



Oregon Department of Environmental Quality

Climate 2023 Rulemaking Brief

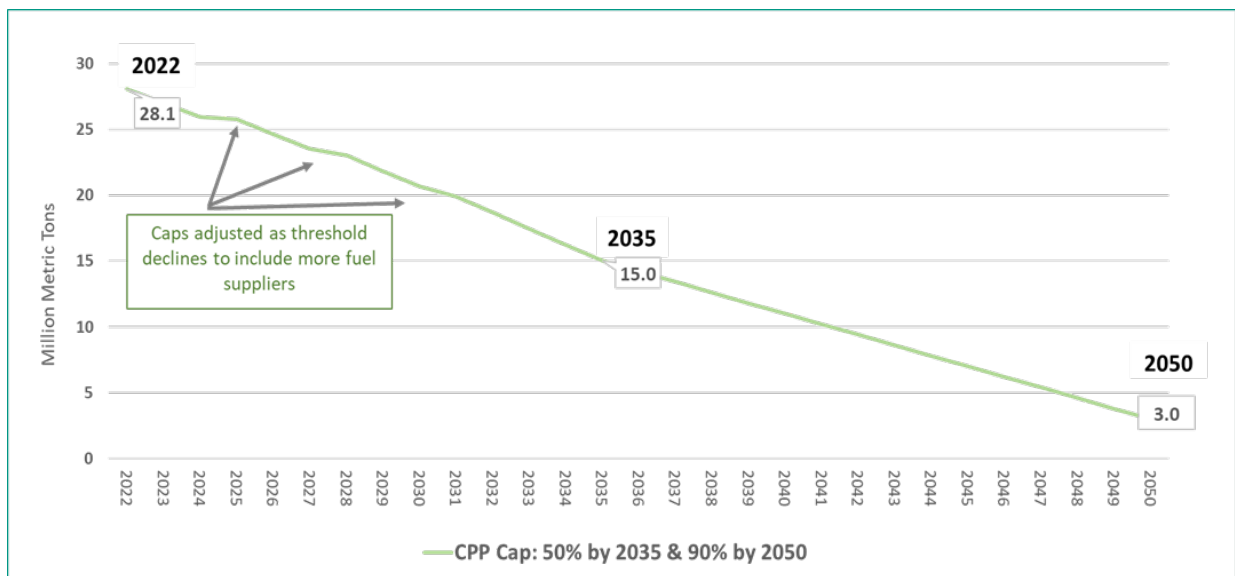
Proposed changes for Climate Protection Program covered fuel suppliers

June 20, 2023

Overview

DEQ is requesting comment on proposed changes to the Climate Protection Program (CPP), OAR 340-271, for covered fuel suppliers. Covered fuel suppliers include local distribution companies, Oregon's three natural gas utilities, and non-natural gas fuel suppliers (gasoline, diesel, kerosene, and propane suppliers) that meet or exceed a threshold for inclusion. A current list of [covered fuel suppliers](#) and additional resources are available on the CPP [website](#). Covered fuel suppliers are subject to the CPP's declining emissions caps.

Figure 1: Climate Protection Program Emissions Caps



Most of the proposed changes in this discussion brief apply to non-natural gas covered fuel suppliers. Based on experience implementing the CPP, DEQ is considering changes to:

- Better align staff resources and timelines across the Climate Protection Program (CPP), Greenhouse Gas Reporting Program (GHGRP), OAR-340-215 and Third Party Verification (TPV), OAR-340-272.
- More quickly incorporate new covered fuel suppliers into the annual distribution of compliance instruments.
- Continue to support CPP emissions reduction targets.
- Continue to support a competitive market.

