Clean Fuels Program Expansion 2022 Rulemaking

Rulemaking Advisory Committee Meeting #4

May 26, 2022

Zoom Meeting Tips for RAC Members

- Please see below webinar instructions and tips below:
  - If you have not already **connected your audio**, click on the arrow next to the microphone icon, then click "Join Computer Audio" **or** "Switch to Phone Audio" to connect your computer speakers or to view the conference line information.
  - Please **keep yourself on mute** when not speaking. To mute and unmute, either select microphone icon, or use your personal phone.
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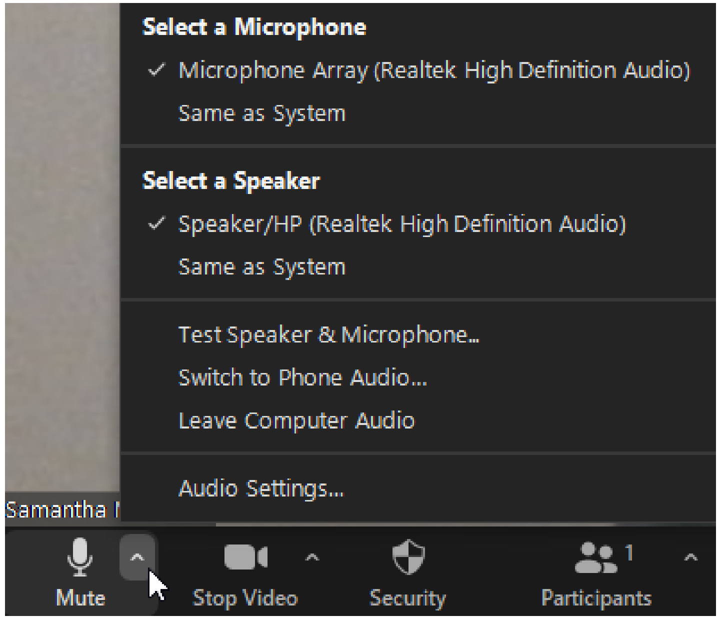
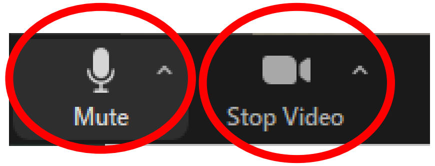
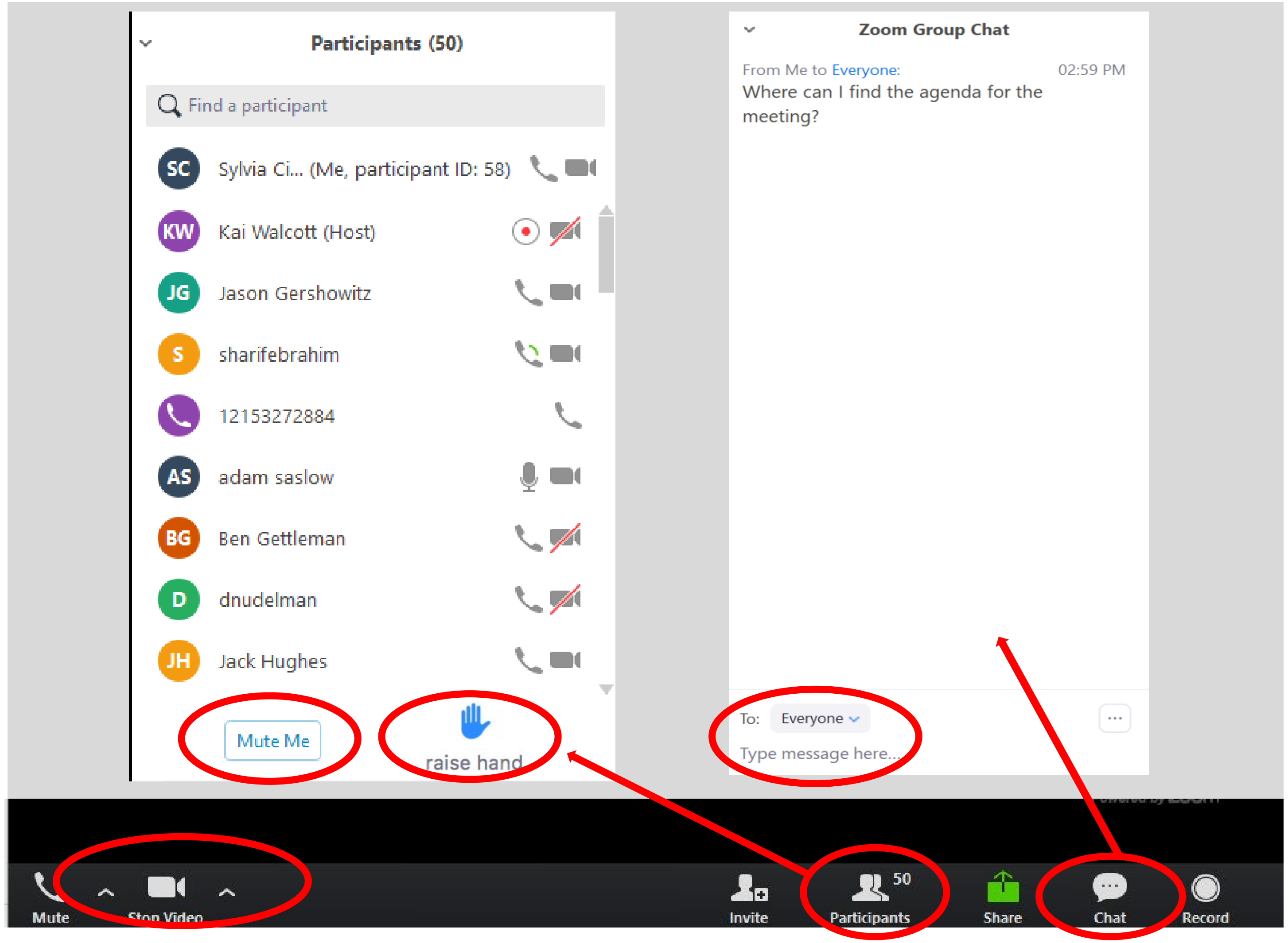




