

ATTACHMENT A: Response to Comments

DEQ accepted public comment on the proposed rulemaking from August 22, 2023, until 4 p.m. on October 13, 2023. DEQ received 2,318 comments by the close of the public comment period, including 21 oral comments received at the public hearing on September 18, 2023. The 2,318 comments include joint comments that were signed by multiple organizations and comments submitted more than once but on different days.

DEQ created 62 comment categories divided into 12 comment subjects to respond to comments, included in Table A-1 below. Oral and written comments are posted on the [Climate 2023 Rulemaking](#) website. Comment subjects include:

- GHG Reporting Program (GHGRP) definitions
- GHGRP book and claim for biomethane and hydrogen
- GHGRP additional GHG reporting requirements
- Enforcement
- GHGRP electricity suppliers
- Climate Protection Program (CPP) Book and claim accounting for compliance
- CPP Compliance instruments – annual distribution
- CPP Compliance instruments- reserve
- CPP Compliance instruments- holding limits
- CPP Compliance instruments market
- CPP – Best Available Emissions Reduction (BAER) for stationary sources
- General or out of scope

Table A-1				
Comment Subject	Category	Comment Description	Response	Comment ID
GHG Reporting Program (Division 215)				
1	Definition of “air contamination”	Commenter requested an explanation of the removal of the term “air contamination source” from the reporting rules and noted that the rules do not define the term “stationary source” or “electric power system facility”.	Proposed amendments within the scope of this rulemaking include clarifying language and updating definitions. This included using more specific terminology, including stationary source and electric power system facility, in place of "air contamination source" where applicable. Definitions of these terms are incorporate into the rule by reference from OAR 340-200 and 40 C.F.R. part 98 subpart DD, respectively.	170
2	Definition of “biomethane”	DEQ should expand the proposed definition of “biomethane” to include renewable fuels such as synthetic methane and to clarify the treatment of gas produced from electrolytic hydrogen when combined with carbon dioxide from a biomass source	DEQ removed the defined term "renewable natural gas" and proposed the definition of "biomethane" to support the programmatic need to identify and account for emissions from biomass-derived fuel use. Oregon statues limit DEQ's authority to regulate emissions from biomass. This proposed definition of biomethane is intentionally different than the term 'renewable natural gas', as the latter is inclusive of synthetic fuels, not produced from biomass derived fuels. The proposed biomethane term and reporting requirements allow DEQ to easily identify emissions from the combustion of biomass and treat them in accordance with Oregon statue. Under the proposed rules, electrolytic hydrogen combined with waste carbon dioxide from a biomass source could still fall under the definition of "biomethane" and not have any associated anthropogenic greenhouse gas emissions when reported.	123, 159, 173
3		Commenters were supportive of the proposed definition of biomethane including the exclusion of	DEQ removed the defined term "renewable natural gas" which was inclusive of all synthetic gas and proposed the definition of "biomethane" to support the programmatic need to identify and account for biomass-derived fuels.	1, 2, 3, 9, 16, 18, 48, 67, 84, 128, 130, 179, 180, 220, 222

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		synthetic methane derived from anthropogenic carbon sources.	Oregon statutes limit DEQ's authority to regulate emissions from biomass. The proposed biomethane term and reporting requirements allow DEQ to easily identify emissions from the combustion of biomass and treat them in accordance with Oregon statute.	
4	Definition of "importer"	Commenters requested that, for consistency, DEQ should revise the definition of "importer" to include hydrogen.	DEQ modified the definition of "importer" and removed portions of the definition specific to certain fuel types, not needed for rule interpretation.	135, 157, 175
5	Definition of "Terminal"	Commenter encourages DEQ to modify the definition of "Terminal" in Division 215 to include rail and transloading facilities.	DEQ is proposing edits to the definition of terminal to clarify current reporting requirements for in-state fuel producers. Redefining the term in ways that change the type of facilities recognized as a terminal may result in changes to the entity that retains the obligation for reporting specific gallons of fuel and related emissions. Changes to the point of regulation for reporting are not in scope for this rulemaking.	139
6	Definition of "hydrogen"	DEQ should propose greater specificity for the definition of hydrogen. The definition should include requirements for how the fuel is produced and transported.	<p>DEQ recognizes that the proposed rules would allow for the reporting of all types of hydrogen, regardless of the carbon intensity, as a zero emissions fuel when reported. DEQ has determined that this treats hydrogen reported via book and claim under the program in the same way as other fuels, including hydrogen directly imported into Oregon.</p> <p>Separately, DEQ has determined that fuels claimed under a book and claim accounting method must have a pathway that would allow for the transport of that fuel to Oregon. DEQ has proposed additional clarifying language that the common transportation and distribution system for the claimed form of energy must allow for the transport of the</p>	1, 6, 25, 31, 131, 180, 218

