Oregon Department of Environmental Quality

Additional Proposals under Consideration

CFP Expansion 2022 Rulemaking: RAC Meeting #3

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Background

In RAC #2 and subsequent workshops, DEQ laid out several options for potential additions or modifications to Division 253 for inclusion in this rulemaking. Three workshops were held, focusing on reporting, electricity, and pathways issues. Workshop memos, written comments, audio recordings, and meeting summaries can all be found on the CFP 2022 Expansion Rulemaking web page[1].

Proposals

DEQ carefully considered the feedback from stakeholders and are presenting our current thoughts in this memo. While these are all presented as proposals, several have details that are not completely thought through and we welcome your feedback on these. Depending on the comments we receive, DEQ may decide to move forward with them or defer them for future consideration. As stated throughout the RAC process, DEQ must consider the resources it will take to implement any modifications to the program. At this time, DEQ is proposing the following updates:

1. Simple updates for reporting

a. Product transfer documents (PTD) must contain a destination for the fuel. If the fuel destination is not known or the transfer is not changing the location of the fuel, this should be noted in the PTD. (OAR 340-253-0600)
b. 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, the entity can change its status to a small importer. (OAR 340-253-0100)
c. 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, that fuel should be reported according to those percentages. It must not be reported as B100/R100. (OAR 340-253-0640)
d. Change “Position holder sale” to “Position holder sale without obligation” as it is named in the OFRS. (OAR 340-253-0040)
e. 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 the obligation. Applies to Oregon producer/out-of-state producer and importer of blendstocks. (OAR 340-253-0040)

2. Require an electronic tracking system for renewable natural gas claims (OAR 340-253-0640)

Background: As the renewable natural gas (RNG) industry continues to mature and additional sectors are using it to replace fossil natural gas, DEQ believes it is time to require the use of an electronic tracking system to ensure that multiple disparate claims on the same volume of RNG are not made.

Proposal: CFP proposes to require that all RNG volumes reported using book-and-claim accounting be made using an electronic tracking system starting in the 2023 reporting year. This requirement would mirror the renewable energy certificate (REC) retirement provision for electricity where retirement reports for RNG claims must be submitted as supplemental documentation with each quarterly report.

3. Correct error in simplified calculator (OAR 340-253-0400)

Description: The OR-GREET model is based on the Argonne National Laboratory GREET model (GREET 1_2016 Worksheets) and closely mirrors the CA-GREET model. OR-GREET-derived simplified calculators are used for established fuel pathways like starch and fiber ethanol. DEQ staff have identified some errors in the calculators and OR-GREET model that need to be corrected but are only proposing to address one error in a simplified calculator during this rulemaking.

DEQ staff are also requesting stakeholder feedback on any factors you want DEQ to consider for potential modification or update for the full OR-GREET or related simplified calculators. These changes will be addressed in a future rulemaking.

Proposal: Address an error Tier 1 Simplified CI Calculator for Biodiesel and Renewable Diesel including BD-Production tab, cell reference I177:I181 (i.e., the cell reference should include 'C' not 'E').

4. Develop calculator for biogas-to-electricity pathway (OAR 340-253-0400)

Description: Currently, users must modify the simplified calculator for biomethane from anaerobic digestion of dairy and swine manure to apply for a biogas-to-electricity pathway. As there are more of these types of projects coming online under the CFP, it makes sense to develop this simplified calculator.

Proposal: Develop a stand-alone Tier 1 simplified CI calculator for biogas to electricity pathways, based on the current simplified calculator for biomethane from anaerobic digestion of dairy and swine manure. This calculator will be posted for review by DEQ by March 31, 2022.

5. Define renewable hydrogen for pathways (OAR 340-253-0040)

Description: Currently in OAR 340-253-0400(3)(c) hydrogen suppliers may use the applicable lookup table value in OAR 340-253-8010 for the carbon intensity of the fuel or apply for a specific carbon intensity under obtaining a carbon intensity in OAR 340-253-0450.

Proposals: Add "Renewable Hydrogen" definition in OAR 340-253-0040- hydrogen derived from (1) electrolysis of water or aqueous solutions using solar and wind; (2) catalytic cracking or steam methane reforming of biomethane; or (3) thermochemical conversion of biomass, including the organic portion of municipal solid waste (MSW).

6. Submit Fuel Supply Equipment registrations in the 1st half of the quarter (OAR 340-253-0100(3)(b))

Description: Currently FSE registrations that are submitted in one quarter cannot be registered for reporting until the next quarter. This was added to give more time for review and registration of the FSE.

Proposal: Require that FSE registrations must be submitted in the first 45 days of the quarter for the FSE to be eligible to be registered and used during that quarter for reporting. If submitted later than that in the quarter, the FSE will not be allowed to be used for reporting until the next quarter.