Zoom Meeting Tips



- To raise your hand by phone, press *9.
- To unmute yourself by phone, press *6.

Public Comment Instructions

To make verbally ask a question or make a comment:

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- If you have joined by phone, press *9 to raise your hand.
- The facilitator will call on participants. You will receive an “unmute” request. Please accept it. If you are commenting by phone dial *6 to unmute.
- Please provide your name and affiliation.
- Attendees will be allocated reasonable time for public comment depending on the number of commenters.
- **If we run out of time and you have not had a chance to speak, you can still provide written comments after the meeting.**

Meeting Guidelines

- Fully participate in Work Group meetings
- Come prepared for meetings
- Participate in an open and mutually respectful way
- Balance of speaking time
- Serve as a liaison to your larger community of interest
- Act in good faith

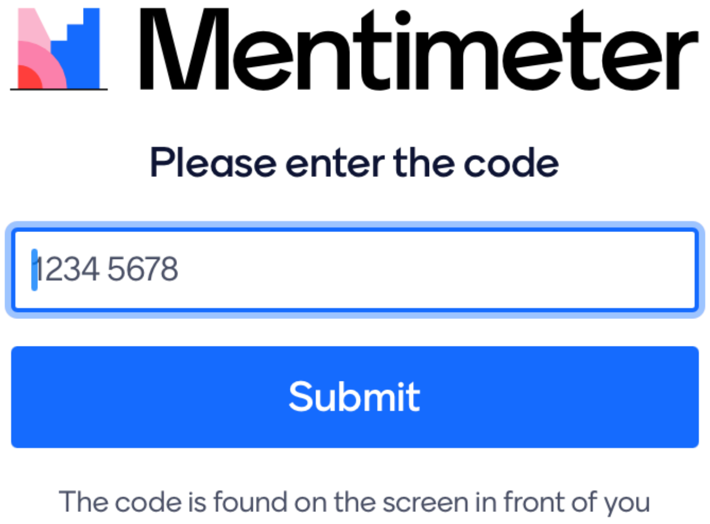
Meeting Agenda

Time	Topic
9:45 a.m.	Webinar Setup and Login
10 a.m.	Welcome and Introductions
10:10 a.m.	Committee Business
10:15 a.m.	Overview of Draft Rules and Updates
12 p.m.	Lunch
1 p.m.	Presentation and Discussion: Fiscal Impact Statement & Racial Equity Statement
3:30 p.m.	Public Comments
3:55 p.m.	Next Steps
4 p.m.	Adjourn Meeting

Attendees: What is your Affiliation?

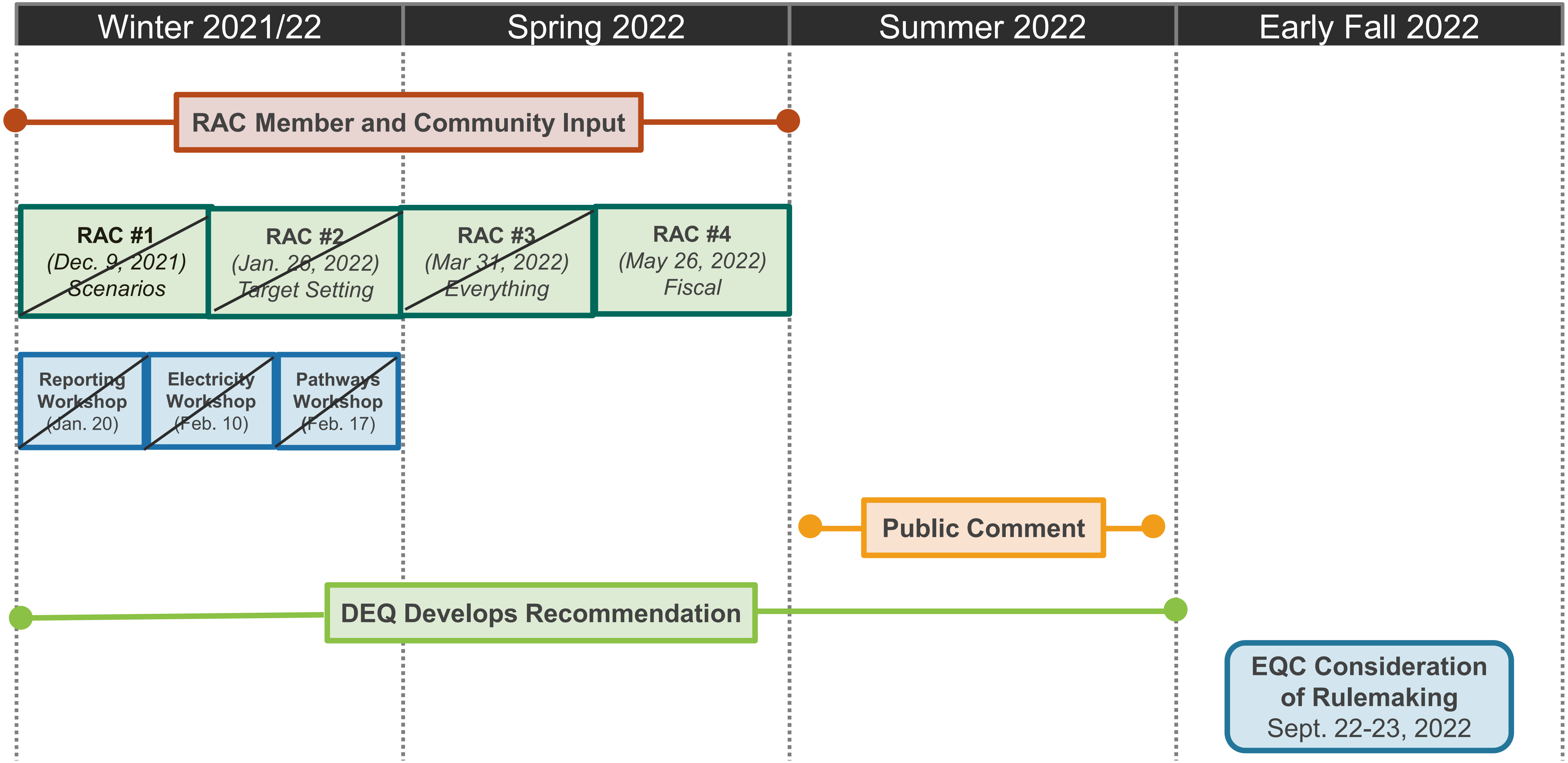
RAC Meeting Attendees:

