

No. 15-35834

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS; et al,

Plaintiffs-Appellants,

v.

JANE O'KEEFFE; et al,

Defendants-Appellees,

CALIFORNIA AIR RESOURCES BOARD; et al,

Intervenor-Defendants - Appellees.

APPELLEES' BRIEF

Appeal from the United States District Court
for the District of Oregon

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APPELLEES' BRIEF

The Oregon state appellees submit this brief in response to the appellants' opening brief.

JURISDICTIONAL STATEMENT

The state appellees accept appellants' statement regarding the jurisdiction of the district court and of this court. This is a timely appeal of a final judgment of the district court entered following the grant of dispositive motions.

QUESTIONS PRESENTED

In *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1079-1080 (9th Cir. 2013), this court held that California's low-carbon fuel standards did not facially discriminate against out-of-state commerce and did not attempt to regulate commerce outside of California. Oregon has adopted regulations that mirror California's. The questions presented for this court's review are as follows:

1. Do Oregon's regulations, which distinguish among transportation fuels based on their total carbon intensity, discriminate against interstate commerce and therefore violate the Commerce Clause?
2. Do Oregon's regulations, which apply only to the sale of transportation fuels within the state, impermissibly regulate out-of-state conduct?

3. Does an Environmental Protection Agency (EPA) finding that methane emissions do not contribute to ground-level ozone pollution preempt Oregon's effort to reduce the greenhouse gas emissions (including methane emissions) that result from in-state use of transportation fuels?

STATEMENT OF THE CASE

A. Legislative Direction to Implement Low Carbon Fuel Standards

Oregon has long been in the vanguard of states that have sought solutions to the global problem of human-caused climate change. As long ago as the 1980s, the Oregon legislature sought to reduce the emission of gases that contribute to global warming by, among other things, giving priority to alternative fuels. 1989 Or. Laws ch. 466 (codified at Or. Rev. Stat. § 469.060(3)(e)).

In 2007, the legislature enacted HB 3543, building upon the work and recommendations made by an advisory group appointed by Oregon's governor. The legislature recognized that global warming "poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon." 2007 Or. Laws ch. 907, §§ 1-14 (codified, in part, as Or. Rev. Stat. § 468A.200-260). The legislation created the Oregon Global Warming Commission to recommend ways by which the emission of greenhouse gases

could be reduced, and also created a climate change research center to provide information that would inform those efforts.

In 2009, the legislature authorized the Environmental Quality Commission (EQC) to adopt rules for low-carbon fuel standards—standards that encouraged the use of fuel that produced the fewest greenhouse gas emissions over the course of their entire lifecycles. 2009 Or. Laws ch. 754, § 6(1)(b), (2)(a), (2)(b)(B).¹ In adopting the rules, the EQC was directed to consider a number of factors, including the safety, feasibility, and cost-effectiveness of a net reduction of greenhouse gas emissions; potential adverse impacts of such efforts; and flexibility in implementation to minimize compliance costs. 2009 Or. Laws ch. 754, § (6)(a – c). The EQC was also specifically directed to consider measures implemented by other states, including Washington. 2009 Or. Laws ch. 754, § (6)(d). The rules were to set standards for “greenhouse gas emissions attributable to the fuels throughout their lifetimes, including but not limited to emissions from the production, storage, transportation and combustion of the fuels and from changes in land use associated with the fuels.” 2009 Or. Laws ch. 754, § (2)(b)(B).

¹ The 2009 law was never codified in the Oregon Revised Statutes because it contained a sunset provision. The sunset provision was repealed in 2015.

B. Phase I Rules: Record-Keeping and Reporting

In December 2012, after receiving the report of an advisory committee that included industry stakeholders, the EQC adopted Phase I rules for the Oregon program. The Phase I rules required regulated parties and parties that chose to opt in to register with DEQ, keep records, report the carbon intensity of fuels they produce or import for use in Oregon, and calculate surpluses and shortfalls against baseline carbon intensity values. Or. Admin. R. § 340-253-0000(4) (2012).

“Regulated parties” are defined differently, according to the type of transportation fuel involved. *See* Or. Admin. R. §§ 340-253-0310 to -0340 (2012). For gasoline, diesel, biomass-based diesel, ethanol, and other regulated fuels except liquefied natural gas (LNG), the regulated party is the Oregon producer or importer of the fuel. For opt-in parties involved in the production or importation of non-traditional transportation fuels such as LNG, biogas used directly as fuel, and liquefied petroleum gas used as fuel, the opt-in party may be the producer or importer, or the person owning the equipment that is used to fuel vehicles. Or. Admin. R. § 340-253-0320 (2012). Electricity used to power vehicles is also an opt-in fuel, with the persons entitled to opt-in defined in Or. Admin. R. § 340-253-0330 (2012). And the opt-in party for hydrogen fuel is,

generally, the Oregon producer or importer of the hydrogen fuel. Or. Admin. R. § 340-253-0340.

Beginning January 1, 2013, each regulated party was required to register with DEQ. Or. Admin. R. § 340-253-0100 (1) and (2). An application for registration was required to include each fuel type that the registrant imported or produced in Oregon. They were also required, beginning July 1, 2013, to keep records of each fuel transaction, including name and quantity of the fuel, and the “fuel pathway code,” a term further explained below. Or. Admin. R. § 340-253-0600. And beginning January 1, 2014, every importer or Oregon producer of fuel was required to file quarterly reports, listing the fuel type, the carbon intensity of that fuel, the total volume of fuel, and whether their imports or production generated a surplus as a result of being below the baseline carbon intensity value, or a shortfall reflecting importation or production of fuel above the baseline carbon intensity value. Or. Admin. R. § 340-253-1020 (2012). However, during Phase 1, importers and producers were simply reporting data; they were not required to meet any particular number or to balance surpluses and shortfalls.

C. Carbon Intensity

The purpose of the Oregon Program was set forth in the Phase I rules: “to reduce the average amount of lifecycle greenhouse gas emissions per unit of

fuel energy used in Oregon by a minimum of 10 percent below 2010 levels over a 10-year period.” Or. Admin. R. § 340-253-0000(2) (2012). The baseline carbon intensity values were based on the mix of fuels sold as transportation fuels in Oregon in 2010. Or. Admin. R. § 340-253-0040(1) (2012). Carbon intensity was expressed in grams of carbon dioxide equivalent per megajoule over the lifecycle of the fuel. Or. Admin. R. § 340-253-0040(9) (2012). Carbon intensity was calculated by use of the GREET (Greenhouse gases, Regulated Emissions, and Energy in Transportation) method developed by the Argonne National Laboratory and modified for Oregon.² Or. Admin. R. § 340-253-0040(36) (2012).

The Phase I rules provided carbon intensity values to be used by regulated parties. Or. Admin. R. § 340-253-0400(1) (2012). These carbon intensities were based on the “fuel pathway,” or unique fuel feedstock and production process. Or. Admin. R. § 340-253-0040(21) (2012). Regulated parties were required to use the values provided in look-up tables for various fuel and fuel pathways, Or. Admin. R. § 340-253-0400(2) (2012), unless DEQ determined that the fuel’s carbon intensity was not adequately represented by

² OR-GREET does not directly consider land use changes, but uses a combination of other methods to calculate indirect emissions, including changes in land use. As a result, although both Oregon and California use the basic GREET model, they do not necessarily yield identical results.

any of the established values, or the party proposed and DEQ approved a different pathway. Or. Admin. R. § 340-253-0400(3) (2012); Or. Admin. R. § 340-253-0450 (2012).