7. All entities can designate an aggregator (OAR 340-253-0300 series)

Description: Throughout the Credit Generator sections of the rule there are repeated statements that entities can designate an aggregator. This is already discussed in OAR 340-253-0100 and the reiterating of it further within the other rules has led to confusion on which entities can designate aggregators.

Proposal: DEQ will remove language for who can designate an aggregator from the rules in the -0300's series of Division 253 besides the broad and permissive statement in -0100 that all credit generators can designate an aggregator.

8. Add transaction types for gallons reported as "Production for Import" (OAR 340-253-0040)

Description: When Production for Import was added as a transaction type in the rulemaking, DEQ did not propose adding transaction types that would allow for the proper reporting of these gallons to the Greenhouse Gas Reporting Program (GHG RP). The GHG RP splits reporting between Importers (brought in outside the bulk system) and Position holders (brought in and sold from a terminal). This requires that we have two transaction types in the reporting system that designate the fuels as within the bulk system or outside the bulk system. To provide the correct reporting for GHG RP, we need to add two transactions: "Import within of the bulk system of production for import gallons" and "Import outside of the bulk system of production for import gallons".

Proposal: Propose to move forward with adding the two transaction types so that these transactions can be reported correctly to CFP and GHG RP.

9. Clarify language for documenting exempt fuel use (OAR 340-253-0250)

Description: The exemption rule needs to be updated to provide clearer direction on how to document fuel going to exempt uses. Draft language was provided at the workshop. There are three options for providing proof of fuel going to an exempt use:

- A dedicated fuel source/pump for exempt equipment
- Transaction-specific documentation of the fuel being sold for an exempt use
- The reporting party may propose a method to DEQ for how exemptions will be documented and DEQ will review the proposal to determine if it meets documentation needs and approve or reject, as applicable, for approval.

Proposal: Propose we move forward with clarifying the language as written and keep the third option of proposing a new method to document the sales if the first two do not work for a reporting entity.

10. Create hierarchy for credit generation (OAR 340-253-0300 series)

Description: For several of the fuels, the entity that is eligible to generate the credit is unclear, including entities that can be the charger or fueling dispenser owner or operator or the fleet owner or operator. This has become an issue when two entities attempt to register the same FSE.

Proposal: DEQ is proposing that the following entities have the first right to generate the credits for the following categories:

Electricity

For non-residential electric charging, other than specified below, the owner of the electric-charging equipment
For Public Transit including electricity used to power fixed guideway vehicles such as light rail systems, streetcars, and aerial trams, or transit buses, the transit agency
For Forklifts, the forklift owner
For Transportation Refrigeration Units, the owner of the electric transportation refrigeration unit
For Electric Cargo Handling Equipment, the owner of the electric-charging equipment

Hydrogen

For Forklifts the owner of the fueling equipment

Propane

For fossil LPG, the forklift operator
For renewable LPG, the producer or importer of the renewable LPG, as long as they are able to document that the renewable LPG goes into a vehicle

For any of the cases above, the credit generator can designate any other registered party to be the aggregator.

For any of the vehicles or equipment listed above, registrations made under the current rules will not be reviewed and updated unless there is a request to do so or new equipment is registered for the site. Beginning in the first quarter of 2023, when previously registered vehicles or equipment are replaced, the new vehicles or equipment will be registered under the current rule and the new credit generator would need to register them or designate another entity as an aggregator to generate credits.

11. Change of ownership, control, or bankruptcy provisions

Description: Under this provision, DEQ would 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. 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 rearrangement of control over a continuing business.

Proposal: Move forward with language as proposed in the reporting workshop.

12. Add new Energy Economy Ratio for electric ground service equipment (OAR 340-253-8010)

Description: For electric ground service equipment, the CFP staff reviewed all available information for the following equipment types: baggage tractors, belt loaders, and pushbacks. We have determined that they should be eligible for crediting under the CFP.

Proposal: The CFP proposes to adopt the straight average EER value of 3.2 applicable for baggage tractors, belt loaders, and pushbacks that would generate credits against the gasoline standard. Equipment with designated EERs values in the CFP that broadly fit into the ground support equipment category at airports must use those values. For example, electric forklifts must continue to use the value designated under OAR 340-253-8010: 3.8.

13. Correct the definition of ocean going vessels (OAR 340-253-0040)

Description: During the Clean Fuels Program 2021 Electricity Rulemaking, the CFP adopted an EER for eOGVs. At that time, an incomplete definition of OGV was adopted into the rule.

Proposal: Correct the definition to accurately reflect the established EER value of 2.6. This value represents the energy benefits associated with large vessels using shore power at berth instead of operating auxiliary engines. To qualify to use this EER, the ocean-going vessels must be:

- greater than or equal to 400 feet in length overall
- weigh 10,000 gross tons or greater
- propelled by a marine compression-ignition engine with a displacement of greater than or equal to 30 liters per cylinder.