- Open a browser window on your cell phone or computer.
- Go to **Menti.com**
- Type in the code in the chat. Click “Submit”



Brief Recap of RAC #3 Meeting

Clean Fuels Program Expansion 2022 Rulemaking Timeline



Recap of RAC Meeting #3

- Meeting summary
- Written comments - 15 received
  - Target setting – targets are too high; targets are too low
  - More emphasis on zero emissions technology and less on biofuels
  - Designation of the first credit generator for several use cases
  - Supportive of the new eGSE energy economy ratio

Presentation: Overview of Proposed Rule Updates

Major Topics of Discussion

- Updates to violations of the Clean Fuels Program
- Expansion of the targets
- Updates to existing provisions
- Housekeeping updates

Enforcement Updates

What is Division 12?

- Division 12 are the DEQ rules that classify violations and govern civil penalty assessment

- DEQ typically updates Division 12 concurrent with changes in underlying obligations (e.g. new rules, changes to rules)

Division 12 Civil Penalty Formula

Civil Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

BP = base penalty (comprised of classification & magnitude, and sometimes violator type)

P= Prior significant actions

H = History of correcting prior significant actions

O = Number of occurrences of the violation

M = Mental state

C = Corrective actions

EB = Economic Benefit

Changes to Division 12

Three categories of changes:

- Based on experience implementing CFP, classify additional, specific obligations that did not previously have their own classification (e.g. failure to notify DEQ of a change in ownership / control)
- Elevate some violations, due to maturity of program and use of CFP data in Climate Protection Program (e.g. failing to register; late or inaccurate CFP reports). These changes will result in higher penalties.
- Minor changes for clarity, consistency.

Separate Violations

Enforcement and civil penalty implications of new Division 253 “Separate Violations” rule in OAR 340-253-0680

- One violation per credit / per deficit, for violations of Clean Fuels Standard and generation of illegitimate credits
- Similar approach taken in Climate Protection Program: each ton of a compliance obligation = one violation
- Civil penalty calculation:
    - These types of violations are Class I, major magnitude violations in the $12,000 penalty matrix.
    - DEQ will issue civil penalties, using the Division 12 formula, for violations or groups of violations
    - Statutory cap $25,000/violation/day
    - Similar approach taken by CARB for enforcement of its LCFS program

Questions and Discussion

Expansion of the Targets

- Proposed targets:
  - 20% by 2030
  - 37% by 2035
- The proposed targets are located in OAR 340-253-8010 Tables 1-3
- Some fuels transition from a “clean fuel” to a “regulated fuel” in OAR 340-253-0200
- The requirements related to that transition are located in OAR 340-253-0200 and -0320
- Proposed program review to be conducted in 2029 to include data through 2028

Questions and Discussion

Additions and Updates to Existing Provisions

- These slides present a high-level overview of the current draft of the proposed rules but rule references and numbering may not be updated
- The goal of this section is to ensure that you have a basic understanding of the proposed rules
- Please submit specific comments on rule language to cfp.2022@deq.oregon.gov
- The organization of the rule changes in this part of the presentation is based on overarching topics. This is different than in the draft Fiscal and Economic Impact Statement where they are based on the magnitude of fiscal impact.