D. Phase II Rules

In January 2015, the EQC adopted Phase II rules for the Oregon Program. Beginning in 2016, the standard values for gasoline and diesel will decrease each year until 2025, first by small increments and later by larger increments, until a total reduction in average fuel intensity of 10 percent is achieved.³ For gasoline, the 2015 baseline value was 97.80; the standard for 2016 is 97.56, a reduction of .25%. Or. Admin. R. § 340-253-8010, Table 1.

Phase II of the Oregon Program required regulated parties to demonstrate compliance with the program by calculating credits and deficits generated by the fuels they produce or import, and to balance those credits and deficits. Or. Admin. R. § 340-253-1030. Deficits are created by importing or producing fuels with carbon intensities that exceed the annual standard, while credits are created by producing or importing fuels that have carbon intensity below the annual standard. Or. Admin. R. § 340-253-1000(5). A regulated party may be

³ The EQC chose to keep to a ten-year implementation period, rather than require compliance by 2020, as originally contemplated.

both a credit generator and a deficit generator if it imports or produces a mix of fuels that are above and below the annual standard.

Regulated parties, credit generators that opt in to the program, and credit brokers who facilitate the trading of credits, are all required to submit reports through the CFP [Clean Fuels Program] Online System. Or. Admin. R. § 340-253-0620. This system facilitates credit transactions between parties with deficits and credits, as well as tracking compliance with the program. Or. Admin. R. § 340-253-1050.

Unlike the Phase I rules, the Phase II rules, as amended in December 2015, do not require use of look-up tables for most fuels, but instead mandate the calculation of actual carbon intensity of fuels using OR-GREET, or an equivalent approved method.⁴ Or. Admin. R. § 340-253-0400(1). Values that have been approved by California under GREET may be used, with adjustment for “indirect land use changes,” as required by Oregon law.⁵ Or. Admin. R. § 340-253-0400(4). Gasoline, diesel, and other fossil fuels are

⁴ In 2015, the Oregon legislature repealed the sunset and amended the law to require the EQC to adopt low carbon fuel standards. 2015 Or. Laws ch. 4 § 3; Or. Rev. Stat. § 468A.275.

⁵ Most producers or importers of fuel for use in Oregon also sell fuel in California and have approved values that may be used as a starting point to calculate their OR-GREET values.

required to use statewide average carbon intensities. Or. Admin. R. § 340-253.0400(3).

Unlike the multiple values provided for ethanol under the Phase I rules, the Phase II rules provide two ethanol pathways: Midwest Average and Oregon Average. Or. Admin. R. § 340-253-8030, Table 3. Both pathways assume the use of corn grown in the Midwest and dry-milled production; they differ in the assumption of energy sources used in the refining process. However, each of those pathways is used only until an individual pathway has been calculated and approved, unless the pathway is in fact representative of the actual carbon intensity of the ethanol feedstock. Or. Admin. R. § 340-253-0400(4)(b); Or. Admin. R. § 340-253-0450(3).

Producers and importers are not required to sell only fuels that meet the standards. Rather, if they sell fuel with a carbon intensity above the annual standard, they generate a deficit that they must offset with a credit generated by a fuel with a carbon intensity *below* the annual standard. Or. Admin. R. § 340-253-1000. They may generate that credits through their own importation or production of less carbon-intensive fuels or buy credits from another entity that does not need the credits to offset its own deficits. Or. Admin. R. § 340-253-1050(1)(b). Generally, importers must show that their deficits and credits balance out over the course of each year. Or. Admin. R. § 340-253-1030. But

the initial compliance period for the Oregon program is two years, 2016-2017, to allow for a period of adjustment. Or. Admin. R. § 340-253-0040(25). In addition, small deficits (less than 10 percent) at the end of a reporting period are not penalized, but may instead be carried forward into the next compliance period. Or. Admin. R. § 340-253-1030(4).

F. The *Rocky Mountain* Decision

Oregon's regulations closely mirror regulations that California promulgated a few years earlier. Like Oregon, California does not require any regulated party to sell any particular fuel or blend of fuels. California also requires fuel producers and importers to balance the average carbon intensity of the fuel they sell in California against the established annual standard. And California calculates the carbon intensity of a fuel through a lifecycle analysis, accounting for emissions that occur in all aspects of producing, refining, and transporting the fuel, and sets default values for various pathways. Fuels generate credits or deficits, depending on whether they are above or below the annual limit. Credits may be used by a regulated party to offset its own deficits, may be sold to other parties, or may be banked for future use.

A coalition of parties, including the appellants here, sued to block California's regulations, contending (among other things) that the regulations violated the Commerce Clause. The district court enjoined the regulations,

holding that the regulations were facially discriminatory as to out-of-state ethanol; regulated ethanol production that occurred outside California; and discriminated in purpose and effect against out-of-state crude oil.

On appeal, this court reversed. First, it held that the ethanol regulations did not facially discriminate against out-of-state commerce. Although the regulations made reference to ethanol's origin by assigning different default values for ethanol produced in the Midwest, California, and Brazil, the court held that there were nondiscriminatory reasons for the distinctions. Because of factors such as the kind of power plants that operated in the area, ethanol produced in different locations in fact gave rise to "real differences" in the amount of lifecycle greenhouse gases emitted. The court held that the Commerce Clause did not require California to ignore these differences, and that considering these factors was not discriminatory because "they reflect the reality of assessing and attempting to limit greenhouse gas emissions from ethanol production." Although it recognized that the regulations' default values were averages and therefore inherently imprecise, the court concluded that the imprecision falls evenly on all pathways, and to the extent that a particular producer uses a different electrical source than assumed, for example, individualized assessment is allowed. *Rocky Mountain*, 730 F.3d at 1093-1094.

Second, the court held that the crude-oil regulations, which all agreed were facially nondiscriminatory, also did not discriminate against out-of-state crude oil in purpose or effect. The court concluded that even though some California refiners might benefit from the way the regulatory scheme was structured, its overall purpose and effect was to direct development efforts toward alternative fuels, not economic protectionism.

Finally, the court rejected the argument that the regulations operated extraterritorially, attempted to control out-of-state conduct, or would result in “economic Balkanization” if every state were to enact similar legislation. The court explained that the regulations operate only in the California market for transportation fuel. They have no effect on ethanol produced, sold or used outside California, do not require the adoption of reciprocal standards, do nothing to ensure that ethanol is cheaper in California, and impose no penalties on out-of-state transactions. They might encourage producers to adopt more carbon-friendly policies, but states “are free to regulate commerce and contracts within their boundaries with the goal of influencing the out-of-state choices of market participants.” *Rocky Mountain*, 730 F.3d at 1103.

Because it had rejected all of the bases on which the district court enjoined the regulations, this court remanded for the district court to consider the other arguments the plaintiffs had made but that the district court had not

yet addressed: that the ethanol regulations discriminated against interstate commerce in purpose or effect, and that they imposed a burden on interstate commerce that was clearly excessive in relation to their local benefits.