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			specific form of energy that is booked and claimed. For the book and claim of hydrogen, this means that there must be a connected pathway of pipelines between Oregon and the point of hydrogen injection and that all the pipelines along this pathway must allow for the transport of that type of gas.	
7		DEQ should consider the many ways hydrogen is derived, including the benefits of hydrogen derived from natural gas via reformation.	Thank you for your comment. DEQ is proposing rules that do not restrict the type of hydrogen that may be reported.	10, 111, 112, 113, 114, 141, 144, 145, 146, 147, 148, 149, 152, 155, 161, 167, 183, 188, 189, 225, 226, 227, 228
8	Definition of "environmental attribute"	Commenters urged DEQ to remove or amend the proposed definition of "environmental attribute" from Division 215 draft rules.	The proposed rules allow for the use of thermal certificates that meet certain requirements, but do not require the use of them. To allow for both the use of these certificate mechanisms and other methods of accounting and attestation a definition of the term "environmental attribute" is needed in the rule to clearly identify the attributes being reported and attested to for verification purposes. DEQ is proposing edits to require that all attributes associated with booked and claimed fuel must be claimed for reporting purposes.	128, 130, 179, 180
9		Commenters expressed support of the proposed definition of environmental attribute under Division 215.	Thank you for your comment. In response to comments DEQ has updated the definition of the term to be inclusive of all environmental attributes.	151
10	Book and Claim for biomethane and hydrogen	DEQ's existing rules already allow for book and claim accounting. Commenters urge DEQ to maintain book and claim methods.	DEQ agrees that the rules currently allow for book and claim reporting of biomethane. DEQ believes the proposed changes are needed to add specificity and clarify the requirements for booking and claiming fuel.	10, 111, 112, 113, 114, 133, 135, 136, 141, 144, 145, 146, 147, 148, 149, 152, 155, 156, 157, 158, 159, 161, 166, 167,

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				171, 172, 174, 175, 176, 177, 178, 183, 184, 188, 189, 199, 225, 226, 227, 228
11		Commenters urged DEQ to align book and claim reporting and recordkeeping requirements with current industry accounting for renewable thermal credits.	The rules list the information that a regulated entity must report and retain to substantiate their reporting of the supply of biomethane and hydrogen. This is information needed to accurately quantify emissions and verify data for the program. To the extent that an RTC, including an M-RETS certificate, meets those reporting and recordkeeping requirements it may be used for compliance purposes. DEQ believes that this case by case evaluation of third party platforms capable of tracking and accounting for renewable fuels ensures that all necessary data can be validated by DEQ while still allowing for a more streamlined regulatory process for fuel suppliers. The rules do not propose that DEQ set up an independent RTC program or require the use of RTC or M-RETS for reporting.	135, 142, 157, 166, 172, 175, 177
12		DEQ should align the book and claim lifecycle carbon intensity calculation methodology with the Public Utility Commission's (PUC) methodology as defined in OAR 860-150-0050 for consistency between regulatory programs.	DEQ does not believe that including lifecycle carbon intensity calculation methodologies allowed under OAR 860-150-0050 would achieve this goal. OAR 860-150-0050 specifies the use of either a Tier 1 or Tier 2 calculator published by the Oregon Clean Fuels Program (which is identical to the proposed requirement under OAR 340-215-0044(5)(c)(I)), or a Tier 1 or Tier 2 calculator published by the California Air Resources Board for use in the California Low Carbon Fuel Standard Program. DEQ does not expect wide divergence between these methodologies and would retain the ability to allow for alternative methodologies as appropriate.	135, 157, 175

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13		<p>Commenter supports DEQ’s proposal to allow environmental attributes claims under federal Renewable Fuel Standard Program.</p>	<p>Thank you for your comment. The proposed rules allow environmental attributes to be claimed under the Oregon Greenhouse Gas Reporting and Climate Protection Programs, as well as under complimentary programs such as the Oregon Clean Fuels Program and the Renewable Fuel Standard, provided the same amount of fuel is reported for the same end use. Allowing for environmental attributes to be claimed under multiple synergistic programs incentivizes the development of low carbon fuel alternatives while safeguarding against double counting of emissions reductions.</p>	187
14		<p>DEQ should add deliverability requirements to book and claim.</p>	<p>At this time, DEQ proposes to limit the eligibility for reporting imported biomethane to fuel that is injected into the transportation and distribution systems that are connected to Oregon but has not proposed additional deliverability requirements. DEQ has not sufficiently explored the technical aspects of introducing new deliverability requirements or how such requirements would or would not reflect how gas is distributed across the interstate systems. DEQ also believes that additional deliverability requirements may result in impacts not fully accounted for in this rulemaking. DEQ monitors changes and developments in emissions accounting to align with best practices and may consider further refinements at a future rulemaking if appropriate.</p>	180
15		<p>Commenters asserted that gas suppliers, that are not local distribution companies, such as natural gas marketers, should be required to report information about</p>	<p>To minimize the burden of reporting, DEQ limits the number of entities within the fuel distribution system that are directly subject to the reporting regulation. Currently, the rules do not place requirements on natural gas marketers or transport customers. However, the rules do allow for these entities to voluntarily provide information</p>	135, 157, 175