Hydrogen

- Added Renewable hydrogen definition to -0040
- Clarified recordkeeping for certain hydrogen pathways, including biomethane to hydrogen and renewable electricity pathways in -0600

Advance Credits

- Modified to allow for hydrogen vehicles and equipment to apply under -1100
  - Hydrogen applications must include contracts with hydrogen supplier or other information on the source of the hydrogen
- Also modified to allow charging equipment participating in National Electric Vehicle Infrastructure funding program to apply
  - There is currently an error in the draft rules for this provision – there is no intent to limit EV charging infrastructure to just equipment in that program

Electricity

- Added and modified definitions to clarify fuel applications for EERs in -0040
- Electric ground support equipment added as the credit generator in -0330 and as a fuel application in -8010
- Renamed utility renewable electricity product application process in -0470
- Narrowed down to a single primary credit generator per fuel application type in -0330
  - Forklift Fleet Operator, not the fleet owner, in response to comments
- Certification requirement for the location of EV charging where the vehicle or equipment is registered in -0600

Biomethane

- Electronic tracking (such as M-RETS Renewable Thermal) required for all pipeline-injected biomethane -0450, -0600, and -0680
- New definitions in -0040 for natural gas common carrier pipelines, renewable thermal certificates, book and claim
- Biogas/biomethane to electricity added as a Tier 1 fuel, calculator -0400, -0450
- Attestation system is retained for biogas/biomethane that is not injected into a pipeline -0600
- Biomethane producer must make contractual arrangements to avoid multiple claims with purchaser of the physical gas -0450

Additional Credits

- Added in -1020
  - Request process to add credits once verification is complete for a fuel production facility
  - Operational CI for the FPC must be more than 1 gram CO2e/megajoule lower than certified CI
  - DEQ may adjust obligated volume used for additional credit calculation if reporting shows that there were exports of that fuel in the first quarter of the next year

Credit Transfers

- For credit transfers, there is a new option to provide the contract or specific information on the credit transfer form to explain the valuation of the credit transfers in -1005

Exempt Uses

- Added definitions in -0040 to clarify exempt uses
- Documentation requirements added in -0250

Housekeeping

- Clarified Aggregator language in -0100, -0300's
- Added Change of Ownership or Control and deregistration language in -0100
- The term "Registered party" is used more throughout the division for clarity
- Administrative adoption of new transactions added in -0630

Housekeeping

- Additional detail in Recordkeeping -0600, Quarterly Reports -0630, and Reporting -0640
- Product transfer documents (PTD) must include the destination state of the fuel, or the destination must be marked as unknown if not known in -0600

Housekeeping

- Simplification of -0310: Regulated Parties: Providers of Gasoline, Diesel, Ethanol, Biodiesel, Renewable Diesel, and Blends Thereof
  - This rule was redrafted for clarity. The intent is to maintain all the existing responsibilities and obligations but move from being situational to a set of overarching principles.
- Delete various rules that applied to past years and are no longer relevant

Housekeeping

- Clarified producer responsibilities when operational CI begins to exceed certified CI

- Fuel Supply Equipment registration process added to Registration rule -0500
  - DEQ will only approve registrations submitted in the first 45 days of that quarter to be available for the current reporting period. Registrations submitted after the first 45 days will not be available for reporting in that reporting period.

Questions and Discussion

Lunch: 12 p.m. – 1:15 p.m.