This court denied the petition for rehearing *en banc*. *Rocky Mountain Farmers Union v. Corey*, 740 F.3d 507 (2014). *Certiorari* was denied, and the case returned to the district court, where it remains pending.

G. The Allegations of the Complaint and Proceedings Below

After Oregon adopted its Phase II rules, plaintiffs filed a complaint for declaratory and injunctive relief against various Oregon officials. E.R. 178. The complaint alleged that the Oregon Program, Or. Admin. R. § 340-253-0000 *et seq.*, violates the Commerce Clause of the U.S. Constitution because it discriminates against transportation fuels imported into Oregon with the intended purpose and effect of promoting the development of in-state economic interests. E.R. 179. The complaint also alleged that the Oregon program violates the Commerce Clause by attempting to regulate and control economic conduct occurring outside of Oregon's boundaries. E.R. 180. Finally, the complaint alleged that the Oregon program was preempted by a provision of the

federal Clean Air Act by attempting to regulate a fuel or fuel additive (methane) where EPA has found that no control is necessary.⁶ E.R. 180.

The California Air Resources Board and the State of Washington sought and were granted intervenor status, as did the Oregon Environmental Council, Climate Solutions, Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club (“the Conservation intervenors”). Docket Nos. 23 and 25.

The Oregon defendants moved to dismiss the complaint on the ground that the court lacked subject matter jurisdiction because the claim was not ripe; that the complaint failed to state a claim as to which relief could be granted as to both the facial and as applied challenges under the Commerce Clause; and that the Oregon Program was not preempted by federal law. Docket No. 51. California and Washington also moved to dismiss, Docket No. 52, while the Conservation intervenors filed an answer and moved for judgment on the pleadings. Docket No. 54.

The district court granted the motions to dismiss and for judgment on the pleadings, holding that the Oregon Program did not violate the Commerce Clause either facially or as applied to out-of-state producers or importers, and

⁶ Another preemption claim made by appellants has been dropped in this appeal.

was not preempted by federal law.⁷ In its opinion and order, the court observed that the claim of facial discrimination was largely controlled by this court's decision in *Rocky Mountain Farmers Union v. Corey*. Appellants' E.R. 013. The only argument not expressly foreclosed by that decision is whether the Oregon program discriminates in purpose or effect against out-of-state ethanol. *Id.* That issue was not decided by the district court in *Rocky Mountain Farmers Union* and hence was not before this court in that case. In the present case, however, the as-applied challenge was squarely presented to, and was decided by, the district court.

With regard to the claim that the rules facially discriminate against petroleum and Midwest ethanol by consistently giving them higher carbon intensity values, the district court held that a state does not discriminate when it distinguishes between fuels based on their lifecycle greenhouse gas emissions rather than their origin. E.R. 016. Not only does Midwest ethanol receive the same "advantages" as locally produced ethanol, but the carbon intensities within geographic regions vary greatly based on manufacturing methods and power source. *Id.*

⁷ The district court denied the motion to dismiss with respect to the ripeness claim, and Oregon does not dispute that the challenged regulations are now in effect. E.R. 022 at fn. 12.

The district court noted that petroleum receives a higher carbon intensity value for legitimate and non-discriminatory reasons: petroleum production does not absorb carbon dioxide from the atmosphere, as do the corn and sugarcane used to produce ethanol as they grow, and methods of petroleum extraction create more emissions as supplies decrease. E.R. 016 – 017. Further, Oregon has no petroleum industry to favor; its entire gasoline supply is imported. Even if biofuels were to entirely replace gasoline over time, a legitimate purpose is served by using fuels with lower emissions. E.R. 017. And Oregon rewards all innovations in the carbon intensities of fuels, regardless of where those innovations take place.

As to the claim that the Oregon program was intended to benefit Oregon's biofuels industry, the district court first noted that the stated purpose of the program was to reduce the lifecycle emissions per unit of fuel. E.R. 020. Second, the statements of various officials and lawmakers are plucked from a context that reinforces the purpose of the program, to reduce greenhouse gas emissions over time. *Id.*⁸ And the hope that pursuing lower emissions also

⁸ Those statements were appended to the state defendants' reply in support of the motion to dismiss, and are included in Appellant's Excerpt of Record at E.R. 043 through E.R. 125.

benefits the economy is insufficient to show a discriminatory purpose. E.R. 021.

Third, this court rejected a very similar claim in *Rocky Mountain Farmers Union*, 730 F.3d at 1100 n. 13. E.R. 021. And finally, the Oregon program provides advantages to many out-of-state fuels with lower carbon intensity values, such as Brazilian sugar-cane ethanol. E.R. 024.

On the discrimination claim, the district court noted that plaintiffs had failed to show that similarly situated products are treated differently. Treating products with differing carbon intensities differently does not violate the Commerce Clause, where out-of-state biofuels receive favorable treatment and the program does not require any particular fuel or carbon intensity to be used. *Id.*

With regard to the extraterritoriality claim, the district court again cited *Rocky Mountain* for the proposition that these standards do not control out of state conduct. E.R. 025. Like California, Oregon's regulations apply only to fuel sold within the state's borders.

As to the preemption claim, plaintiffs asserted that the EPA had declined to make an "endangerment finding" as to methane, and in so doing, preempted state efforts to control methane emissions. Plaintiffs' are correct that EPA found that methane was not a factor in curbing ozone-forming volatile organic

compounds. But EPA made no finding as to methane's contribution to greenhouse gas emissions.⁹ The court therefore found that there was no preemption. E.R. 028.

The district court granted the motions to dismiss and for judgment on the pleadings on the ground that the complaint stated no claim on which relief could be granted, E.R. 038, and entered judgment for the Oregon defendants, state intervenors, and conservation intervenors. E.R. 002. This appeal followed.

SUMMARY OF ARGUMENT

Oregon's Clean Fuels Program does not discriminate against interstate commerce, facially, in purpose, or in effect. Distinctions among fuels are based on their lifecycle greenhouse gas emissions and not on their origin. Carbon intensity of transportation fuels measures the lifecycle contributions of those fuels to global climate change. The regulations do not subsidize local industry; producers and importers of transportation fuels that have carbon intensities below the standard established by the rules benefit under these rules, wherever they may be located.

⁹ EPA has written that methane is the second most prevalent anthropogenic GHG emissions, accounting for 10% of emissions in the United States. <http://www3.epa.gov/climatechange/ghgemissions/gases/ch4.html>

The purposes of the rules and of the statutes that authorize and require them are affirmatively stated in those enactments: to reduce Oregon's contribution to the shared problem of global warming. Oregon has no local petroleum industry, one ethanol producer, and a single manufacturer of biodiesel. It is hoped that the rules may have a positive effect on the Oregon economy, but the purpose of the rules is as stated: to reduce lifecycle greenhouse gas emissions from fuels by 10% over 10 years.

The Clean Fuels Program rules do not operate extraterritorially. They apply only to fuels produced in or imported into Oregon and sold for use in Oregon. Some out-of-state producers may choose to change their operations to receive additional benefits under the program, but the rules do not mandate such changes. Nor do the rules bar the sale of any particular fuel, or require any particular formulation of fuel.

Oregon's Clean Fuels Program rules are not preempted. Air pollution is a traditional area of state regulation, and Oregon's program does not conflict with any provision of federal law. In particular, the Environmental Protection Agency has not declared that regulation of methane is unnecessary to achieve reductions in GHG emissions. Methane is a powerful driver of global climate change and is properly addressed by Oregon's rules.