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		environmental attributes to the gas utility.	to the utility for the reporting of biomethane or hydrogen procured by the third-party to DEQ.	
16		Commenters urged DEQ to limit book and claim reporting for biomethane and hydrogen to gas injected into a pipeline within Oregon.	DEQ acknowledges stakeholder's interest in limiting book and claim to pipelines within Oregon. DEQ's proposal allows for biomethane and hydrogen injected into pipelines within Oregon to be reported, provided the regulated entity can meet all of the rule requirements. Nearly all natural gas used in Oregon is imported on a pipeline system that also transports biomethane. Since biomethane and natural gas molecules are identical and are comingled on the interconnected pipeline systems, the reporting rules add requirements to specify the reporting of biomethane, procured outside of Oregon, and injected into that system to properly account for and verify emissions from biomass-derived fuels.	1, 2, 3, 4, 5, 6, 9, 11, 13, 16, 18, 19, 22, 23, 24, 31, 35, 36, 39, 40, 45, 48, 50, 51, 52, 58, 63, 67, 70, 82, 84, 109, 110, 116, 120, 131, 163, 179, 180, 202, 207, 209, 212, 215, 216 218, 220, 221, 222, 223, 224
17		DEQ should not impose geographical limitations on the reporting of biomethane	DEQ acknowledges stakeholders' interest in expanding book and claim to allow for the reporting of fuels without imposing geographical constraints. DEQ's proposal allows for book and claim reporting for both gas injected into a pipeline in Oregon, as well as, gas that may be procured outside the state and delivered through a pipeline system that is connected to the state, provided the regulated entity can provide the required data and information. This allows DEQ to account for emissions associated with the annual quantity of fuel delivered by pipeline and used in the state. Fuel injected into a pipeline system outside of the state, that is not part of the transmission and distribution pipeline network connected to Oregon, may not be reported.	7, 8, 10, 73, 74, 76, 91, 93, 111, 112, 113, 114, 133, 134, 135, 136, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 152, 155, 156, 157, 160, 161, 162, 165, 166, 167, 168, 172, 174, 175, 176, 177, 183, 184, 186, 187, 188, 189, 199, 200, 204, 214, 219, 225, 226, 227, 228

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18		Avoid book and claim accounting for hydrogen.	<p>The proposed book and claim rules address the need for DEQ’s programs to account for comingled fuels imported into Oregon through an interconnected pipeline system.</p> <p>DEQ has determined that fuels claimed under a book and claim accounting method must have a pipeline pathway that would allow for delivery to Oregon. DEQ has proposed that the common transportation and distribution system for the claimed form of energy must allow for the transport of the specific form of energy that is booked and claimed. For the book and claim of hydrogen, this means that there must be a connected pathway of pipelines between Oregon and the point of hydrogen injection and that each segment connecting the point of injection to Oregon must permit the transport of that gas.</p>	128, 130, 131, 163, 179, 180, 218, 223
19		Commenters expressed support for the use of renewable natural gas (RNG).	Thank you for your comment.	7, 8, 72, 74, 75, 76, 77, 78, 79, 83, 86, 87, 92, 100, 101, 102, 104, 105, 106, 108, 133, 134, 135, 157, 165, 166, 167, 168, 174, 175, 176, 178, 184, 199, 200, 208, 213, 219, 225, 226, 227, 228
20	Additional GHG reporting requirements	Commenter requested that DEQ expand the reporting timeline for additional required documentation for reporting entities from 14 days to 30.	Providing requested records within 14 calendar days is a current requirement of the reporting rule. DEQ is not proposing changes to the timeline and has found, through program implementation, that 14 days is sufficient for requesting records that a regulated entity is obligated to maintain. DEQ also notes that both the current and	135, 157, 175

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			proposed rules establish provisions to allow DEQ to approve a different schedule.	
21		Natural gas suppliers requested that DEQ remove the requirement in OAR 340-215-0044(5)(a) to separately report biogenic emissions from combustion and oxidation processes.	As defined in OAR 340-215-0020 in the proposed rules, “Direct emissions” means emissions from a stationary source, including but not limited to fuel combustion activities, process related emissions, and fugitive emissions. Natural gas utilities are regulated as natural gas suppliers under the greenhouse gas reporting rules and this rule does not apply to them.	135, 157, 175
22		Commenters advocated for additional data reporting requirements for reporting of certain alternative fuels.	DEQ agrees that there is value in collecting data on biofuel and hydrogen production and use within Oregon to provide sufficient data to inform possible future policies. To that end, DEQ has included within the proposed rules new data requirements that include the production facility, feedstock, and method of production. In addition, DEQ is proposing a requirement that the full lifecycle intensity of the fuel be reported to DEQ. These new data requirements capture most of the elements requested by commenters.	9, 11, 25, 120, 180, 216, 220, 221
23		The Greenhouse Gas Reporting Rules should not be retroactive to the 2023 data year.	DEQ proposed that the rules are effective for the reporting of 2023 emissions in 2024. To allow for the transition to the new requirements, under OAR 340-215-0046(3), entities reporting biomass-derived fuels or hydrogen may request exemption from specific requirements for the 2023 data year.	135, 157, 175
24		Create a reporting mechanism for fuels suppliers to document the end use of fossil fuels.	The GHG reporting program requires fuel suppliers to report emissions that would result from the complete combustion or oxidation of fossil fuel supplied and does not require any documentation of end use.	117

