

Memo for Rulemaking Advisory Committee Meeting #1

Clean Fuels Program 2024 Rulemaking

This memo lays out current DEQ thinking and proposals for our Clean Fuels Program 2024 Rulemaking. These proposals are being made to solicit feedback from the Advisory Committee, our stakeholders, and the public and will be discussed during the first Rulemaking Advisory Committee meeting. Comments are due by 5pm Pacific on May 1st, 2024 and should be emailed to CFP.2024@deq.oregon.gov.

This memo covers the following topics in this order:

- Third Party Verification
- Reconciliation and Corrections Process
- Matching Export Notifications and Methodology from Climate 2023 rulemaking
- Fuel Supply Equipment Registration
- Transition process from OR-GREET 3.0 to OR-GREET 4.0
- Public comment periods for Tier 2 pathways
- Feedstock attestation requirements and other conforming changes
- Carbon Capture and Sequestration

Third Party Verification

DEQ's Third Party Verification Program exists to ensure that the data used by the Clean Fuels Program and Greenhouse Gas Reporting Program are accurate and can be relied on for compliance determinations, credit transfers, and policymaking. DEQ stood up this program in 2020 and has seen the quality of data reported to both programs improve over the three data years that it has applied to. In this rulemaking, we are proposing to extend the requirements for third party verification to fuel pathway applications that are made directly to Oregon, and electricity reported to the program to generate credits.

Validation of fuel pathway applications

This proposal would remove the optionality for fuel producers applying directly to Oregon for a Tier 1 or Tier 2 fuel pathway to go through validation of their fuel pathway application's data. Validation is the same basic process as verification, it just occurs prior to the data being submitted to DEQ rather than as a review of data that have already been submitted in required reporting to the agency.

This change would assure DEQ and reporting entities using fuel pathway codes from these producers that their data has undergone a detailed review prior to the fuel pathway code being certified and used. DEQ would accept verification or validation statements done under the California LCFS for recertification pathways, so this change would only affect entities that are only applying to Oregon and do not have an active California pathway.

DEQ would mirror the California process here. For the simpler Tier 1 applications, the fuel producer would seek validation prior to submitting their application to the agency, and DEQ will not consider an application unless it gets a positive or qualified positive validation statement. For the more complex Tier 2 applications, the

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fuel producer would submit their application to DEQ prior to it going through validation. This step is necessary for the more complex application because DEQ may need to specify additional areas or datasets to go through validation by the verifier depending on the details of that more complex pathway.

DEQ is proposing the requirement to validate fuel pathway applications will apply to any pathway application submitted 6 months after the effective date of this rulemaking.

Verification of electricity transactions

This proposal would remove the exemption for electricity transactions in quarterly reports from undergoing verification in the Third Party Verification division and adjust the method for calculating the threshold for entities by excluding residential EV credits from this calculation.

At this time, DEQ is proposing that electricity credit generators are otherwise treated as all other credit generators and regulated parties are in the Third Party Verification program. That means that the electricity reporting entities who are over a prescribed threshold for verification would need to prepare and maintain a monitoring plan, hire a third party verifier, and have their data reviewed and the verification statement submitted by August 31st each year. Monitoring plans are required of all entities that must obtain third party verification, and cover how data is measured, collected, prepared, and then reported to DEQ for the Clean Fuels Program.

The agency is interested in feedback on if it should modify the requirements for less intensive verification to better capture how those rules would affect aggregators, or if the assumption should be that aggregators will generally not be eligible for less intensive verification because they will often have new clients that have new sources of data to report from new data management systems. Less intensive verification follows the same requirements as full verifications, except that the verification body uses the risk assessment developed as part of its most recent sampling plan to complete the verification, and the site visit is only performed at the verification body or DEQ's discretion.

Under the current rules, entities responsible for going through verification (aka "responsible entities" in the Third Party Verification division rules) are eligible for less intensive verification in two years of every three if the following requirements are met:

- (A) There has not been a change in the verification body;
 - (B) A positive verification statement was issued for the previous year; and
 - (C) No change of operational control of the responsible entity occurred in the previous year.
- (c) A verification body may choose to provide full verification, at its discretion, in instances where the responsible entity has made changes in sources, significant changes in emissions, significant changes in data management systems, or any combination therein, occurred compared to the previous year, based on the professional judgment of the verification body.

These requirements are prescribed in OAR 340-272-0100(4). DEQ is considering whether to provide CFP-specific language that could also create more specific conditions around aggregators as this change will pull in more of them and their clients into verification, and they may add or subtract significant new clients from year to year.

Some commentors raised changing the threshold for verification in this field. DEQ reviewed 2022 and partial 2023 data to determine how many entities would be affected by the 6,000 credits and deficits threshold and found that out of about 40 electricity reporting entities, it would only pull in 5 to 6 of them under current reporting. This is consistent with where that threshold falls elsewhere in the program and would result in 80-90% of the non-residential electricity credits that are generated each year going through the verification process.