Presentation and Discussion: Fiscal and Economic Impact Statement & Racial Equity Statement

https://www.oregon.gov/deq/rulemaking/Documents/cfp2022m4FIS.pdf

Major Topics of Discussion

- Specific topics
  - Fiscal and economic impact statement (FEIS)
- Updates in aggregate
  - Fiscal and economic impact (FEIS)
  - Racial equity impact (REIS)

Review of Fiscal and Economic Impact

ORS 183.333-336 requires DEQ to ask for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 to reduce that impact.

Updates with no Fiscal and Economic Impact

- (See page 2 of the FEIS) Updates to violations of the CFP - These proposed changes only have fiscal impact if a party violates the rules and are therefore outside the scope of this fiscal and economic impact analysis.

- (See page 4 of the FEIS) Housekeeping updates

Updates with Minor Fiscal and Economic Impact

(See page 3 of the FEIS) Updates of existing provisions, with minor impact – These updates are mostly administrative in nature or provide clarity to existing language and therefore do not have significant fiscal and economic impacts.

FEIS - New EER for Electric Ground Service Equipment

(See page 4 of the FEIS) This proposal will have a positive fiscal and economic benefit to the owner of the charger that will be able to generate credits from the deployment of these vehicles, most likely an airport or airline.

FEIS – Modify Ocean-Going Vessels

(See page 4 of the FEIS) This proposal will have minor fiscal and economic impact for smaller vessels which are currently generating credits but will not be eligible as of January 1, 2023, unless they can apply for a new EER.

FEIS – Advance Crediting for all ZEV Technologies

(See page 4 of the FEIS) This proposal will have slight positive fiscal and economic benefit to the fleets that participate in this provision.

- The impact is slight since the advancing of credits effectively is a loan rather than granting extra credits.
- Since the cap on the number of advance credits that can be generated has not been increased, DEQ does not anticipate that the number of fleets that apply will increase but they might be spread between electric and hydrogen fuel cell fleets.

FEIS – Electronic Tracking of Renewable Natural Gas

(See page 4 of the FEIS) This proposal will have a moderate fiscal and economic impact since parties reporting renewable natural gas will have to pay to participate in the registry, but that cost is minor compared to the revenue from generating the credits and the administrative cost and risk of paper attestations.

FEIS – Additional Credits Post-Verification

(See page 4 of the FEIS) This proposal will have a positive fiscal and economic benefit for pathway holders whose verified carbon intensity is lower than their approved carbon intensity.

FEIS - Expansion of the Targets

(See page 1 of the FEIS) To assess the fiscal and economic impact of the future targets, DEQ considered the following:

- Direct cost of complying with the proposed targets
- Benefits from reducing tailpipe air pollutants
- Indirect costs or cost savings to fuel consumers

Direct Cost of Complying with the Proposed Targets

(See page 6 of the FEIS):

- Increasing targets will increase the number of deficits and decrease the number of credits that are generated from the same volume of fuel.
- There are many variables involved in estimating the future cost of compliance, but a conservative approach is to multiply the number of deficits modeled in the illustrative compliance scenario in 2035 by the highest possible credit price allowed
  - 5,443,520 deficits in 2035
  - The credit clearance market price is the de facto cap. It is difficult to forecast future inflation, so we used the 2022 CCM price of $230.43.
- We also used credit prices of $100 and $150 to provide a range of costs. The current credit price is about $125.

	Maximum Estimated Cost of Compliance		
Number of Deficits in 2035	$100 per credit	$150 per credit	$230.43 per credit (2022 CCM price)
5,443,520	$ 544,352,000	$ 816,528,000	$ 1,254,350,314

Direct Cost of Complying with the Proposed Targets

There are many reasons why the actual compliance cost will be much lower.

- The potential cost can vary widely based on a number of factors, from inherently volatile crude oil prices to various agricultural markets, and the adoption of alternative vehicle technologies.
- Regulated parties can purchase them from other credit generators. In this case, the value paid for credits goes to other parties that generate credits in the program which means that these dollars are not lost to the economy but are invested within the transportation fuel market.
- Regulated parties can generate credits themselves by providing low-carbon fuels; they are among the largest credit generators because of the biofuels they purchase, import, or produce.
  - Increasingly so, they are investing more in other low-carbon fuels such as electric vehicle chargers and renewable natural gas projects as the market transitions away from fossil fuels.
  - Several petroleum refineries have already begun co-processing or completely converting to renewable feedstocks in order to transition to producing renewable fuels.

