is not mentioned in every instance where this is true.
- **Proposal:** OAR 340-253-0100(3)(b) states that a “*An eligible credit generator may designate an aggregator for its credit generation.*”
 - Delete the multiple references to aggregator appointment in the rule and leave the overarching reference in 100(3)(b) to lessen the confusion and make it clear that all credit generators can appoint an aggregator.

2. Create a hierarchy for electricity credit generation between the charger/fleet owner and the service provider/fleet operator

- **Problem:** The current regulation for most non-residential charging (OAR 340-253-0330, sections 3, 5, 6 and 7) states that it is the charger/fleet owner and the service provider/fleet operator of the electric-charging equipment has the first priority in generating credits from the equipment. It states that only one entity may generate credits from each piece of charging equipment or electric vehicle fleet but does not offer a hierarchy between the two.
- **Proposal:** Add a hierarchy in the rule where the charger or fleet owner has the first option to generate credits. If the owner chooses not to generate credits for the fuel supply equipment, the service provider or fleet operator can generate the credits. DEQ would add a requirement that a written agreement between service provider and owner would be needed with the owner stating that they are passing their right to credit generation to the service provider must be uploaded as supporting documentation with the registration for the fuel supply equipment.

3. Fuel Supply Equipment registrations must be submitted in the first half of the quarter

- **Problem:** The current regulation stipulates that credit generation in one quarter can occur for FSE submitted in the previous quarter. Many submissions of FSE for approval occur at the end of the quarter and the CFP staff do not have time to approve these at that point in the reporting cycle. However, submissions received earlier in the quarter can be approved for use for credit generation in the current quarter.
- **Proposal:** Modify rule language to require that FSE submitted for registration during the first 45 days of the quarter in order to get approved for use in that quarter. Anything submitted after that point in the quarter will be registered for the next quarter. This requirement will ensure that the CFP staff has sufficient time to approve the submissions and ensure that credit generators and aggregators will still have a clear understanding of when their FSE will be approved for credit generation.

4. Clarify language for exemptions

- **Problem:** The current regulation for reporting exemptions is not entirely clear. DEQ issued guidance to reporting entities that will be added to the regulation during this rulemaking.
- **Proposal:**
 - Insert language that exempt use will not be able to be reported after the end of the reporting period, even if the entity has proof this occurred.
 - Insert language clarifying what documentation is needed to support the Exempt use claim.

5. Add additional Transaction Types for gallons reported as “Production for Import”

- **Problem:** The regulation has a Production for Import transaction in it currently and this is being added to the reporting tool. However, we also need to be able to track these gallons for the Greenhouse Gas Reporting Program, so additional transaction types need to be added.
- **Proposal:** Create two new transaction types within the Oregon Fuel Reporting System:
 - Import inside of the bulk system of production for import gallons
 - Import outside of the bulk system of production for import gallons

6. Change of ownership, control, or bankruptcy provisions

- **Problem:** DEQ would like to clarify language within the rule for reporting entities and fuel producers on what they must do when a change of ownership, control, or bankruptcy has occurred for an entity registered in the program.
- **Proposal:** Add provisions to clarify how changes in the ownership or control of a reporting or fuel producer entity is handled, similar to language in use in California’s LCFS. The intent of these provisions is to ensure that compliance obligations are met by an entity exiting the program, or are taken over by the new owner or corporate entity in the case of a merger, purchase, or other re-arrangement of control over a continuing business.
 - Proposed Language for this provision can be found in the addendum.

Topics without a DEQ proposal:

1. Reconciling credit generation for fossil vs. renewable natural gas

- **Problem:** The current regulation states that for fossil natural gas, the owner of the FSE can generate credits, but for renewable natural gas, it is the supplier that can generate credits. The regulation was originally written this way because the FSE owner typically has the greatest investment for the fossil product while the supplier of the RNG typically has the greatest investment for the renewable product. However, in many cases, these are separate entities and may cause confusion as to who should generate the credits when switching between renewable and fossil.