<p>25</p>	<p>Enforcement for reporting errors</p>	<p>DEQ should clarify how Division 12 and the proposed enforcement under Division 215 applies to under-reporting or over reporting emissions.</p>	<p>Failing to timely submit a complete and accurate emissions data report under the Greenhouse Gas Reporting Program, Division 215, where the untimely, incomplete or inaccurate reporting impacts applicability, distribution of compliance instruments, or any compliance obligation under the Climate Protection Program, Division 271, is a Class I, major magnitude violation. The only change being proposed to the Division 12 rules is to clarify that greenhouse gas reporting errors that impact the distribution of compliance instruments are considered major magnitude violations along with reporting errors that impact applicability or compliance obligations under the CPP.</p> <p>In addition, DEQ is proposing a new rule, OAR 340-215-0130, to clarify how certain greenhouse gas reporting violations are counted. Specifically, the rule states that “Each metric ton of greenhouse gas emissions not reported according to the requirements of [Division 215] by a covered fuel supplier, as defined in OAR 340-271-0020, that affects applicability determinations, compliance instrument distribution, or compliance obligations under the Oregon Climate Protection Program, OAR Chapter 340 Division 271, is a separate violation of [Division 215].” This rule is consistent with a similar rule in the CPP, OAR 340-271-0450(4), which states that each metric ton of CO2e of a compliance obligation for which a covered fuel supplier does not demonstrate compliance is a separate violation of Division 271.</p> <p>The new Division 215 rule applies specifically to fuel suppliers covered under the CPP program that submit reports with errors that impact applicability determinations, compliance instrument distribution, or compliance obligations. Misreporting impacts the amount of compliance instruments distributed not just to the party</p>	<p>124</p>
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			<p>that misreported but to all regulated entities in the CPP program. In addition, just because there are reporting errors that impact compliance instrument distribution in CPP, there will not necessarily be a failure to demonstrate compliance with CPP compliance obligations, which can be addressed under the CPP “each ton is a separate violation” rule. Therefore, the “each ton is a separate violation” rule in Division 215 plays an important role in DEQ’s ability to enforce the full regulatory scheme that supports the CPP. Even if a covered fuel supplier corrects misreported emissions through the process of third party verification, a covered fuel supplier could still be subject to enforcement and penalties. This new Division 215 rule is needed to deter errors in reporting, maintain the integrity of the program's greenhouse gas emissions accounting and to limit the impacts of misreporting for all CPP program participants.</p>	
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26		Commenters disagree with new enforcement under Division 215.	See response to comment above, which describes the rule changes and the rationale for those changes.	171, 178, 186
27	Electricity suppliers	Commenters expressed support for the proposed amendments for the multijurisdictional utility emission factor.	Thank you for your comment.	170
28		DEQ should clearly define the Division 215 term “net metered”	DEQ has updated the proposed rules to include language that clarifies the term and associated reporting requirement.	151
29		DEQ should clarify Division 215 reporting requirements for net metering and qualifying facilities.	Thank you for your comment. DEQ proposes additional language to clarify that utilities may aggregate net metered power by resource type for reporting purposes.	151, 170
Climate Protection Program (Division 271)				
30	Book and claim accounting for biomethane and hydrogen for CPP compliance	Book and claim accounting for biomethane will likely encourage investments away from Community Climate Investments (CCIs) reducing benefits for Oregon's environmental justice communities.	The Climate Protection Program is designed to offer various options and flexibility mechanisms for covered fuels suppliers to comply with the program’s requirements for reducing emissions. One of the ways that natural gas utilities can comply with Climate Protection Program is by increasing their procurement and supply of biomethane (a biomass derived fuel) in place of fossil fuel gas. A covered fuel supplier can also choose to purchase Community Climate Investment credits to meet a limited percentage of its compliance obligation. Funds in the Community Climate Investments are prioritized for investments that reduce greenhouse gas emissions in or for the benefit of Oregon's environmental justice communities and are an important mechanism to support equitable	1, 2, 3, 6, 13, 14, 16, 21, 23, 24, 29, 30, 38, 44, 52, 54, 56, 58, 59, 67, 84, 116, 119, 131, 132, 180, 193, 194, 196, 197, 198, 209, 211, 222, 223, 224

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			<p>outcomes as Oregon's transitions away from a reliance on fossil fuels.</p> <p>DEQ agrees with the comments that CCI investments can result in many associated economic and public health benefits particularly for environmental justice communities in Oregon. DEQ does not however require that covered fuels suppliers purchase any particular amount of Community Climate Investments credits. DEQ does not specify which options covered fuels supplier must use to comply with the Climate Protection Program. The existing Greenhouse Gas Reporting rules that allow for book and claim accounting were in place during the development of the Climate Protection Program rule.</p>	
31		<p>Allowing for book and claim accounting for biomethane and hydrogen undermines Climate Protection Program goals and/or the state's climate goals.</p>	<p>The EQC and DEQ have acknowledged the importance of addressing climate change and reducing greenhouse gas emissions, The Climate Protection Program is designed to significantly reduce greenhouse gas emissions, while supporting equitable outcomes and containing costs to businesses and consumers. There are multiple benefits, economic, environmental and health, to reducing the state's reliance on fossil fuels.</p> <p>The Greenhouse Gas Reporting Program rules currently allow for the book and claim accounting of biomethane and proposed amendments for hydrogen reporting are designed to provide further clarification for reporting entities and to support ongoing implementation of the Climate Protection Program. The existing Greenhouse Gas Reporting rules that allow for book and claim accounting were in place during the development of the Climate Protection Program.</p>	<p>1, 2, 3, 4, 5, 6, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 32, 31, 33, 34, 35, 36, 37, 42, 47, 55, 57, 58, 70, 71, 81, 82, 85, 88, 95, 97, 98, 109, 110, 120, 150, 163, 179, 180, 190, 191, 192, 195, 201, 203, 205, 209, 210, 211, 220, 222, 223, 224</p>