The judgment of the district court in favor of the state appellees is correct and should be affirmed.

STANDARD OF REVIEW

Appellants correctly set forth the standard of review; this court must accept well pleaded facts and give appellants the benefit of reasonable inferences from those facts. However, the court is not required to accept bald legal conclusions disguised as factual allegations. “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L.Ed. 2d 868 (2009). Mere allegations that Oregon’s regulations are discriminatory are legal conclusions, not facts.

ARGUMENT

Appellants argue that Oregon’s Clean Fuels Program is unconstitutional and unenforceable for three reasons: because the rules discriminate against out-of-state commerce, both facially and as-applied; because the rules regulate economic conduct that occurs entirely outside the state’s boundaries; and because it is preempted as to methane by an EPA’s finding that methane does not contribute to ground level ozone formation. None of these arguments are well taken, for the reasons that follow.

A. The Rules Do Not Subsidize Local Industry at the Expense of Out-of-State Producers.

Appellants first argue that the Oregon program rules require out-of-state fuel manufacturers to subsidize in-state producers. Appellants' Opening Brief (AOB) 20. This argument presupposes that all out-of-state manufacturers create deficits while all in-state producers generate credits. AOB 23. Leaving aside the fact that there is little in-state industry to subsidize, aside from a single ethanol plant and a single biodiesel producer, out-of-state fuel manufacturers are the primary generators of credits for importing, selling, and dispensing fuels that are below the carbon intensity standard.

The 2025 standard in the Phase II rules that achieves the ultimate ten percent reduction goal is 80.36 for gasoline and gasoline substitutes.¹⁰ The carbon intensity levels of Oregon, Brazilian, and Midwest ethanol are already below the 2025 standard. Or. Admin. R. § 340-253-8030, Table 3 (12/2015). All out-of-state suppliers of ethanol will generate credits that can be sold or used to offset deficits generated by other products. As appellants admit,

¹⁰ Contrary to Appellants' assertions, the use of the term "gasoline substitutes" to categorize ethanol, natural gas, and electricity does not indicate that such fuels are "similarly situated" with gasoline for purposes of dormant Commerce Clause analysis. *See* AOB at 29. This term indicates only that these fuels can be used to operate similar types of vehicles (such as passenger cars and light trucks). *See* RJN Exh. J at V-5; *see also* ARB/WA Br. at 28-29.

virtually all of the ethanol used as fuel in Oregon comes from the Midwest, since that is where the feedstock is grown.¹¹

The same is true of diesel vs. biodiesel. The 2025 diesel standard adopted in the Phase II rules is 78.38. The carbon intensities of every variety of biodiesel and renewable diesel, with the exception of two produced from soybeans, are already beneath that level, often by 50 points or more. Or. Admin. R. § 340-253-8040, Table 4 (12/2015). Virtually all biodiesel generates credits under the system regardless of its source. The carbon intensity ascribed to it depends on what its source material is and the manufacturing process used. As of January 2016, there are 34 approved carbon intensity values for biodiesel produced in numerous locations and using numerous methods of production, ranging from a low carbon intensity value of 9.65 for biodiesel produced in Arkansas from North American corn oil to a high of 83.25 for Midwest soybeans. *See* Exhibit G, pp. 1 - 3 to the Request for Judicial Notice filed by California and Washington. Only one of the approved biodiesel values is from an Oregon product (BIOD002); the other 31 that generate credits are from locations outside Oregon.

¹¹ Oregon not only lacks oil, gas, and refineries, but also corn grown on an industrial scale.

Treating fuels with different properties in a fashion that is consistent with those properties is not discriminatory. *Rocky Mountain Farmers Union*, 730 F.3d at 1089-1090. Just as California does, Oregon's program bases its treatment of different fuels on their lifecycle carbon intensity, not on their origin. There is no Commerce Clause violation.

B. Midwest Ethanol Is Treated According to Its Carbon Intensity, Not Its Origin.

Appellants argue that Oregon discriminates against Midwest ethanol because the look-up tables ascribe different and higher carbon intensity values than for other ethanol produced in the same way. *See* Exhibit 1, Appellants' Request for Judicial Notice, Table 3. AOB 35 – 36. This is not correct. Corn ethanol from the Midwest and from Oregon are both assumed to be made from Midwest corn, dry milled, and with natural gas as the direct source of energy. However, Midwest ethanol has a higher carbon intensity because its source of electricity, which is also a source of energy for the refinery, is produced by higher carbon fuels such as coal as opposed to natural gas or hydropower. These differences are reflected in the look-up table as "Oregon production" versus "Midwest production." Or. Admin. R. § 340-253-8030, Table 3, page 1.

The values in the table are based on the most common facts of production. But under the rules currently in effect, the carbon intensity of every fuel pathway is approved by DEQ; the values included in the look-up table are

used only if no specific pathway has yet been approved or if the actual carbon intensity is adequately reflected in the tabled value. Or. Admin. R. § 340-253-0400(5). If, for example, an ethanol plant uses excess biomass as a heat source, or generates its own electricity, the carbon intensity of its fuel will be lower. And because DEQ must approve a carbon intensity value for all registrants in the program, if the plant, whether in Oregon or the Midwest, operates in a way that generates more GHG emissions than assumed, Oregon will require an individual carbon intensity value that is higher than the average value for that region. *See* Or. Admin. R. § 340-253-0400.

As this court held in *Rocky Mountain Farmers Union*, distinctions made on the basis of carbon intensity are not based on fuel origin, and do not violate the Commerce Clause:

Unlike these discriminatory statutes, the Fuel Standard does not base its treatment on a fuel's origin but on its carbon intensity. The Fuel Standard performs lifecycle analysis to measure the carbon intensity of all fuel pathways. When it is relevant to that measurement, the Fuel Standard considers location, but only to the extent that location affects the actual GHG emissions attributable to a default pathway. Under dormant Commerce Clause precedent, if an out-of-state ethanol pathway does impose higher costs on California by virtue of its greater GHG emissions, there is a nondiscriminatory reason for its higher carbon intensity value. *See [Oregon Waste Systems v. Dept. of Environmental Quality, 511 U.S. 93, 101 n 5 (1994).]* Stated another way, if producers of out-of-state ethanol actually cause more GHG emissions for each unit produced, because they use dirtier electricity or less efficient plants, CARB [California] can base its regulatory treatment on these emissions. If California is to successfully promote low-

carbon-intensity fuels, countering a trend towards increased GHG output and rising world temperatures, it cannot ignore the real factors behind GHG emissions.

730 F.3d at 1089-1090.

Oregon does not discriminate against Midwest ethanol, or any other fuel. Rather, it regulates according to carbon intensity to achieve its policy goal of lowering greenhouse gas emissions associated with transportation fuels. Nothing in the Constitution bars it from doing so.

C. Oregon's Treatment of Gasoline and Diesel Is Based on Their Characteristics, Not on Discriminatory Motives.

Plaintiffs argue that the Oregon Clean Fuels Program discriminates against the fossil fuels that they produce by ascribing them higher carbon intensity values. AOB 22. It is true that clear gasoline and diesel cannot meet Oregon's clean fuel standards. It is also true that Oregon produces no petroleum products, and must therefore import them. However, the distinctions that Oregon makes between these products and other fuels are legitimately based on the different characteristics of petroleum fossil fuels.