Benefits from Reducing Tailpipe Air Pollutants

(See page 7 of the FEIS):

- DEQ worked with UC Davis researchers to model the impacts of the proposed CFP expansion, both in tailpipe emissions and health outcomes.
- The modeling indicates that the proposed expansion is likely to produce significant air quality benefit, mostly due to reductions in particular matter, and avoided health costs of about $90 million dollars annually.
- Additional benefits will result from reductions in other criteria pollutants such as nitrogen oxides, carbon monoxide, and volatile organic compounds but were not quantified.

Indirect Costs or Cost Savings to Fuel Consumers

(See page 8 of the FEIS):

- Switching to non-petroleum fuels buffers consumers from crude oil price shocks due to market, weather, or geopolitical factors, which can have a significant economic effect for both those consumers and the overall economy.
- Each year, DEQ calculates the average cost or cost-savings of complying with the CFP on a gallon of gasoline (E10) and diesel (B5) using 3 pieces of information: 1) the carbon intensity of the fuel, 2) the target, and 3) the average credit price.
- For 2021, the cost is estimated to conservatively be 5.09 cents per gallon of gasoline and 5.80 cents per gallon of diesel. The same factors can also lead to significant cost savings for lower-carbon fuels used either alone or blended.
- For 2030 and 2035, the cost estimates are shown here for a range of credit prices:

	Credit Prices in 2030		**Credit Prices in 2035**	
	$125	CCM	$125	CCM
E10	29 cents per gallon	47 cents per gallon	55 cents per gallon	87 cents per gallon
B5	33 cents per gallon	53 cents per gallon	62 cents per gallon	99 cents per gallon

Indirect Costs or Cost Savings to Fuel Consumers

There are several ways that this calculation is an overestimation:

- Decreasing demand for gasoline and diesel is likely to lower their prices over time.
- The credits generated by biofuels will increase the blend rates and help lower the retail cost of those fuels.

There are also a series of cost containment provisions to ensure that regulated parties or fuel consumers will be protected from sudden or significant changes in prices including:

- Emergency deferral for short-term fuel supply shortages
- Annual fuel supply forecast and deferral in the event of a longer-term fuel supply concern
- Credit Clearance Market which provides a de facto cap on the price of credits

FEIS – Cumulative Impact of the Rulemaking

- At a high level, the proposals contained in this rulemaking will expand the market for low-carbon fuels which would be a significant benefit to the parties that provide them.
- It will also increase the obligation of deficit-generating high-carbon fuels and the costs associated with them.
- The scenario analysis shows that the effect of the expanded 2035 target will reduce tailpipe greenhouse gas emissions by about half from roughly 20 million metric tons CO_2e per year to 10.55 million metric tons by 2035.
- Using the most recent federal estimate of the social cost of carbon in 2035, using a 2.5% discount rate, the cost per ton is $96 per ton so the value of this reduction in emissions is $916 million dollars.

Questions and Discussion

FEIS – Impact to the Public

The public are consumers of transportation fuels, and the fiscal and economic impact to the public is described in the section above describing the Indirect Costs to Fuel Consumers.

The public also benefits from the reduction of tailpipe emissions as described above.

FEIS – Impact to Agencies and Governments

Other state agencies and local governments are consumers of transportation fuels and included in the fiscal and economic impact as described in the section above describing the Indirect Costs to Fuel Consumers.

They may also be participants in the program as many of them own electric vehicle chargers and generate credits from the electricity they dispense.