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			<p>The Climate Protection Program is designed to offer various options and flexibility mechanisms for covered fuels suppliers to comply with the program’s requirements to reduce emissions. One of the ways that natural gas utilities can comply with Climate Protection Program is by increasing their use of biomethane (a biomass derived fuel) in place of fossil fuel gas.</p>	
32	Compliance instrument distribution - annual distribution	Comments supportive of proposed changes to remove the three-year evaluation period for compliance instrument distribution methodology for annual distribution	Thank you for comment.	10, 111, 112, 113, 114, 141, 144, 145, 146, 147, 148, 149, 152, 155, 158, 161, 164, 167, 183, 188, 189, 225, 226, 227, 228
33		Comments not supportive of using unverified emissions in compliance instrument distribution methodology for annual compliance instrument distribution.	<p>The annual compliance instrument methodology for liquid fuels and propane suppliers in the Climate Protection Program was designed to reflect the variability in the fuels market, both in terms of covered fuels supplier' annual variations in emissions and variability among covered fuel suppliers.</p> <p>DEQ believes it is necessary that the distribution of compliance instruments to liquid fuels and propane suppliers better reflect those companies’ positions in the Oregon fuel market. Their positions change regularly, and thus the data used to assess companies’ positions needs to be as contemporaneous as possible. DEQ is proposing to reduce the evaluation period to one year and to use the most current emissions data in the annual compliance instrument distribution. Due to Greenhouse Gas Reporting Program and Third Party Verification reporting and</p>	169, 185

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			<p>verification timelines, using the most recent emissions data (data from the previous calendar year) requires using unverified emissions in the annual compliance instrument distribution.</p> <p>Third party verified data is critical to the implementation of the Climate Protection Program, including for determining compliance obligations of covered entities. DEQ therefore proposes to apply a verified emissions data correction factor to annual compliance instrument distributions. Essentially, DEQ will recalculate the compliance instrument distribution from the previous year using third-party verified emissions data and incorporate any needed adjustments to the current compliance instrument distribution.</p>	
34		<p>Comments that expressed support of using most recent years of unverified emissions data with a verified emissions correction factor in annual compliance instrument distribution.</p>	<p>Thank you for your comments. DEQ believes it is necessary that the distribution of compliance instruments to liquid fuels and propane suppliers better reflect those companies' positions in the Oregon fuel market. These positions change regularly, and thus the data used to assess companies' positions needs to be as contemporaneous as possible. DEQ is proposing to reduce the evaluation period to one year and to use the most current emissions data in the annual compliance instrument distribution. In response to comments (see below), DEQ is proposing for the 2024 compliance instrument distribution year only, to use the higher of each covered fuels supplier 2022 verified emissions or 2023 unverified emissions for the distribution methodology. The verified emissions correction factor would still apply if the unverified 2023 emissions data was the greater amount and used for the 2024 distribution.</p>	124, 164

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			<p>Due the Greenhouse Gas Reporting Program and Third Party Verification reporting and verification timelines, using the most recent emissions data (data from the previous calendar year) requires using unverified emissions in the annual compliance instrument distribution. DEQ would apply a verified emissions data correction factor to the annual compliance instrument distribution to incorporate third party verified data when available.</p>	
35		<p>DEQ should provide more clarification on implementation of proposed verified emissions correction factor.</p>	<p>DEQ will use unverified emissions data for each annual compliance instrument distribution. After DEQ has verified emissions data for a reporting year, DEQ will apply a verified emissions data correction factor to the annual compliance instrument distribution of each covered fuel supplier. Essentially, DEQ will recalculate the compliance instrument distribution from the previous year using third-party verified emissions data. If DEQ determines that the reported emission data used for the previous year’s compliance instrument distribution resulted in a lesser or greater number of compliance instruments being distributed to a covered fuel supplier, when compared to the recalculation using the third-party verified data, DEQ will increase or reduce, respectively, the number of compliance instruments distributed to that covered fuel supplier by an equal amount in the current compliance instrument distribution.</p>	124
36		<p>Comments not supportive of changing compliance instrument distribution methodology for annual distribution during</p>	<p>DEQ notes concerns that emissions data for 2023 is not yet available and transitioning to the new methodology as proposed in the Notice of Proposed Rulemaking would result in one year of emissions data (2022) being omitted from the compliance instrument distribution methodology.</p>	139, 185