To put it bluntly, the use of petroleum-based transportation fuels is an enormous factor in anthropogenic climate change. California found that 40% of its greenhouse gas emissions were due to transportation; in Oregon, that figure is 39%. <http://www.oregon.gov/DEQ/AQ/Pages/Greenhouse-Gas-Inventory->

Report.aspx. EPA puts that figure at 27% nationally.¹² Reducing the carbon intensity of transportation fuels is, as the Oregon legislature has found, imperative to limiting climate change. Doing so requires a reduction in the use of carbon-intensive petroleum-based fuels.

A regulation does not violate the Commerce Clause merely because it affects in-state and out-of-state interests unequally, so long as there is some reason, beyond their origin, to do so. *Philadelphia v. New Jersey*, 437 U.S. 617, 627 (1978). Oregon uses a single statewide average carbon intensity for clear gasoline, and a single statewide average carbon intensity for gasoline blended with 10% Midwest-average corn ethanol, which is the grade commonly sold at the pump in Oregon.¹³ Those values are higher than other fuels because gasoline is simply more carbon intensive; blending with ethanol makes it somewhat less so, and blending with an even lower carbon ethanol further reduces its carbon impact. There is no protectionist purpose.

¹² <http://www3.epa.gov/climatechange/ghgemissions/sources.html>
Thirty-one percent of national emissions of GHG are from electricity production from coal and natural gas burning plants. This is why Midwest ethanol produced with coal-fired electricity has a higher carbon intensity than Oregon-produced ethanol.

¹³ Ethanol content of motor fuels in Oregon is regulated by the Oregon Department of Agriculture. Those rules, which are not challenged here, require that gasoline contain 10% ethanol. Or. Admin. R. § 603-027-0420(3). The source of ethanol is not regulated by that rule.

D. The Purpose of the Statutes and Rules Is Stated within Them.

Appellants rely on the statements of various politicians, taken largely out of context, to support their claims that Oregon’s purpose is to further in-state economic interests, rather than reduction of greenhouse gas emissions. AOB 28 – 29. Their reliance is unavailing.

As noted above, the Oregon legislature has expressed concern regarding the human contribution to climate change since 1989. The 2009 legislation authorizing the clean fuels program reiterated that concern. And the rules themselves also express their purpose: to “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.” Or. Admin. R. § 340-253-0000(1). As in *Rocky Mountain Farmers Union*, 730 F.3d at 11, fn 13, the statements of some politicians citing potential economic benefits of the program are “easily understood, in context, as economic defense of a [regulation] genuinely proposed for environmental reasons,” quoting *Minnesota v. Clover Leaf Creamery*, 449 U.S. 456, 463 n7 (1981). In that case, the Supreme Court held that, “this Court will assume that the objectives articulated by the legislature are actual purposes of the statute, unless an examination of the circumstances forces us to conclude that they ‘could not have been a goal of the legislation’.”

Both the Phase I and Phase II rules recite their purpose: to reduce the average greenhouse gas emissions of transportation fuels used in Oregon by 10 percent over a 10-year period. Or. Admin. R. § 340-253-0000(2).

The Oregon Program operates to the benefit of fuels with low carbon intensity, wherever their origin. There is neither a discriminatory purpose, nor a discriminatory effect.

E. The Relevant Case Law Supports Dismissal of the Complaint.

Appellants suggest that this court's decision in the *Rocky Mountain Farmers Union* case has no relevance to the issues presented here, due to alleged factual distinctions. AOB 26 – 27. It is not surprising that they would attempt to distinguish that case, because it is controlling in its legal analysis: a low carbon fuel standard that is based on lifecycle greenhouse gas emissions does not violate the Commerce Clause:

The dormant Commerce Clause does not require California to ignore the real differences in carbon intensity among out-of-state ethanol pathways, giving preferential treatment to those with a higher carbon intensity. These factors are not discriminatory because they reflect the reality of assessing and attempting to limit GHG emissions from ethanol production.

730 F.3d at 1092-1093.

Like California, Oregon has given petroleum products higher carbon intensity values not because they are imported, but because they are “dirtier” fuels from a lifecycle carbon emissions standpoint. Ethanol carbon intensity

values vary tremendously, not because of their origin, but because of the differences in manufacturing methods and energy inputs used in refining them. Distinctions among fuels are based on real factors and not on artificial distinctions that serve local interests. Such distinctions do not violate the Commerce Clause.

Appellants also suggest that *Exxon Corp. v. Governor of Maryland* favors their position. AOB 27. *Exxon* challenged a state law that barred oil producers or refiners from operating retail service stations and also required that temporary price reductions be offered equally to all retail service stations. The holding of that case did not depend on the fact that no oil was produced or refined in Maryland; rather, the statute was intended to prevent preferential treatment of company-owned service stations over independent service stations when gasoline was in short supply. The requirement that out-of-state companies divest themselves of directly owned stations in Maryland did not violate the Commerce Clause, because it had no impact on the flow of gasoline in interstate commerce, gave no advantage to in-state vs. out-of-state dealers, and placed all in-state stations on an equal basis. To be sure, the only companies that were required to divest were from outside Maryland, “[b]ut this fact does not lead, either logically or as a practical matter, to a conclusion that

the State is discriminating against interstate commerce at the retail level.” 437 U.S. 117, 125 (1978).

Appellants also contend that the district court misconstrued a number of other Supreme Court decisions. AOB 25 *et seq.* They cite *New Energy Corp. v. Limbach*, 486 U.S. 269 (1988), as an example. The district court cited *New Energy* as an example of “patent” discrimination between in-state and out-of-state interests, as indeed it was. Ohio awarded a tax credit for ethanol sold as a component of fuel, but only if the ethanol was produced in Ohio or in a state that afforded Ohio the same credit. The provision obviously discriminates against interstate commerce. However, the court was careful to distinguish regulations that are “justified by a valid factor unrelated to economic protectionism.” 486 U.S. at 274. Here, that factor is carbon intensity. All ethanol is chemically identical, but it came to be that way as the result of processes that are anything but the same. Oregon may legitimately distinguish between fuels with different carbon intensities.

Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources, 504 U.S. 353 (1992), is another unremarkable application of the Commerce Clause to invalidate a patently discriminatory regulation. There, Michigan law barred a landfill from accepting waste generated outside the county in which it was located. Lower courts upheld the law because it applied

to waste from other Michigan counties as well as to out-of-state waste. The Supreme Court noted that the effect of the law was to isolate each of the state's counties from interstate commerce, with no reason for the bar apart from its origin.

These cases are not distinguishable from the present case because the laws at issue either positively impacted some out-of-state interests or negatively affected some in-state interests. Rather, in each case, distinctions were made in commerce without any factual basis for differential treatment of in-state and out-of-state interests. Oregon has provided a sound, scientific factual basis, rooted in environmental policy, for the distinctions that it has made.