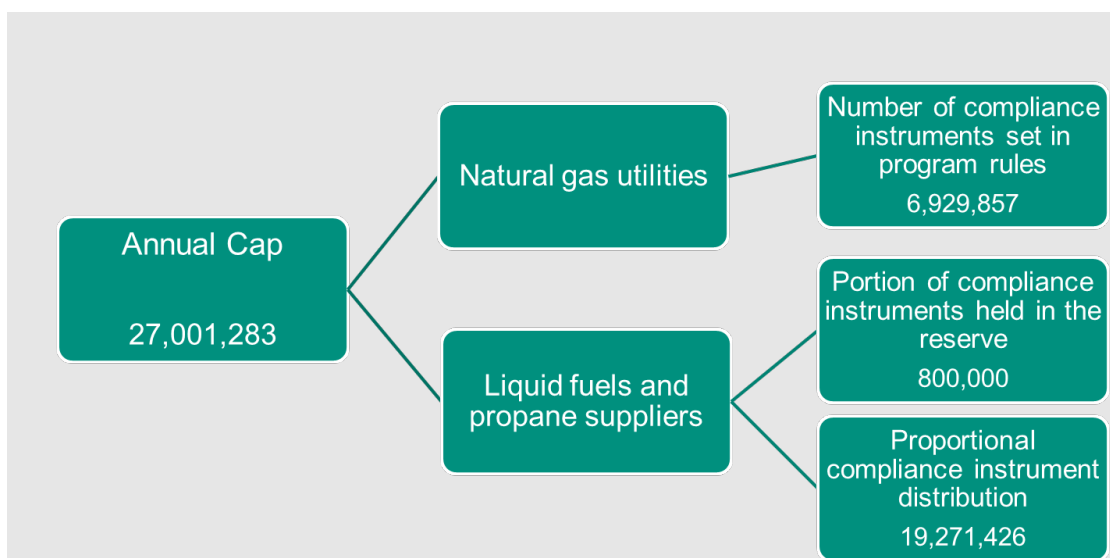
DEQ currently anticipates that any changes approved by the Environmental Quality Commission would take effect in 2024.

Proposed rule changes under consideration

1) Methodology for Distribution of Compliance Instruments

DEQ’s distribution of compliance instruments is outlined in [OAR- 340-271-0420](#). DEQ distributes compliance instruments to covered fuel suppliers by March 31 of each calendar year. The total number of compliance instruments DEQ distributes to all covered fuel suppliers is equal to the cap for each year, as stated in Table 2 in [OAR 340-271-9000](#) (except any compliance instruments held in the compliance instrument reserve). As demonstrated in Figure 2, the three natural gas utilities each receive a fixed number of compliance instruments stated in Table 4 in [OAR 340-271-9000](#). These distributions are based on each natural gas utility’s share of average 2017-2019 of covered emissions and decline each year at the annual rate of decline for the CPP emissions caps. The remaining compliance instruments are distributed to the non-natural gas covered fuel suppliers.

Figure 2: Schematic of March 31,2023 distribution of 2023 compliance instruments



The compliance instrument distribution methodology for non-natural gas fuel suppliers relies on those companies’ relative market shares to one another. This proportional approach uses a three-year rolling average of historic covered and biofuel emissions for each covered fuel supplier. Table 1 shows the years of emission data used, known as the evaluation period, for each calendar year of the cap.

Table 1: Compliance instrument distribution evaluation periods

Calendar years of emissions evaluated	Calendar year of the cap
2018 through 2020	2022
2019 through 2021	2023
Each subsequent three-year period	Each subsequent year

The methodology attempts to create a proportional allocation that recognizes volatility in the fuels sector, while helping to incent emission reductions as the CPP cap decreases.

Request for comment on evaluation period for distribution of compliance instruments

Currently, new covered fuels suppliers may need to make requests from the reserve for multiple years due to a lack of emissions data, i.e., a new covered fuel supplier may only have reported emissions for one year during the relevant three-year evaluation period. In addition, the number of compliance instruments available through the reserve is limited, so if emissions from new covered fuel suppliers significantly exceed the number of available compliance instruments in the reserve, those new covered fuel suppliers will need to obtain additional compliance instruments to cover such emissions by the end of the compliance period. Also, due to the length of the evaluation period, new covered fuel suppliers may need to operate for 4 years before they would maximize their compliance instrument distribution in the annual distribution of compliance instruments. This could also result in DEQ distributing more instruments from the reserve over time as compared to incorporating new covered fuel suppliers into the annual distribution process sooner.

The following simplified example demonstrates how changing the length of the evaluation period from three years to one year more quickly incorporates a new fuel supplier. Assume DEQ has 20 million instruments to distribute between two covered Fuels Suppliers: A and B

- Fuel Supplier A has 20 million tons of emissions during each year of the evaluation period
- Fuel Supplier B has 5 million tons of emission for each year of the evaluation period

Currently, DEQ computes the following:

- Fuel Supplier A gets 16 million instruments $[60M / 75M] * 20$ million
- Fuel Supplier B gets 4 million instruments $[15M / 75M] * 20$ million

Table 2 compares a 3-year and 1-year evaluation period with the onset of a new fuel supplier with 2 million tons of emissions (Fuel Supplier C). A and B remain as shown above: having 20 million and 5 million of historic emissions in each year of a 3-year period. We now have C who has 2 million tons of emission but only in the last year of the evaluation period.

