

## Fuels Sectors: Considerations for Covered Entities and Compliance Instrument Distribution

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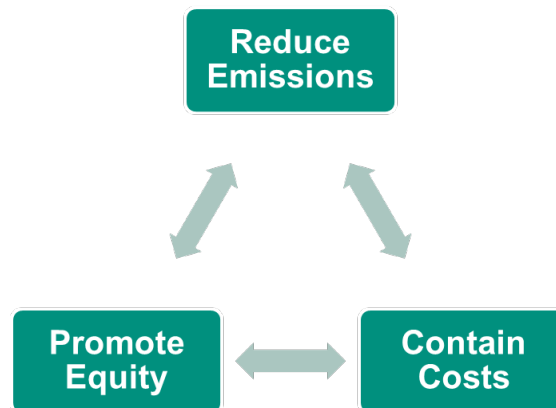


State of Oregon  
Department of  
Environmental  
Quality

### Overview

The Climate Protection Program will limit and reduce greenhouse gas emissions from some of the most significant sources in Oregon. The program aims to:

- Achieve significant emissions reductions
- Promote benefits and alleviate burdens for environmental justice and impacted communities
- Contain costs



This brief reviews some key considerations for regulating non-natural gas fuel suppliers, including:

1. Determining which entities the program covers and those it does not, and
2. Distributing compliance instruments.

DEQ believes the program should have a predictable process to determine covered entities, which will also inform compliance instrument distribution. This approach will provide certainty for businesses while achieving significant emissions reductions and limiting program costs.

### Determining which non-natural gas fuel suppliers are covered

The point of regulation for non-natural gas fossil fuels, such as gasoline, diesel, propane and kerosene, is the fuel supplier that first has title to the fuel outside of a fuel terminal or otherwise owns the fuel as it is imported across the state border.<sup>1</sup> An emissions threshold will be used to determine which fuel suppliers would be regulated. The program would cover any fuel supplier with emissions at or above the threshold.

The companies importing these fuels and the quantities they supply vary annually, particularly among smaller companies. A company's market share can change significantly from year to year. A fuel supplier could have emissions above the selected threshold one year, but not in future years. This could occur regardless of the threshold level selected but would occur more frequently at lower thresholds.

At the April 2021 Rulemaking Advisory Committee (RAC) Meeting, DEQ discussed a potential way to determine which fuel suppliers are above the threshold by evaluating average emissions over a three-year period. DEQ discussed repeating this evaluation

Office of  
Greenhouse Gas  
Programs  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-6124

[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

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<sup>1</sup> This aligns with the point of regulation for greenhouse gas emissions reporting in Oregon Administrative Rules Chapter 340, Division 215.

once per compliance period to determine which fuel suppliers would be covered. An advantage of this approach would be providing more certainty about which entities are covered over a longer period of time, which also has benefits for compliance instrument distribution. However, a tradeoff would be that entities who cross the threshold for the first time would not become covered until the compliance period after their average emissions cross the threshold. DEQ received feedback from RAC members requesting that a fuel supplier be covered beginning with the first year it meets or exceeds the threshold, without waiting for an average to rise above the threshold.

### **DEQ leaning**

DEQ's leaning is for a fuel supplier to be covered beginning with the first year it meets or exceeds the program threshold and to remain covered until its covered emissions are below the program threshold for six consecutive years.

DEQ could make initial determinations at the outset of the program based on evaluating historical data (for example, any fuel supplier that met or exceeded the program threshold in the 3-5 years prior to program implementation would be covered). After DEQ makes initial determinations, additional fuel suppliers would become covered beginning with the year that they meet or exceed the program threshold.

### **Regulating natural gas utilities**

DEQ's current leaning is to regulate all natural gas emissions at the three natural gas utilities without setting a threshold.

### **Distributing compliance instruments to fuel suppliers**

DEQ will set an annual limit of allowable emissions in the Climate Protection Program measured in metric tons of carbon dioxide equivalent (MT CO<sub>2</sub>e). The limit would decline each year toward emissions reduction targets established in the program rules. The limit would apply to natural gas utilities and non-natural gas fuel suppliers, collectively referred to as fuel suppliers.