Hunt v. Washington State Apple Advertising Com'n., 432 U.S. 333 (1977), also does not assist appellants. Washington created a system of grading fruit under a mandatory and stringent inspection program, which came to be regarded as superior to USDA grades for apples. North Carolina adopted a regulation forbidding the display of state grades on sealed containers of fruit, thereby increasing the cost to ship Washington apples to that state by a considerable amount, unless shippers were to forgo selling to North Carolina entirely. North Carolina argued that 13 states had their own apple grades, creating potential confusion in the market as to the actual quality. The practical effect of the regulation was not only to burden interstate commerce, but to

discriminate against it. It also stripped away the competitive advantages that Washington apples had gained by mandating and advertising its high standards. And because the USDA grades allowed inferior quality apples to receive the highest grades, it leveled the market in favor of local producers. The burden therefore fell on the state to demonstrate local benefits and the unavailability of nondiscriminatory alternatives to achieving those benefits. Although it was touted as a consumer protection measure, it allowed for the shipment and sale of apples to North Carolina with no grading information at all. It therefore conferred scant benefit, and its ends could be achieved by requiring USDA grades in addition to any state grade, so that there would be some measure of uniformity.

Hunt has no application here. Oregon does not ban the import of any fuel from any location, nor does it mandate that only certain fuels be used. It simply requires that, over time, the carbon intensity of the total volume of fuel sold in Oregon will be reduced. It provides an incentive for all producers of transportation fuels from any source to reduce their carbon footprint if they desire to import, produce, or sell in Oregon, but it does not require them to do so.

In sum, existing Supreme Court case law strongly supports the constitutionality of the Oregon Clean Fuels Program.

F. Oregon's Program Does Not Operate Extraterritorially.

Appellants argue that the Oregon program regulates commerce that occurs entirely outside the State of Oregon. AOB 43. It does not. The rules apply only to transportation fuels that are imported or produced and sold for use in Oregon. The rules may influence decisions that are made about conduct that occurs outside Oregon, but they do not require any out-of-state conduct. The rules are constitutional.

The dormant “Commerce Clause prohibits state legislation regulating commerce that takes place wholly outside of the state’s borders.” *Pacific Merchant Shipping Ass’n v. Goldstene*, 639 F.3d 1154, 1178 (9th Cir. 2011). But a state law regulates extraterritorially only “when it *necessarily* requires out-of-state commerce to be conducted according to in-state terms.” *Cotto Waxo Co. v. Williams*, 46 F.3d 790, 794 (8th Cir. 1995) (emphasis added). Thus, a state law may not expressly require that out-of-state prices conform to in-state prices. *See, e.g., Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 520 (1935). Nor may a state law have the “practical effect” of controlling out-of-state prices by interacting with neighboring states’ laws in a manner that induces regulatory “gridlock” throughout the region. *Healy v. Beer Inst.*, 491 U.S. 324, 340 and 342 (1989).

However, each State “retains broad regulatory authority to protect the health and safety of its citizens,” *Maine v. Taylor*, 477 U.S. 131, 151 (1986), even if its regulations have some “incidental burdens on interstate commerce,” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 623-24 (1978); *see also Hunt v. Wash. Apple Adver. Comm’n*, 432 U.S. 333, 350 (1977) (“there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it”). And “[t]he protection of our environment has repeatedly been recognized” as a crucial component of the states’ undisputed interest in protecting its own citizens. *Pacific Merchant Shipping Ass’n v. Goldstene*, 639 F.3d 1154, 1181 (9th Cir. 2011).

The Supreme Court recognized in *Massachusetts v. EPA* that the dangers of climate change due to GHG emissions are both “widely shared” and specifically felt—in rising sea levels, irreversible changes in natural ecosystems, more intense and damaging storms, and the wider and faster spread of diseases. 549 U.S. 497, 522 (2007). This Court has also acknowledged the “ample evidence that there is a causal connection between man-made greenhouse gas emissions and global warming.” *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1140 (9th Cir. 2011). And Oregon’s legislative assembly and a series of governors have recognized that human caused climate

change is a reality and that it is a problem that can only be addressed if everyone – including smaller states such as Oregon – takes action.

In enacting and implementing the program, Oregon has made the policy determination that effectively addressing the harmful consequences of GHG emissions from the use of transportation fuels in Oregon must take into account *all* components of a fuel’s lifecycle. The method used by Oregon for lifecycle analysis, GREET, is a widely-accepted approach nationally to compute lifecycle GHG emissions. In *Rocky Mountain*, this court described the GREET methodology:

Recognizing the need for a reliable method to compare the lifecycle emissions of diverse fuels, the Argonne National Laboratory developed the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation Model (“GREET”).³ GREET, first published in 1996 and revised and peer reviewed several times since, incorporates comprehensive data on the lifecycle emissions of various fuels. The Environmental Protection Agency (“EPA”) uses GREET for lifecycle analysis in the RFS, which mandates the use of low-carbon-intensity biofuels in the United States fuel supply. *See* 78 Fed.Reg. 14190, 14209 (Mar. 5, 2013). State agencies in Oregon, Minnesota, and New York have also used GREET to estimate emissions from the production of alternative fuels. In designing the Fuel Standard, CARB used GREET as the basis for its lifecycle-emissions model for fuels used in California. That peer-reviewed model, called CA-GREET, incorporates detailed information about local conditions, including California’s stringent environmental regulations and low-carbon electricity supply.

730 F.3d at 1081-1082.

A rule of law requiring the states to entirely ignore nondiscriminatory factors associated with out-of-state GHG emissions would promote less efficient energy use, higher levels of greenhouse gas emissions, and the swifter approach of the “harms associated with climate change”—harms that are “serious and well recognized” as costly and deadly. *Massachusetts*, 549 U.S. at 521. The Dormant Commerce Clause does not require such a result.

G. EPA’s Conclusion that Methane Does Not Contribute to Ozone Pollution Is Irrelevant

Appellants contend that regulation of methane by the states is preempted by the Clean Air Act (CAA), specifically §211(c)(4). AOB 54. That section expressly preempts state regulation of a fuel or fuel additive if the EPA administrator has found that regulation is unnecessary.

Section 211(c)(4)(A)(i), 42 U.S.C. §7411(c)(4)(A)(i), provides in relevant part as follows:

(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register * * * .

That provision has no application here, because the administrator has made no finding that regulation of methane emissions is not necessary to combat climate change. While EPA has decided that regulation of methane is unnecessary to control ground level ozone pollution, it has made no such finding regarding methane as a greenhouse gas, where methane is a significant contributor. There is no merit to appellants' argument to the contrary.

The Clean Air Act expressly reserves state authority to adopt regulations respecting air pollutants. Subject to certain exceptions, “nothing in this Chapter shall preclude or deny the right of any State * * * to adopt or enforce” any standard or limitations on emissions or any requirement to control or abate air pollution. CAA §116, 42 U.S.C. §7416. This court has described this provision as “sweeping and explicit” in its retention of state authority. *Exxon Mobil v. Saudi Basic Industries Corp.*, 217 F.3d 1246, 1255 (9th Cir. 2000). (“Air pollution prevention falls under the broad police powers of the states, which include the power to protect the health of citizens in the state. Environmental regulation traditionally has been a matter of state authority.”); *Oxygenated Fuels Ass’n Inc. v. Davis*, 331 F.3d 665 (9th Cir. 2003) (“Environmental regulation is an area of traditional state control”).

Because it is assumed that Congress does not cavalierly decide to override state authority, there is a general presumption against preemption in areas

traditionally regulated by states. *Id.* at 668. “[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 91 L.Ed. 1447 (1947).