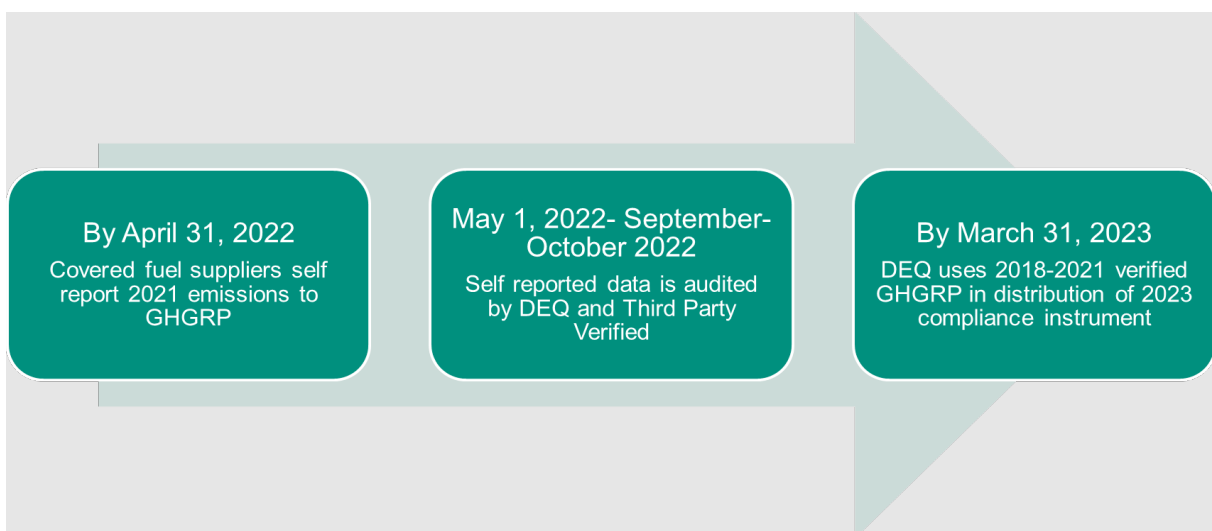
Table 2: Comparison on 3 year and 1 year compliance instrument evaluation period

	Fuel A	Fuel B	Fuel C	Total
3-year Evaluation Period				
Evaluation emissions:	60,000,000 (3 X 20m)	15,000,000 (3 X 5m)	2,000,000 (1 X 2m)	
Instruments distributed:	15,584,415	3,896,103	519,480	19,999,998
1-year Evaluation Period				
Evaluation emissions:	20,000,000	5,000,000	2,000,000	
Instruments distributed:	14,814,814	3,703,703	1,481,481	19,999,998

Request for comment on most recent Greenhouse Gas Reporting Program data year for use in emissions evaluation

Annual greenhouse gas emissions data reports are currently submitted to DEQ by the end of April of the following year. This self-reported data by fuel suppliers undergoes an internal audit by DEQ and Third-Party Verification as required by OAR 340, division 272 to ensure accuracy. Third party verified data is expected to be available in October of the following year. As a result of the time required for data to be accurately reported, audited, and verified, there is currently a one-year lag in the use of emissions data. For example, as noted above the distribution of the 2022 instruments relied on an evaluation period of 2018-2020, rather than 2019-2021.

Figure 3: Timeline for GHGRP emission reporting and compliance instrument distribution



DEQ is proposing to update the distribution timeline to use the most recent GHGRP data (see Figure 4). The deadline for the annual distribution of compliance instruments would move from March 31 to June 30 so emissions data from the most recent prior calendar year could be used. DEQ would then distribute compliance instruments using data from this prior year.

Using this most recent data would incorporate new or growing fuel suppliers into the annual distribution more rapidly. However, since this would be self-reported data, it would not have undergone internal auditing or Third-Party Verification as required in OAR 340, division 272. This might result in discrepancies in what a covered fuel supplier may self-report and Third Party Verified data. This may increase the likelihood of misreported emissions data and impact the annual distribution of compliance instruments for all covered fuel suppliers.

What else would DEQ have to consider if using self-reported GHGRP data?

- Are there additional concerns using self-reported data for the 2025 distribution as the applicability threshold declines?
- Are current Division 12 enforcement provisions for the GHGRP and CPP sufficient to support accurate reporting?
- Should DEQ consider an updating process for compliance instrument distribution once verified data is available?