An example of what has confused entities is switching between fossil and renewable natural gas when one entity is already generating the credits. For instance, if the FSE owner is currently generating credits using fossil NG but then begins receiving renewable NG, they would no longer be eligible to generate credits through the program. The supplier of that fuel is now the entity that is allowed to generate credits. The entity that is supplying the fuel would need to sign up for the CFP and report the fuel to the CFP to generate credits.

- Key Questions:
 - Is there a need to change this in the rule? Are suppliers able to determine what equipment is being serviced and register FSE if they are able to take credit for the RNG?
 - Should DEQ allow the owner of the FSE to generate the credits for renewable natural gas as well?
 - Which approach better incentivizes switching from fossil to renewable natural gas?

2. Establishing new transaction types

- **Problem:** The current regulation requires new transaction types used in the Oregon Fuels Reporting System to be established through a rule change. With the merging of GHG and CFP reporting through OFRS, there have been times when it would have been useful to have been able to adopt new transaction types administratively to capture what is happening in the industry without having to wait for a rulemaking.
 - An example of when this has become an issue is with the Production for Import inside and outside of the bulk system mentioned above. Because we cannot add transactions during the rulemaking, interim guidance had to be determined for how suppliers would report this fuel. This causes issues with consistency in reporting and the workarounds can often add complexity to the reporting that is not needed.
- Key Questions:
 - Should DEQ establish an administrative way to adopt new transaction types?
 - Could it be similar to how new energy economy ratios were administratively added in the last CFP rulemaking?
 - Those wanting an EER that does not exist send in a proposal with appropriate supporting information. If DEQ determines it is appropriate, it is put out for comment.
 - DEQ could come up with a proposal and create a comment period to implement new transaction types.
 - What documentation should DEQ provide during the comment period?
 - What would be the proper notification to affected entities?

Other rule language needed to be added or modified

1. Product transfer documents must contain a destination for the fuel if known. If fuel destination is not known or the transfer is not changing locations, this should be noted in the PDT.
2. Changing registration status from a large to a small importer of finished fuels requires at least one year of submitted reporting showing that the company is below 500,000 gallons for the year. Then, the following year, they can change their status to a small importer.
3. B99/R99 must be reported as 99 percent biodiesel or renewable diesel and 1 percent petroleum diesel if the actual blend percentage is not known. If actual percentages are known, the fuel should be reported with those percentages. It must not be reported as B100/R100.
4. Change "Position holder sale" to "Position holder sale without obligation" as it is named in the OFRS.
5. Add Position holder sale with obligation as a transaction type so that obligation can be passed below the rack with one transaction when it is sold with obligation.

ADDENDUM: Straw Proposal Rule Language for Topics with Proposals

Underlined text indicates new language being added to the rule, ~~strikethrough~~ means text that has been deleted.

Example for topics 1 and 2: Generating Electric Credits: Credits 340-253-0330 (3)

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

(a) Owner of the electric-charging equipment. The owner of the electric-charging equipment is the entity given priority to be able to generate the credits. The owner may sign over the right to generate the credits to the service provider. This must be documented with a signed letter.

(b) Service provider of the electric-charging equipment. If the owner declines to generate credits, the service provider of the electric-charging equipment may generate the credits. The owner must sign over the authority to generate credits to the service provider in a signed letter. This letter must be uploaded with the registration of the fuel servicing equipment in OFRS.

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

(d) Backstop and Incremental Aggregators. If an electric utility does not register ~~or designate an aggregator~~ under subsection (c), then backstop and incremental aggregators are eligible to claim any credits that the utility could have generated for the following year, as provided in sections (10) and (11), as applicable. The backstop aggregator may claim any base credits and the incremental aggregator may claim any incremental credits.