There are some limits to state authority in this area. Section 211(c)(4)(A)(i) of the Clean Air Act, 42 U.S.C. §7411(c)(4)(A)(i), set forth in the previous section, preempts state regulation when EPA makes an express determination that regulation of a specific characteristic or component of fuel is not necessary. Appellants claim that that EPA made the necessary determination to trigger preemption of the Clean Fuels Program when EPA decided not to regulate methane as an ozone-forming volatile organic compound (“VOC”). 59 Fed. Reg. 7716, 7722-23 (Feb. 16, 1994).¹⁴ But EPA made no such decision as to methane’s contribution to climate change as a greenhouse gas, the fuel characteristic that the Clean Fuels Program regulates.

Methane is the second most prevalent GHG emitted from anthropogenic activities in the U.S., comprising 10% of all such emissions in 2013.

¹⁴ §211(k) of the Clean Air Act requires that the EPA adopt regulations that require “the greatest reduction in emissions of ozone forming volatile organic compounds . . . achievable through the reformulation of conventional gasoline[.]” 42 U.S.C. § 7545(k)(1)(A).

<https://www3.epa.gov/climatechange/ghgemissions/gases/ch4.html> Natural gas and petroleum are the largest industrial source of methane emissions. Methane is actually 25 times more potent than carbon dioxide in its impact on climate change. *Id.* To compute the total lifecycle carbon intensity of a given fuel, consideration of methane is essential to an accurate result. According to EPA, “Methane is more abundant in Earth’s atmosphere now than at any time in at least the past 800,000 years. Due to human activities, CH₄ [methane] concentrations increased sharply during most of the 20th century and are now more than two-and-a-half times pre-industrial levels.”

<https://www3.epa.gov/climatechange/science/causes.html>

Appellants suggest that this court’s decision in *Rocky Mountain Farmers Union* supports their preemption argument. AOB 53, at fns. 32 and 33. It does not. There, the court noted California’s special status under the Clean Air Act. Oregon does not claim that it is entitled to the anti-preemption provisions that apply to California. But the provision of the Clean Air Act on which appellants rely has no application to any state that chooses to regulate GHG emissions.

In summary, it is simply untrue that EPA has declared that it is unnecessary to regulate methane to mitigate its effects, as a GHG, on climate change. Oregon’s Clean Fuel Program is not preempted.

CONCLUSION

The Clean Fuels Program does not affront the Commerce Clause, nor is it preempted by federal law. Rather, it is an entirely constitutional exercise of state authority to achieve a policy goal of reducing lifecycle greenhouse gas emissions of transportation fuels used in Oregon. The district court did not err in dismissing the complaint, and its judgment should be affirmed.

Respectfully submitted,

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APPENDIX



► [The Oregon Administrative Rules contain OARs filed through March 15, 2016](#) ◄

QUESTIONS ABOUT THE CONTENT OR MEANING OF THIS AGENCY'S RULES?
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DEPARTMENT OF ENVIRONMENTAL QUALITY

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). OAR division 253 of chapter 340 implements the 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;
- (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.

(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.

(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 renewable resources.

(8) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from non-petroleum sourced oils or fats, designated B100 and conforming to the specifications of ASTM D6751-15a, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

(10) "Biodiesel blend" means a blend of biodiesel with petroleum-based diesel fuel containing at least 6 percent and not more than 20 percent biodiesel by volume, designated BXX where XX 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.

(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 (gCO₂e/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.

(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 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.

(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.
- (37) "Ethanol" means ethyl alcohol, the chemical compound C₂H₅OH.
- (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.
- (39) "Finished fuel" means a transportation fuel used directly in a motor vehicle without requiring additional chemical or physical processing.
- (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 under OAR 340-253-0500(3).
- (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.
- (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 (gCO₂e/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.
- (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 CO₂e to account for the relative global warming potential of each gas.
- (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.
- (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) Argonne National Laboratory model that DEQ develops 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 lading, invoices, contracts, meter tickets, rail inventory sheets or RFS product transfer documents.
- (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" means a hydrocarbon oil conforming to the specifications of ASTM D975-15b, "Standard Specification for Diesel Fuel Oils" produced from renewable resources.
- (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.

(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.

(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 in Oregon" means the transportation fuel was designated for use only in Oregon at production and acquired a compliance obligation under Clean Fuels Program regardless of production inside or outside of 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.

(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 Customary 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.

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

340-253-0060**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.
- (4) "CFP" means the Clean Fuels Program established under OAR chapter 340, division 253.
- (5) "CNG" means compressed natural gas.
- (6) "CO₂e" 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) "gCO₂e/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.
- (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, 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) Brokers.

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

(b) Brokers may hold and trade credits. A broker also may generate credits and facilitate credit generation and credit trading if a regulated party or a credit generator authorizes a broker to act on its behalf by submitting a Broker Designation Form.

(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 must submit a complete registration to DEQ under OAR 340-253-0500 and a broker designation form each time it enters into a new contract with a regulated party or credit generator, before trading credits or facilitating credit generation or trading by a regulated party or credit generator. DEQ will not recognize the transfer of credits by a broker that does not have a DEQ-approved, accurate and current registration and a DEQ-approved broker designation form.

(5) Records. Regulated parties, credit generators and brokers 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 deficits for such fuel produced or imported into Oregon. The initial compliance period is for two years, 2016 and 2017.

(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 must submit quarterly progress reports under OAR 340-253-0630.

(8) Annual compliance report. Regulated parties, credit generators and brokers 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;

(f) B5; and

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

(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;

(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:

(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.

(c) 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.

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

(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, 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.

(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 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.

(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. 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, Liquefied Petroleum Gas and Renewable Diesel

(1) Applicability. This rule applies to providers of compressed natural gas, liquefied natural gas, liquefied compressed natural gas, 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.

(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 (6) 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 (c) determine the person who is eligible to generate credits.

(a) Electric Utility. 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 generate credits for the following calendar year.

(b) Broker. If an electric utility does not register as the credit generator under subsection (a), then a broker may register to generate credits.

(c) Owner of electric-charging equipment. If an electric utility or a broker does not register as the credit generator under subsection (a) or (b), then the owner of the electric-charging equipment may register to generate credits.

(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, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Owner or operator of electric-charging equipment. The owner or operator 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.

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

(c) Broker. If the owner or operator of the electric-charging equipment and the electric utility do not register as the credit generator under subsections (a) or (b), then a broker may generate credits if it has provided documentation 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.

(4) Responsibilities to generate credits. Any person specified under sections (2) or (3) 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 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
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 brokers must calculate all carbon intensities using OR-GREET 2.0 or a model DEQ approves.

(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 brokers 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;

(D) B5;

(E) Fossil CNG;

(F) Fossil LNG;

(G) LPG; and

(H) Electricity, unless an electricity provider meets the conditions under subsection (1)(b) and chooses to obtain a different carbon intensity.

(b) For electricity, credit generators and brokers 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.

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

(a) The California Air Resources Board has certified for use in the California Low Carbon Fuel Standards 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 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 innovative 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);

(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) Tier 1 fuels using innovative methods.

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 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.

(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) 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.

(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.

(5) 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.

(6) 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;

(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.

(7) 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 (6) of this rule.