FEIS – Impact to Oregon DEQ

For DEQ, implementing these proposals will require updates to the Oregon Fuels Reporting System, modifications to existing workflows, and new processes especially for:

- auditing retirement records for renewable natural gas transactions;
- extending advance crediting to hydrogen fuel cell vehicles and fueling infrastructure; and
- calculating additional credits for post-verification adjustments.

Other updates will also need to be incorporated into existing systems.

FEIS – Impact to Large Businesses

- For those who provide deficit-generating fuels, the proposed targets will have a significant fiscal and economic impact.
  - The traditional blend of gasoline and diesel will generate more deficits and the regulated parties will need to acquire and retire more credits to comply with the proposed targets.
- For those who provide credit-generating fuels, the proposed targets will have a significant fiscal and economic benefit as the demand their fuels and the credits they generate increases.
  - Credit prices may also increase due to the increase in demand for them.
- Additionally, the proposed updates described in Slides 39 through 43 would have a minor to moderate fiscal and economic impact as described above.

FEIS – Impact to Small Businesses

Do the proposed rules have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact?

- Small businesses can be impacted in the same ways large businesses can be impacted
- Small businesses are mostly small fuel distributors and businesses that serve as aggregators for other registered parties.
- There are no additional requirements for reporting, recordkeeping or other administrative activities including costs of professional services for small businesses.
- There are no additional requirements for equipment, supplies, labor or administration for small businesses.

Questions and Discussion

Review of Racial Equity Impact

Requirement: ORS 183.335(2)(a)(F), as amended by HB 2993, requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal of the proposed rules will affect racial equity in this state.

This is a new requirement and DEQ is asking for the RAC's input on how adoption of this rule may affect racial equity in the state.

Assessment of Racial Equity

- The scope of this racial equity impact statement is this rulemaking; it does not re-assess the existing CFP.
- While the CFP is primarily a lifecycle greenhouse gas reduction strategy, the lower-carbon fuels that replace the high-carbon ones also reduce tailpipe emissions and can be a highly effective strategy to address the localized impacts of air pollution.
- Communities that are adjacent to or near transportation facilities and corridors are disproportionately impacted by those emissions and are commonly lower-income and have a higher percentage of residents that are Black, indigenous, and other peoples of color.
- These environmental justice communities have been historically overburdened by transportation emissions and expansion of the program's targets will benefit these most vulnerable Oregonians by decreasing the air pollution to which they are exposed.
- Environmental justice communities are being impacted by climate change first and worst.

Racial Equity Impact

- The UC Davis study clearly signals that the health of Oregonians will benefit from the expansion of the program by showing air quality improvement in the vicinity of major roadways.
- An expanded CFP mitigates many of the issues listed above and has a positive impact on racial equity.
- DEQ also knows that switching from a gasoline or diesel-powered vehicle is costly and low-income Oregonians may be delayed in that transition.
- An expanded CFP will add to the cost of gasoline and diesel.
- An expanded CFP also creates incentives for higher blends of biofuels that will bring down the cost of fuels that can be used in gasoline and diesel vehicles.
- Higher gasoline and diesel costs will disproportionately impact lower income Oregonians but increasing the availability of lower-cost alternatives can also benefit those same communities.

Racial Equity Impact Statement

DEQ finds that the proposed rules will impact racial equity in the state, both positively and negatively. Throughout the development of the proposed rules, DEQ has attempted to design the updates to the Clean Fuels Program to maximize the benefits and mitigate the costs.

Questions and Discussion

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*9

Written Comment Instructions

To submit comment after the meeting:

- Please email comments to CFP.2022@deq.oregon.gov with “RAC #4 Public Comment” as the subject line **by the end of day on Friday, June 10**.
- Thank you for sharing your feedback.

Next Steps

RAC #2 → RAC #3 → RAC #4 → Public Comment

- Notice of Proposed Rulemaking: week of June 27th

Future targeted dates:

- Public Hearing: mid-July 2022
- Environmental Quality Commission: September 22-23, 2022

Thank you!