Residential charging is defined as EV charging at residences with less than four units of housing – a residence with more than four units such as an apartment building falls into the non-residential charging category in the program. For the individual entity threshold, DEQ is proposing to remove residential electricity credits from the 6,000 credit and deficit threshold, so it would only be calculated on the basis of non-residential charging electricity credits along with any other credits or deficits that a reporting entity generates. The reason for this is

that DEQ calculates residential charging credits based on an analysis of vehicle registration data and the reporting entities do not have any data that could be verified for those credits.

DEQ is proposing that electricity reporting entities would need to go through verification starting with 2025 reported data verified in 2026.

Reconciliation and Corrections Process

One of the ongoing difficulties with quarterly reporting for liquid fuel reporting entities and DEQ is the reconciliation of fuel transactions between business partners. The reconciliation requirement is simple on its face – if you trade a regulated fuel with another company inside of Oregon, you and your business partner need to have the details of that transaction match up in your reporting to DEQ. Our reporting system facilitates the reconciliation process by allowing companies to look up what other companies have reported against them in any given quarter.

This double-entry bookkeeping is the justification for leaving these transactions out of the scope of third party verification, however getting companies into reconciliation and keeping them reconciled during the corrections process has proven difficult. That is especially the case where one entity's correction affects multiple upstream parties – for example, when gallons initially reported as an export actually remained in state, or when the importer of a biofuel accidentally uses the wrong fuel pathway code for the import and sales of that biofuel to their business partners.

There are two particular crunch points for corrections that create issues with reconciliation – the annual reporting deadline on April 30th, and the deadline for verification statements to be submitted on August 31st. As part of this rulemaking, DEQ is proposing the following:

- Making explicit the existing requirement that quarterly reports must be reconciled to the best of the submitter's ability prior to initial submittal.
- Requiring correction requests for quarterly reports to identify if the corrections will affect business partners, and that an entity making corrections must notify each of those business partners prior to submitting the correction request. The correction request must state when the entity making corrections notified each of their business partners.
- Add a provision for DEQ-requested corrections to OAR 340-253-0650(4) that creates a more formal process and a required timeline for reporting parties to make corrections or prove to DEQ that no corrections are needed. This process would be used to prompt corrections when DEQ is aware that they are needed, and the reporting entity has not made a correction request after informal prompting by DEQ or their business partner. We are proposing the following process for requiring corrections if a party has not responded to informal prompting by DEQ or their business partners:
 - DEQ becomes aware of the need for a correction and notifies the reporting entity that they must correct their report.
 - The reporting entity has a default of 14 calendar days to respond to DEQ from the date they receive our notification by either submitting a correction request or providing an explanation with evidence to the agency showing that their reporting is correct. DEQ may shorten the response period if there is good cause to do so, such as when it affects a number of other parties' reporting or an impending annual report deadline.
 - If the entity submits a correction request, DEQ approves it and the reporting entity makes the edits and resubmits the report within two business days.
 - If the entity provides evidence to the agency that their reporting is correct, DEQ reviews it and makes a determination on if it agrees with the reporting entity or not. If it agrees, DEQ may make a correction request to another party if needed. If DEQ disagrees, it will inform the reporting entity. If the reporting entity refuses to make corrections that DEQ believes are needed, DEQ would initiate a process under the Authority to Suspend, Revoke, or Modify in OAR 340-253-0670.

Matching Export Notifications and Methodology from Climate 2023 rulemaking

To maintain consistency with the Greenhouse Gas Reporting Program, DEQ proposes to incorporate requirements in OAR 340-215-0110(4)¹ around notifying position holders of fuel that is exported and how to apportion fuel that is exported from intermediate storage to position holders. We may also update certain definitions in the Clean Fuels Program rules to maintain consistency with the Greenhouse Gas Reporting Program, especially those around the bulk system, position holders, and terminals that are mainly used in the CFP rules to implement the combined reporting system for both programs.

Fuel Supply Equipment Registration

The CFP 2022 rulemaking added more detailed requirements for registering fuel supply equipment, and DEQ has worked with reporting entities over the last two years to implement those rules. DEQ is looking at making some minor clarifying edits to the Fuel Supply Equipment registration rules in order to consolidate the requirements and make the following point clear:

- The entity registering the Fuel Supply Equipment must provide evidence that they are an eligible credit generator for that equipment based on OAR 340-253-0330. That can take the form of proving that the entity is the owner or operator of the equipment.

As part of implementing these updated requirements, DEQ has been allowing that an entity can attest to being either the credit generator for that equipment or they can attest to the equipment being operational, not both. Generally, entities are attesting to the fact that they are the eligible credit generator.

OR-GREET 3.0 to 4.0 Transition

In order to move pathways from OR-GREET 3.0 to 4.0, DEQ is proposing the following transition process, which parallels California's transition process for CA-GREET. The goal is to fully transition from 3.0 CI values to 4.0 values for 2026 reporting.