(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.

(8) 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.

(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.

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

340-253-0500

Registration

(1) Registration information. To register, regulated parties, credit generators and brokers 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;

(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.

(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) 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) 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) 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 gCO₂e/MJ or 10 percent of the listed carbon intensity. DEQ shall approve the registration application within 14 calendar days after the completeness determination.

(c) 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.

(d) 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:

(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.

(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 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 wishes to voluntarily opt-out of the Clean Fuels Program, the credit generator or broker 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.

(c) The regulated party, credit generator or broker 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 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;
- (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) Review. All data, records, and calculations used by a regulated party, a credit generator or a broker to comply with the Oregon Clean Fuels Program are subject to verification by DEQ. Regulated parties, credit generators and brokers 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.

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.

(a) Except as provided in subsection (b), regulated parties, credit generators and brokers 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 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 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) Name and title of one or more persons who will be Contributors on the account, optional;
- (e) 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:

(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:

(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:

(A) Provided read-only access; but

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

(5) Signature. The Administrator or a Contributor authorized to sign reports 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 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;

(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) Any reporter that generated 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 scf) dispensed per compliance 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.

(4) Any reporter that generated 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 stations, 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, the credit generator or broker may report the total electricity dispensed as a transportation fuel using an alternative method that the credit generator or broker demonstrates is substantially similar to the use of direct metering, as approved by DEQ.
- (d) For each public access charging facility, fleet charging facility and workplace private access charging facility, the amount of electricity dispensed (in kWh).

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

340-253-0650

Annual Compliance Reports

(1) Annual compliance reports.

(a) Except as providing in subsection (b), regulated parties, credit generators and brokers 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.

(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 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 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;

(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 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

340-253-1000

Credit and Deficit Basics

(1) Carbon intensities.

(a) Except as provided in subsections (b) or (c), when calculating carbon intensities, regulated parties, credit generators and brokers 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 has an approved provisional carbon intensity approved under OAR 340-253-0450(8), the regulated party, credit generator or broker must use the provisional carbon intensity DEQ approved.

(2) Fuel quantities. Regulated parties, credit generators and brokers 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 CO₂ equivalent. Regulated parties, credit generators and brokers 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.

(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.

(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.

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

(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. 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 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:

(a) Exported outside Oregon; or

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

(3) Voluntary inclusion. A regulated party, credit generator or broker 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 user under 340-253-0250(2) provided that the credit and deficit calculation includes all fuel listed on the same delivery invoice.

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 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);
- (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).

(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:

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

(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 brokers, including carryback credits;

(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; 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:

Credit Balance = (Credits Gen + Credits Acquired + Credits Carried Over)

– (Credits Retired + Credits Sold + Credits on Hold)

(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 10 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

340-253-1050

Credit Basics

(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 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 that are registered under OAR 340-253-0500.

(c) Regulated parties, credit generators and brokers 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. 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 date" before credits with a later completed transfer "recording date;"

- (c) The System will retire credits generated in an earlier quarter before credits generated in a later quarter.
- (4) Credit transfers between parties.
- (a) "Credit seller," as used in this rule, means a regulated party, credit generator or broker who wishes to sell or transfer credits.
- (b) "Credit buyer," as used in this rule, means a regulated party, credit generator or broker 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 transfer.
- (5) Credit seller requirements. When a credit transfer agreement has been reached, within 10 business days, the credit seller must initiate an online "Credit Transfer Form" provided in the CFP Online System and must include the following:
- (a) Date on which the credit buyer and credit seller reached agreement;
- (b) Names and FEINs of the credit seller and credit buyer;
- (c) 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.
- (6) Credit buyer requirements. Within 10 days of receiving the "Credit Transfer Form" from the credit seller, 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 may only act as a credit seller or credit buyer if that broker:
- (a) Has an approved and active registration under OAR 340-253-0500;
- (b) Has an account in the CFP Online System; and
- (c) Has an approved Broker Designation Form from a regulated party or credit generator for whom the broker is acting in any given transaction.
- (9) Illegitimate credits.
- (a) A credit generator violates these rules if it submits information into the CFP Online System indicating that one or more credits have been generated when such an assertion is inconsistent with the requirements of OAR 340-253-1000 through 340-253-1020. If DEQ determines that one or more credits a credit generator claims to have generated are illegitimate credits, then the credit generator:
- (A) Must provide an approved credit to replace each credit that was not properly generated, if available; and
- (B) Is also subject to enforcement for the violation.
- (b) A regulated party, credit generator or broker that has acquired one or more illegitimate credits is subject to enforcement unless DEQ determines:
- (A) The credits were acquired from a registered regulated party, credit generator or broker; 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.
- (10) Public disclosure.
- (a) List of DEQ-approved registered parties. DEQ will maintain a current list of regulated parties, credit generators and brokers 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.

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

(A) An aggregate data summary of credit and deficit generation for the:

(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,

(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 the month, the report will also include the monthly average credit price for transfers.

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

(e) DEQ reports will represent information aggregated for all fuel transacted within the state; not by individual 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 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

Deferrals

340-253-2000

Emergency Deferral Due to Clean Fuel Supply

(1) Determining whether to issue an emergency deferral. DEQ will issue an order declaring an emergency deferral from the clean fuel standard, 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 shortage is greater than the equivalent of five percent of the total credits generated by all regulated parties and providers of clean fuels 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.

(2) Content of an emergency deferral. If DEQ determines under section (1) that it must issue a deferral, 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) The fuel deferred from complying with the clean fuel standard; and
- (c) Which of the following methods DEQ selects to defer compliance with the clean fuel standard during the temporary deferral period:
 - (A) Allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(4) through (6); or
 - (B) Suspending deficit accrual during the emergency deferral period.
- (d) Credits will accrue during the emergency deferral period.

(3) Issuing an emergency deferral. An emergency deferral 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 period as established under section (2);
- (c) The fuel deferred as established under section (2); and
- (d) The method selected by DEQ to comply as established under section (2).

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

(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 available in Oregon;
- (b) The estimated total aggregate credits available;
- (c) The estimated credits needed to meet the clean fuel standard; 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 of alternative-fueled vehicles in Oregon;
- (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 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, including:

(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 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;

(ii) Amend the clean fuel standard to extend beyond 2025, the year when Oregon must meet the lowest average carbon intensities to allow for less stringent annual reductions 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.

(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).

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);

(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;

(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).

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

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

340-253-8030

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

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

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

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

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

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7), Federal Rules of Appellate Procedure, I certify that the Appellees' Brief is proportionately spaced, has a typeface of 14 points or more and contains 8,583 words.

DATED: April 29, 2016

/s/ Denise G. Fjordbeck

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN FUEL &
PETROCHEMICAL
MANUFACTURERS, et al,

Plaintiffs-Appellants,

v.

JANE O'KEEFFE, et al,

Defendants-Appellees,

CALIFORNIA AIR RESOURCES
BOARD, et al,

Intervenor-Defendants -
Appellees.

U.S.C.A. No. 15-35834

STATEMENT OF RELATED CASES

Pursuant to Rule 28-2.6, Circuit Rules of the United States Court of

Appeals for the Ninth Circuit, the undersigned, counsel of record for

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defendants-appellees, certifies that she has no knowledge of any related cases pending in this court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2016, I directed the Appellees' Brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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