2) Changes to the reserve for compliance instruments

New covered fuel suppliers may not receive compliance instruments in the March 31st annual distribution because they had not yet exceeded the threshold for applicability or did not operate during, or only operated during part of, the evaluation period, and so have no or relatively low reported emissions data as compared to current operations. New covered fuels supplier might be fuel suppliers already reporting to the GHGRP but whose emissions have grown above the threshold due to business practices or acquisitions, or new entrants to the Oregon fuels market.

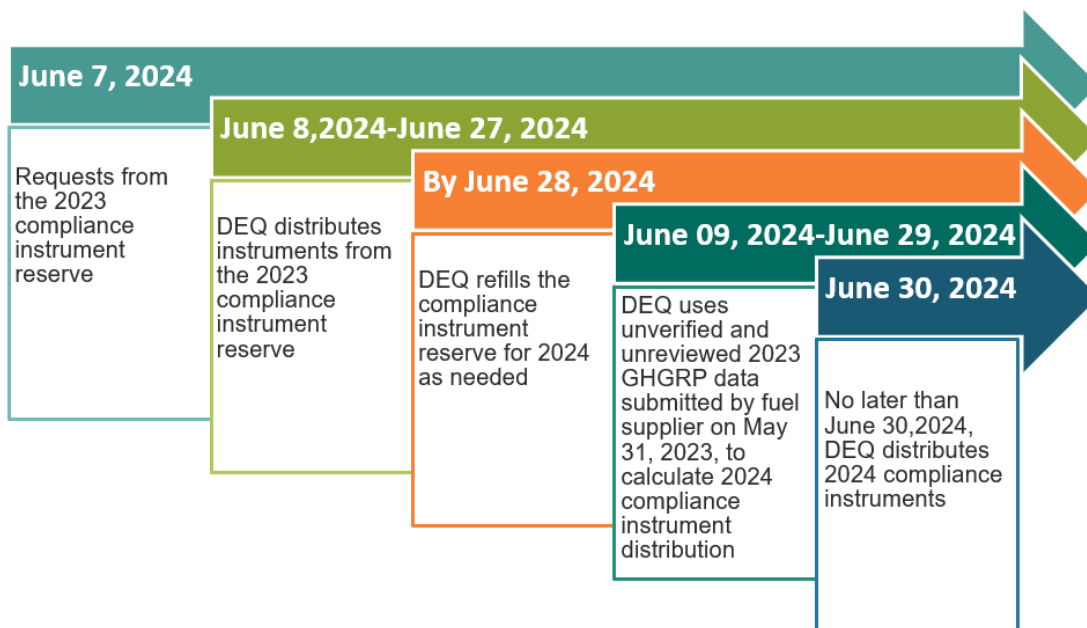
New covered fuel suppliers can make a request for a distribution from the compliance instrument reserve for that calendar year. DEQ populates the compliance instrument reserve with compliance instruments from under the CPP emissions cap as described in [OAR 340-271-0420](#). DEQ distributed all 400,000 compliance instruments from the 2022 compliance instrument reserve.

Coupled with the changes discussed above, DEQ is considering changes to the compliance instrument reserve. DEQ is not proposing to change the size of the reserve and DEQ will continue to respond to requests from the reserve prior to the annual distribution of compliance instruments to determine if the size of the compliance instrument reserve is less than described in Table 3 in [OAR 340-271-9000](#). Currently DEQ may consider:

- The number of compliance instruments the covered fuel supplier might have received if DEQ had available information to include the covered fuel supplier in the annual distribution
- The number of compliance instruments in the reserve at that time
- A maximum distribution amount that will not exceed the covered fuel supplier's covered emissions in that year
- A maximum distribution amount that will not exceed 300,000 compliance instruments per covered fuel supplier per year

DEQ is proposing to update the above by adding how DEQ will calculate distributions from the reserve and requiring that all requests for a distribution from the reserve are made by June 7 of the following calendar year. This will provide more time for DEQ to respond to reserve requests and for DEQ to use more recent GHGRP data in calculating distributions from the reserve. DEQ would also remove the maximum distribution amount (as all reserve distributions would be limited by the total reserve amount).

Figure 4: Schematic of proposed updated compliance instrument distribution



Assuming DEQ uses self-reported 2023 GHGRP data to determine the distribution of 2024 compliance instruments DEQ would require all requests from the 2023 compliance reserve by June 7, 2024, as seen in Figure 3.