Topic 4: Reporting exempt fuel use: Reporting Exempt Gallons

OAR 340-253-0250(2)(b) (All new text)

(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).

(A) The following can be used to document that fuel was supplied to those motor vehicles if the specific customer and vehicle type is listed:

- (i) Individual receipts or invoices for each fuel sale claimed as exempt; or
 - (ii) If the fuel is sold through a dedicated tank for a single customer, electronic or paper records that document the customer's vehicle(s) being fueled belong to an exempt category under (2)(a) must be provided.
- (B) Another method of documentation can be used but must be approved by DEQ prior to exemptions being claimed. The method must:
- (i) Establish that the fuel was sold through a dedicated source to use in one of the specified motor vehicles; or
 - (ii) Be on a fuel transaction basis if the fuel is not sold through a dedicated source.
- (C) Records must be kept in support of this information and be provided to DEQ upon request.

OAR 340-253-1010(2)

(2) Fuels exempted. Except as provided in sections (3), (4), and (5), credits and deficits may not be calculated for fuels exempted under OAR 340-253-0250. No exemptions may be claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has passed.

Topic 6: Change of ownership, control, bankruptcy provisions, or deregistering from the program (all new text)

If a registered entity or a fuel facility registered in the Clean Fuels Program undergoes a change of ownership or operational control, or will no longer be participating from the program, the following requirements apply.

(a) Notifications. Within 30 days of the change of ownership or operational control, the previous owner or operator of the regulated entity or facility and the new owner or operator of the entity or facility must provide the following information to DEQ:

(1) The previous owner or operator must notify DEQ in writing of the ownership or operational control change, including the name of the new owner or operator and the date of the ownership or operational control change.

(2) The new owner or operator must notify DEQ in writing of the ownership or operational control change, including the following information:

(A) Previous owner or operator;

(B) New owner or operator;

(C) Date of ownership or operator change;

(D) Name of new account representatives pursuant to OAR 340-253-0500 for the affected entity's account in OFRS.

(3) The previous owner must give DEQ regarding the disposition of net credits in the previous owner's OFRS account and/or the certified fuel pathways associated with the previous owner's AFP account.

(4) If an entity is leaving the Clean Fuels Program a letter detailing the company name (s) and any CFP ID numbers associated with the company or companies.

(b) Reporting Responsibilities. The owner or operator of record at the time of a reporting or verification deadline specified in this division, or divisions 215 or 272, has the responsibility for complying with the requirements of this division, including submitting quarterly and annual reports, certifying that the reports are accurate and complete, and obtaining verification services and completing verification under division 272.

(1) Reported data must not be split or subdivided for a reporting period, based on ownership. A single reporting period data report must be submitted for the entity by the current owner or operator. This report must represent required data for the entire reporting period.

(2) Previous owners or operators are required to provide data and records to new owners or operators that is necessary and required for preparing quarterly and annual reports required by this article.

- (3) A regulated entity leaving the program must show through one full year of reporting that they are below the 500,000 gallon threshold that requires companies to report to the program. The entity must also file an annual report for the last year of their registration. If the company will not be reporting to either the CFP or GHG Reporting Program, they will be inactivated in the system once the appropriate letter and filing has occurred.
- (4) A credit generator leaving the program will need to finish out that year's reporting and file an annual report.
- (c) New Owner Responsible for Net Deficits. The new owner, when filing the annual report, is responsible for demonstrating compliance pursuant to this division.
- (d) Bankruptcy. Deficits constitute regulatory obligations under Oregon law.
- (e) Fate of Credits After an Entity Dissolves. DEQ will assign to the Incremental Aggregator any net credits in the account of a party that dissolves or otherwise ceases to exist without notifying DEQ pursuant to this rule.
- (f) Fate of Deficits After an Entity Dissolves. Prior to dissolution, a registered entity is responsible for retiring credits equal to any net deficits in its OFRS account and fulfill account closure requirements.

Alternate formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.oregon.gov.