In addition, the CFP staff invite interested parties to submit a Tier 2 application for category 1 & 2 engines for smaller vessels, through the administrative process defined under OAR 340-253-0460. Parties are reminded that the applications must make clear in the application that electric charging or shore power is not the predominant practice to be eligible for crediting.

14. Require additional documentation for credit transactions

Background: The credit market in the Clean Fuels Program has grown significantly in size and value over the last several years. To enhance DEQ's ability to monitor the market on an ongoing basis, DEQ is proposing to begin requiring that the contracts that certain credits are transferred under be submitted to the agency when the credit transfer is being recorded in the Oregon Fuels Reporting System. The California Air Resources Board currently requires a similar level of documentation.

Proposal: DEQ is proposing to require the contract a transfer is being conducted under be submitted for any transfers of credits that occur ten days after the contract was signed. This would allow DEQ to better understand current credit pricing, as transfers that occur under contracts with a longer lead time may have non-standard pricing or other terms that affect the $/t valuation of the credits being transferred.

15. Establish process to add new transaction types in OFRS

Description: There are cases where transaction types need to be added to the reporting system to allow for the correct collection of information. Currently, DEQ can only create transaction types during rulemaking. This has hampered the ability for us to collect reporting in the system without onerous workarounds that are confusing to regulated parties and difficult to follow for agency staff. Allowing the creation of new transaction types, with a limit to these transaction types only being created for specific situations, will allow for easier and more transparent reporting.

Proposal: DEQ would move forward with the proposal as discussed in the workshop subject to the following:

- New transactions created would not be able to generate credits/deficits and do not create a new requirement to report, but only a change in the way reporting is done.
- The process would include a proposal from DEQ of the transaction type with a thorough description of how the transaction would work in the system and what action or actions they would be used to report. That proposal would be subject to a 30-day comment period to ensure that stakeholders can participate in the creation of new transaction types.
- If DEQ moves forward with creating a new transaction type, there will be an announcement to affected parties and a notice on the website.

16. Post-verification credit generation adjustment

Description: The certified carbon intensity for a fuel is based on the average of two years of historical data. Credits generated under it are based on that historical CI and may not reflect improvements made by the fuel producer in the year the fuel is being distributed and used in Oregon. The certified CI also acts as a cap on the CI that a fuel producer can have, if their actual operation CI exceeds the certified CI and they continue to sell fuel into Oregon under the certified CI, they are in violation of the CFP's rules. With the start of third party verification being required for certain fuel pathway holders, stakeholders have asked if those pathways can generate additional credits if the verified carbon intensity is lower than the approved one. This would encourage fuel producers to lower their carbon intensities and generate real and valid credits that are currently missed.

Proposal: DEQ would annually issue additional credits to a fuel producer if:

- They are registered in the reporting tool as an importer of blendstocks, a credit generator, or an out-of-state fuel producer by June 30th of the year in which DEQ would be issuing the additional credits.
- Their fuel production facility has gone through third party verification for their annual fuel pathway report, and they have received a positive or qualified positive verification statement
- One or more of the pathways in their annual fuel pathway report had volumes reported against it, and that pathway's operational CI for the reporting year was 1 gram per megajoule lower than the certified CI used for reporting.
- The pathways being verified are full pathways, not temporary or provisional pathways.

Under this proposal, credits would only be issued to the fuel producer itself or the fuel pathway holder for that fuel production facility. The fuel producer would be able to distribute the credits to other parties if it so desires through the normal credit transfer process.

The fuel producer must register in the Low Carbon Fuel Standard Reporting Tool (LRT) part of the OFRS by the end of the second quarter, annually. The additional credits would be based on the verified operational CI and the obligated volume of fuel under that fuel pathway code in the prior and fully reported year.

17. Add hydrogen to the advance crediting provisions (OAR 340-253-1100)

Description: The Advanced Crediting provision adopted in last year's Electricity Rulemaking are currently limited to battery-electric vehicles. The provision is meant to help push zero-emission vehicles into cost-competitiveness with their internal combustion engine counterparts by providing several years of credits at the time of delivery in order to lower their cost of acquisition. DEQ is considering adding hydrogen fuel cell vehicles and fueling equipment as eligible for advanced credits under the current framework of the advance crediting provision. Because the source and thus the CI of hydrogen can be more variable than that of electricity, DEQ would need to require documentation on the planned or contracted source of the hydrogen for the vehicles or fueling equipment at the time that the advance credits are being estimated.

Proposal: DEQ would maintain current eligibility requirements and structure of the advanced crediting rules for fuel cell vehicles. For hydrogen vehicles and fueling equipment, the applicant would be required to describe the source of hydrogen they intend to use and a minimum three-year contractual agreement with their hydrogen supplier if the CI of the hydrogen being used to calculate advanced credits is based on a renewable hydrogen source.

Parties are reminded that the hydrogen supplier must be a registered CFP fuel producer with a CFP approved and certified hydrogen fuel pathway and CI value.

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.