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		compliance period, even if supportive of proposed changes for future.	<p>DEQ does DEQ see a need to better reflect companies' positions, including new covered fuels suppliers, in the Oregon fuel market as soon as possible</p> <p>DEQ believes that data used to assess companies' positions needs to be as contemporaneous as possible and this requires updating the compliance instrument annual distribution methodology sooner rather than later. However, in response to these comments, DEQ is proposing, for the 2024 compliance instrument distribution year only, to use the higher of each covered fuels supplier 2022 verified emissions or 2023 unverified emissions for the distribution methodology. The verified emissions correction factor would still apply if the unverified 2023 emissions data was the greater amount and used for the 2024 distribution.</p>	
37	Compliance instrument distribution - reserve instruments	Comments expressed support of proposed changes to the compliance instrument reserve	Thank you for comment.	124, 164
38		Comments expressed support for proposed changes to distributions from the reserve, except that they ask DEQ not eliminate the ability of new market entrants that are related to existing covered fuel suppliers to obtain instruments from the reserve.	DEQ understands that related entities often function independently; however, DEQ finds that the potential possibility of related entities returning to the compliance instrument reserve year after year necessitates the proposed rule change to disallow entities related to a current market participant from making requests for instruments from the reserve. In doing so, DEQ has delayed the implementation of this rule until the first year of the second compliance period (2025) to avoid penalizing actions taken under the existing rules and to allow fuel suppliers to assess the implications of the	139

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			proposed exclusion. DEQ also thinks this change is necessary to ensure equal treatment for market growth under one company or through acquisitions.	
39	Holding limit for compliance instruments	Commenters expressed general support of proposed holding limit for compliance instruments	DEQ believes a holding limit for compliance instruments can be a useful mechanism to support a competitive market for compliance instrument by preventing potential market manipulation or hoarding. In designing the proposed holding limit DEQ has attempted to design a holding limit that could support market competitiveness but would not hinder program elements features such as banking and early action to reduce emissions.	124, 139, 164, 185
40		Comments not supportive of proposed holding limit, holding limit is not needed or too restrictive, holding limit could have unintended consequences.	<p>DEQ believes a holding limit for compliance instruments can be a useful mechanism to support a competitive market for compliance instruments by prevent potential market manipulation or hoarding. In designing the proposed holding limit DEQ has attempted to design a holding limit that would not be too limited and support program features such as banking and early action to reduce emissions.</p> <p>To achieve this, DEQ is proposing holding limits that would apply at the end of the three-year compliance period, are calculated using each covered fuel supplier's emissions and compliance obligations, and establishing holding limits at a level that attempts to balance supporting market competitiveness with banking as a compliance option. DEQ also considered alternatives including whether holding limits should be applied as a percentage of the annual program caps or the total number of compliance instruments in distribution. DEQ also considered applying and enforcing holding limits on an annual basis instead of at the end of each compliance</p>	127,185

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			period and considered alternatives to the number of compliance instruments held in excess of each covered fuel supplier’s sum of compliance obligations. DEQ did not believe these other options would meet these considerations.	
41		Comments supportive of holding limit for compliance instruments but covered fuel suppliers should have more time to trade compliance instruments in excess of individual holding limits.	<p>DEQ designed the proposed holding limits to apply as proposed so covered fuels suppliers would be incentivized to trade compliance instruments in excess of individual holding limits at the end of the compliance period and before demonstration of compliance, not just prior to the next annual compliance instrument distribution. DEQ believes this may be beneficial for the overall market.</p> <p>DEQ will endeavor to provide preliminary information to covered fuel suppliers that might be in excess of the holding limit to provide more time for potential compliance instrument trades.</p>	124
42		Comments not supportive of proposed holding limit, holding limit is not needed or too restrictive, holding limit could have unintended consequences.	DEQ believes a holding limit for compliance instruments can be a useful mechanism to support a competitive market for compliance instruments by prevent potential market manipulation or hoarding. In designing the proposed holding limit DEQ has attempted to design a holding limit that would not be too limited and support program features such as banking and early action to reduce emissions. To achieve this, DEQ is proposing holding limits that would apply at the end of the three-year compliance period, are calculated using each covered fuel supplier's emissions and compliance obligations, and establishing holding limits at a level that attempts to balance supporting market competitiveness with banking as a compliance option.	127

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Comment Subject	Category	Comment Description	Response	Comment ID
			<p>DEQ also considered alternatives including whether holding limits should be applied as a percentage of the annual program caps or the total number of compliance instruments in distribution. DEQ also considered applying and enforcing holding limits on an annual basis instead of at the end of each compliance period and considered alternatives to the number of compliance instruments held in excess of each covered fuel supplier’s sum of compliance obligations. DEQ did not believe these other options would meet these considerations.</p>	
43	Compliance instrument market	DEQ should expand the market to include voluntarily associated entities (market participants or non-compliance entities).	DEQ does not propose rule amendments to allow entities to voluntarily register with the Climate Protection Program and participate in potential trading of compliance instruments. However, DEQ will continue to monitor the program and consider additional program elements that might support market liquidity.	158
44	Best Available Emissions Reduction (BAER)	Strengthen emissions reductions at new and existing facilities, all new stationary sources and modifications at existing stationary sources should go through BAER assessment.	The BAER process requires significant time and resources from the facility and from DEQ. DEQ has limited resources to go through the processes prescribed by the BAER rules, so we want to prioritize that work for only the facilities with the highest BAER covered emissions.	1, 2, 3, 4, 5, 6, 9, 12, 16, 18, 19, 20, 21, 22, 23, 29, 30, 31, 34, 36, 38, 40, 45, 46, 50, 51, 52, 54, 56, 58, 63, 70, 84, 88, 95, 97, 98, 103, 116, 120, 131, 163, 180, 202, 205, 206, 207, 211, 215, 218, 220, 221, 222, 223, 224
45		Proposed thresholds for BAER assessments for facility modifications are not adequate. DEQ should at	The BAER process will require significant time and resources from both the facility and DEQ. DEQ has limited resources to implement BAER, and the intention of the proposed rules is to require BAER review at the	180, 224