DEQ will also use the self-reported 2023 data to calculate covered emissions for covered fuel suppliers requesting a distribution from the 2023 compliance instrument reserve. If there are not enough compliance instruments in the reserve to distribute compliance instruments equal to the covered emissions for each approved covered fuel supplier, DEQ would distribute reserve compliance instruments according to the ratio of each requester's covered emissions to total covered emissions for all requesters. DEQ could also consider using the most recent verified GHGRP data, 2022, for these reserve calculations.

DEQ is also proposing to no longer allow a reserve distribution for new covered fuel suppliers that are related entities to another covered fuel supplier that is already receiving compliance instruments from the annual compliance instrument distribution. This change is to help ensure that an emissions increase due to expansion is treated the same whether done within a currently covered fuel supplier or through an acquisition, and to prevent fragmentation of covered entities.

Request for comment for changes to the reserve distribution

DEQ is requesting comment on whether and how it should update the methodology to determine distributions from the compliance instrument reserve including the new proposed timeline and emissions data used.

3) Additional considerations for compliance instrument distribution

If DEQ were to use self-reported GHGRP data for the distribution of compliance instruments to non-natural fuel suppliers, DEQ also may want to consider whether to adopt a new process to

update the distributions once verified GHGRP data was available. This might allow DEQ to adjust for any significant discrepancies in what any individual fuel supplier may have reported and Third Party Verified data. While changes to reported data can occur even after Third Party Verification, self-reported data is more likely to be inaccurate or incorrect. DEQ may want to update annual compliance instrument distributions when Third Party Verified data is available.

Request for comment on additional considerations for compliance instrument distribution

DEQ is requesting comment on the updating process if using self-reported GHGRP data for the annual compliance instrument distribution. Some options could include:

- Adjustment of compliance instrument distribution in the following year to account for over/under distributions
 - In 2024, DEQ would re-check the 2023 distribution using the (now available) audited and verified emissions data.
 - Covered fuel suppliers that received too many instruments would see an equivalent reduction in their 2024 distribution.
 - Covered fuel suppliers that received too few instruments would see an equivalent addition to their 2024 distribution.
- Adjustment of compliance instrument distribution to account for over/under distributions over a period of multiple years. For example:
 - In 2025, DEQ would re-check the 2023 and 2024 distributions using audited and verified emissions data
 - Covered fuel suppliers that received too many instruments would see an equivalent reduction in their 2025 distribution.
 - Covered fuel suppliers that received too few instruments would see an equivalent addition to their 2025 distribution.

DEQ also considered making the adjustment at the end of each calendar year. However, this would require “taking back” compliance instruments (removing from accounts) after the annual distributions.

4) Additional measures to support market competitiveness/prevent anti-competitive behavior

As stated in [OAR 340-217-0500](#), covered fuel suppliers can trade compliance instruments but can't engage in fraud, unconscionable tactics, activities intended to lessen competition or tend to create a monopoly, to injure, destroy or prevent competition in the market for compliance instruments, or attempt to monopolize holding of compliance instruments, or to combine, collude, or conspire with others to monopolize. In addition to monitoring market activity and compliance instrument trades in Your DEQ Online, are there additional tools or changes that DEQ should consider to prevent anti-competitive behavior?

DEQ distributes 100% of the compliance instruments directly to covered fuel suppliers and only covered fuel suppliers can trade and hold compliance instruments. Several other state and provincial cap and reduce or cap and invest emission reductions programs, i.e., California and Washington, use quarterly auctions to distribute program allowances. Individuals and many types of entities, once qualified, can participate in these auctions. Some of these market-based emission reduction programs use auction limits (no one entity can purchase more than a certain percentage of allowances available at each auction) and/or holding limits (each market participant is limited to certain number of allowances at a specified time). In most programs the holding limit is applied at the quarterly auctions. Holding limits are not intended to limit the ability to bank allowances, but instead as a tool to prevent anti-competitive behavior, such as exercising market power or market manipulation.

Request for comment on additional measures

DEQ is requesting comment on whether it should consider additional measures such as holding limits.

- Should DEQ consider implementing a holding limit for covered fuel suppliers in the program?
- How would DEQ calculate a holding limit for each covered fuel supplier?
- How could DEQ calculate a holding limit while recognizing emissions volatility, longer term planning with banking and supporting incentives for lower emissions reductions as soon as possible?
- Would a potential holding limit be calculated using compliance instruments in circulation, historic emissions, projected emissions or a combination?
- Would holding limits be applied in advance of the annual compliance instrument distribution so a covered fuel supplier could complete trades?
- Would DEQ apply a holding limit annually or apply every two or more years?

Alternate formats

Translation or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)

800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).