One compliance instrument would represent one allowable MT CO<sub>2</sub>e of covered emissions. Annually, DEQ would generate a number of compliance instruments equal to the limit and distribute those compliance instruments to covered fuel suppliers. DEQ has previously stated it favors distributing compliance instruments annually based on historically reported emissions by covered entities. DEQ could do this by assessing a covered fuel supplier's proportional share of emissions to determine their distributed share of compliance instruments. For example, if a covered fuel supplier reported one percent of historical emissions, they could receive one percent of compliance instruments.

At the April RAC meeting, DEQ described a process to evaluate each covered fuel supplier's proportional share based on three years of emissions data. DEQ received feedback that it is preferable to have the evaluation period as close to the compliance year or compliance period as possible. DEQ also received feedback suggesting an annual true-up based on actual emissions that occur during the year, or holding a portion of compliance instruments to distribute based on actual emissions during the year. DEQ believes there are advantages to providing certainty at the start of a year regarding the number of compliance instruments each entity will receive, and not changing that number after emissions have already occurred.

## New Entrants

For fuel suppliers who become covered after initial determinations are made (called new entrants), the distribution based on the proportional share of historical emissions may not be appropriate because:

- These new entrants may become covered fuel suppliers after DEQ has already distributed compliance instruments for the year, and
- These new entrants may not have sufficient historical data to calculate their proportion of historical emissions.

This means that for new entrants, there may be benefits to holding a portion of compliance instruments in a reserve from within the cap. When a new entrant becomes covered, it could receive a distribution of compliance instruments from the reserve. DEQ could base the number of compliance instruments an entity receives from the reserve on reported emissions data (if available), a maximum number of compliance instruments, the number of compliance instruments it would have received if it were a preexisting covered fuel supplier, or other limits.

The size of the reserve could be set in program rules. DEQ could place that number of compliance instruments into the reserve when the program starts from within the first year's cap. DEQ could then distribute them to new entrants as necessary. Any compliance instruments not distributed from the reserve could roll over to the next year. DEQ could place additional compliance instruments into the reserve the following year from within that year's cap to bring the reserve back to the size set in program rules. DEQ could evaluate historical data to determine what size the reserve should be.

## DEQ Leaning

DEQ's leaning is to distribute compliance instruments to each covered fuel supplier based on its proportion of emissions from a three-year evaluation period, using historically reported data, according to the schedule in Table 2. As shown in the table, DEQ would re-calculate the proportional share annually. Each year, DEQ would use the most recently available emissions reported emissions data to determine compliance instrument distribution for the next year. DEQ believes this approach will:

- Smooth annual variability by averaging;
- Provide certainty about the number of compliance instruments each entity will receive prior any emissions occurring for the year; and
- Limit time lags by using the most-recently-available data and re-evaluating annually.

**Table 2: Example schedule for evaluating distribution of compliance instruments**

Emissions years for evaluation period	Year in which evaluation occurs to determine distribution of compliance instruments	Year for distribution of compliance instruments
2018-2020	2021	2022
2019-2021	2022	2023
2020-2022	2023	2024
Each subsequent three-year period	Each subsequent year	Each subsequent year

DEQ's leaning is to create a compliance instrument reserve from within the cap for new entrants. DEQ would distribute from the reserve to a new entrant if the new entrant enters the program after DEQ has already distributed compliance instruments for the year or if it has not reported emissions for enough years for DEQ to calculate its proportion of compliance instruments using the schedule described in Table 2. DEQ does not yet have a leaning on the size of the reserve.

## **Discussion questions**

1. What are the advantages and disadvantages of distributing compliance instruments based on each entity's proportional share of emissions during a three-year period?
2. What are the advantages and disadvantages of creating a reserve of compliance instruments for new entrants?
3. Should DEQ limit the number of compliance instruments a new entrant could receive from the reserve, and if so, how?

## **Alternative formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).