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		minimum lower the threshold for potential to emit (PTE) from 10,000 MT CO ₂ e to 5,000 MT CO ₂ e per year.	time of modification only in situations where the facility is proposing a "large" modification. DEQ may re-evaluate the BAER thresholds in future rulemaking if warranted based on implementation experience.	
46		Fuel export facilities should be required to have an air permit (Div 216) and be subject to emissions reductions requirements under BAER.	Current DEQ rules require gasoline dispensing facilities, bulk gasoline plants, bulk gasoline terminals, and pipeline facilities located in Oregon to have an air permit that regulates emissions from their on-site operations [OAR 340-216-8020 Table 1 Part B]. DEQ isn't proposing to regulate emissions from the eventual combustion of fuels exported from Oregon. Currently there are no fuel export facilities in Oregon that have onsite emissions above BAER thresholds.	9
47		DEQ should not require BAER assessment at the time of a proposed modification.	<p>The BAER process is designed to review "all fuels, processes, equipment, and operations that contribute to the covered stationary source's covered emissions" and evaluate options for reduction of those covered emissions. In some cases, options that are feasible before construction may become infeasible or much more expensive after a project has already been constructed. For this reason, the current BAER rules require BAER before permitting and construction of a new facility with high potential BAER covered emissions [OAR 340-271-0110(5)(a)(B) and 340-271-0150(2)].</p> <p>The current rules do not require BAER review at the time of a modification, but DEQ is proposing to add that requirement now because some modifications may have impacts similar to construction of a new source. The proposed rules would only require BAER review at the time of modification in limited situations- see the</p>	171, 178, 186, 187

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			proposed OAR 340-271-0110(5)(a)(C) and 340-271-0310(c).	
48		DEQ should define 'significant change' as it pertains to modifications at existing stationary sources.	DEQ's proposed rules state that, "DEQ will require a BAER assessment at the time of the modification only if DEQ determines that the modification represents a significant change to the equipment or processes that emit covered emissions at the source" [340-271-0310(1)(c)]. BAER assessments require substantial time and resources from the facility and from DEQ. DEQ wants the ability to narrow the set of circumstances when a modification would trigger BAER. If DEQ determines that a proposed modification is significantly different than a facility's current operations, then DEQ would require the facility to go through BAER at the time of the modification. n. Some examples of significant changes could include, but are not limited to, changes in production practices, changes in manufacturing processes, proposing to install new equipment types not already in place at the facility. If DEQ determined that the changes were not significant, the stationary source would still be called in later as an existing BAER source if their actual covered emissions reached the 25,000 MT threshold.	135, 180
49		A BAER review of a permit modification should only consider the covered emissions associated with the modification, not with the entire facility.	A BAER assessment must include "identification and description of all available fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions" [OAR 340-271-0310(2)(c)] A BAER assessment should include a holistic review of options for reducing covered emissions from the facility, as well as options specific to individual pieces of equipment or processes. For that reason, DEQ is proposing that when a BAER assessment	171, 178, 186

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			is triggered by a proposed modification, the scope of the BAER assessment would be the entire facility, including the proposed modification as well as existing operations.	
50		DEQ should have to notify a stationary source of requirement to conduct a BAER assessment for Type 2 Notice of Intent to Construct (NC) within 30 days, rather than the proposed 60 days.	DEQ interprets ORS 468A.055(2) to apply to new permit applications and modifications that trigger New Source Review, but not a Type 2 NC. The proposed rules give 60 days from a facility's submittal of a Type 2 NC for DEQ to review the NC and notify the facility if a BAER assessment is required. This 60-day period is designed to align with the 60-day period allowed for DEQ review of a Type 2 NC in OAR 340-210-0240(1)(b).	171, 178, 186
51		Commenters opposed the proposed comment period requirement for a BAER assessment as it will result in unnecessary delays.	The proposed rules include a 30-day public comment period when DEQ has received a BAER assessment. DEQ is proposing this in order to invite input from members of the public that may have information or expertise that will help DEQ review the BAER assessment and draft the BAER order. Since this comment period happens concurrently with DEQ review of the BAER assessment, DEQ feels that this comment period provides additional public transparency while adding minimal delay to the process. This 30-day public comment period would be triggered only upon DEQ receipt of a draft BAER assessment. Any additional information or edits submitted by the facility would not trigger an additional 30-day period. After review of all information submitted, DEQ will issue a draft BAER order and open a second public comment period.	171, 178, 186
52		Commenters supported DEQ's proposed changes to include public comment periods for BAER	Thank you for your comment.	180

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		assessments and BAER orders.		
53		BAER requirement for modifications or Type 2, 3 or 4 notices of construction to go through BAER process should only apply to applications submitted after rules adopted.	The proposed requirement for BAER review of certain modifications would apply to applications received after rule adoption as well as to applications pending at the time of rule adoption. Requirements for BAER review at the time of modification would be limited to a narrow set of situations, and DEQ has already notified facilities with applications that are expected to be affected by the new requirements.	171, 178, 186
54		DEQ should incorporate mandatory emission limits into BAER orders	<p>BAER orders will include enforceable requirements that will be incorporated into the facility's air permit. These requirements could take the form of an emissions limit, or a requirement to install certain equipment or otherwise implement reductions in covered emissions.</p> <p>Some commenters have proposed that industrial source emissions should instead be covered under the Climate Protection Program emissions cap that applies to liquid fuel suppliers and natural gas distribution companies. DEQ is proposing to implement the BAER approach as laid out in the current Division 271 rules and proposed amendments. DEQ will continue to evaluate whether BAER implementation will meet the CPP goals for covered stationary sources described in OAR 340-271-8100(3). DEQ may consider other policy options in future rulemakings.</p>	180
55		DEQ has not adequately evaluated the impacts of proposed BAER rule amendments for	For the 2021 Climate Protection Program rulemaking DEQ estimated that preparing a BAER assessment may take approximately 150-300 hours of facility staff time and/or consultant time. At a rate of \$200 per hour,	186

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		modifications and underestimated the cost of a BAER assessment.	estimated costs are \$30,000-\$ 60,000. DEQ recognizes these are estimated costs, but DEQ does not have additional stationary source data or information to inform or revise these estimates as DEQ is currently conducting the first BAER assessment with a stationary source. DEQ also recognizes that \$30,000 could be significant for a smaller business and that costs could be higher. DEQ has updated the statement of fiscal and economic impact to reflect these comments.	
56		Stakeholders expressed concerns on allowing for book and claim accounting for reducing BAER covered emissions	<p>DEQ’s existing rules allow for book and claim accounting of biomethane. Book and claim accounting of biomethane replaces covered emissions from fossil fuels at stationary sources under BAER in the same manner as it does for natural gas utilities.</p> <p>There is no language in the current or proposed rules that limits book and claim accounting only to natural gas utilities.</p>	180, 187
General or Out of Scope				
57	Rulemaking advisory committee	Advisory committee did not have diverse representation, overrepresentation of industry perspectives on the advisory committee	Public engagement is critical to DEQ's rulemaking process. In selecting an advisory committee, DEQ tried to balance diverse perspectives among stakeholders, multiple groups of affected entities, and a manageable committee size. Since the rulemaking encompasses three different programs, it has potential effects for several distinct types of entities, including companies with emission reporting and verification requirements, fuel suppliers regulated by the Climate Protection Program, both natural gas utilities and liquid fuels and propane suppliers, and electricity sector suppliers.	4, 12, 17, 29, 31, 66, 82, 84, 86, 103, 110, 115, 116, 131, 150, 209, 218

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			<p>DEQ attempted to identify committee members with extensive stakeholder networks, including connections to community based and environmental justice organizations to leverage those connections to inform this rulemaking process and encourage public comment. During the rulemaking process DEQ received comment from advisory committee members that community based organizations were not directly represented on the advisory committee. In response, DEQ looked for other opportunities to encourage public comment such as providing updates to the Equity Advisory Committee for Community Climate Investments. DEQ notes that in addition to the advisory committee comments and engagement, DEQ received extensive comments from the public, community based organizations and coalitions of stakeholders at advisory committee meetings and received over 2,000 comments in response to the Notice of Proposed Rulemaking.</p>	
58	EQC authority	<p>DEQ should not conduct any further rulemaking for the Climate Protection Program. The Environmental Quality Commission has overstepped its authority in adopting the CPP rules.</p>	<p>DEQ has concluded that the EQC has the statutory authority to adopt the CPP, including authority to adopt program elements for which comments asserted that the EQC did not have authority, and DEQ had the authority to implement the program.</p>	171, 178, 186
59	New technologies	<p>Flexibility for new technologies to achieve compliance with Climate Protection Program</p>	<p>DEQ agrees that covered entities will be deploying existing, new, and future greenhouse gas emissions reduction technologies to comply with the Climate Protection Program. These technologies will be needed to</p>	122, 135, 157, 175

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			meet the program's emissions reduction targets of 90% by 2050.	
60	Out of scope - Legislative authority	DEQ lacks the legislative authority to regulate lifecycle emissions of alternative fuels.	Thank you for your comment. During this rulemaking, DEQ is proposing that regulated entities report the carbon intensity for certain fuel types to better understand the lifecycle emissions of the fuels used in Oregon.	116, 180, 218
61	Climate change	Climate change requires urgent action. Need to act on climate change now and remember future generations.	While this comment is outside the scope of this rulemaking as noted in the development of the Climate Protection Program, climate change caused by greenhouse gas emissions has detrimental effects on the overall public health, safety and welfare of the State of Oregon. The EQC and DEQ have acknowledged the importance of addressing climate change and reducing greenhouse gas emissions and have adopted several regulations in response.	6, 9, 15, 16, 19, 20, 22, 34, 36, 38, 44, 48, 49, 53, 55, 58, 81, 88, 94, 206, 217, 223
62	Climate change	Climate change is not real	This comment is outside the scope of this rulemaking. The Climate 2023 Rulemaking is a joint rulemaking of three programs-the Greenhouse Gas Reporting Program, Third Party Verification and Climate Protection Program. The rulemaking proposes a variety of clarifications to program requirements and a limited number of program modifications. The rulemaking incorporates process improvements and technical clarifications for regulated companies to support the implementation of these three interconnected programs.	72, 75, 77, 90, 107, 121