Submittal of 4.0 calculators in Annual Fuel Pathway Reports

In March 2025, fuel producers will complete and submit both an OR-GREET 3.0 and an OR-GREET 4.0 calculator in their Annual Fuel Pathway Reports. For recertification pathways, the fuel producer will be able to provide the same CA-GREET calculators to DEQ.

During the verification process, both calculators will be updated, and DEQ will use the 3.0 calculator to determine compliance with the producer's certified carbon intensity score. If the producer receives a positive or qualified positive verification statement, DEQ will use the 4.0 calculator to determine and issue the CI scores for that producer for 2026 reporting, and will re-issue all fuel pathways for that year unless there is no change in the CI (including the margin of safety) between the two calculators. If a fuel producer receives an adverse verification statement, DEQ will not issue fuel pathway codes for that producer for 2026 reporting and they will need to make a new fuel pathway application.

Submittal of new pathway applications

DEQ will not review any OR-GREET 3.0 pathway applications submitted after this rulemaking becomes effective, but it will finish reviewing and processing any 3.0 pathway applications it receives prior to that date. It will only consider recertification pathways submitted using the CA-GREET 3.0 calculator until March 2025 in order to allow time for the agency to process the rollover of all other pathways to the 4.0 calculator.

¹ Available at: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=307420>

Conforming updates to rule tables due to the OR-GREET transition

As DEQ did in in the 2018 rulemaking, the agency will update and reevaluate the Carbon Intensity (CI) scores in the following rule tables in OAR 340-253-8010:

- The baseline CI values for E10 gasoline, B5 diesel, and jet fuel used in Tables 1, 2, and 3, including possible updates to the annual CI values, but not the percentage reduction targets. These updated values would take effect for 2025.
- The lookup table values in Table 4.
- The continued appropriateness of the current CI values for the substitute and temporary fuel pathway code values in tables 8 and 9.

DEQ will provide draft updates to these values when the draft OR-GREET 4.0 calculator is ready to be published.

Public Comment Periods for Tier 2 pathways

DEQ plans to add public comment periods for Tier 2 pathways to allow for comment and scrutiny of the more novel pathways we are processing, in line with how energy-economy ratio applications are currently treated. Tier 2 applications are more complex fuel pathways that use novel technologies and are not as well understood as the Tier 1 applications. DEQ followed this process for the Tier 2 Red Trail CCS pathways and believes it will be helpful for future Tier 2 pathways in ensure that there is outside notice and scrutiny of Tier 2 pathways before DEQ certifies a CI score for them. DEQ is proposing that this would not apply to recertification pathways, which have already undergone a public comment period in California.

Feedstock attestation requirements and other pathway application rule changes

DEQ is planning to adopt conforming changes to our fuel pathway rules to match California's rulemaking, including adopting the proposed specified source feedstock attestations. Harmonizing the requirements for fuel pathway applications, verifications, and annual fuel pathway reports simplifies things for fuel producers. The proposed attestation requirements build on the existing chain of custody evidence requirements that have been in place for several years and require that the entities in the supply chain for those feedstocks maintain letters that would attest to the following:

1. That the feedstocks have not undergone any processing (e.g., drying or cleanup) that is not explicitly included in the fuel producer's pathway.
2. That all data and information supplied to the producer are true and accurate, including:
 - a. The feedstocks meet the applicable definitions in the CFP regulation or as defined in DEQ's staff summary for that pathway.
 - b. Deliveries of the feedstocks consist entirely of what is documented on the feedstock transfer documents and are not mixed with any other feedstock.
 - c. The feedstocks have not been intentionally produced, modified, or contaminated to meet the definition of a specified source feedstock.

Specified source feedstocks are feedstocks that are generally assigned a lower CI score because they come from waste streams or are the non-primary products of a process, such as used cooking oil, animal fats, fish oil, yellow grease, distiller's corn oil, distiller's sorghum oil, brown grease, and other fats, oils, and greases. Because they are assigned a lower CI score, they are at a greater risk of being falsified because lower CI feedstocks generally command a price premium.

The specified source feedstock supplier attestations here would need to be maintained by the supplier, who may also be a joint applicant for the pathways, and those attestation letters would need to be made available to DEQ or a verifier upon request.

Carbon Capture and Sequestration

In this rulemaking, DEQ is aiming to add structure around how it handles CCS projects associated with fuel pathways under the program. This rulemaking will not consider adopting a broader CCS protocol, but will create some additional bounds for which kind of CCS projects we will consider reviewing at this time.

Reserve account

DEQ plans to create a Reserve Account to set-aside some credits from CCS projects in case of an unintended release of sequestered CO₂ from that reservoir. Our proposal for this account is as follows:

- The account will be under the control of DEQ, and DEQ will annually place credits into that account based on the risk-based contribution required of fuel pathways with CCS projects.
- Each metric ton of CO₂ emitted from a geologic reservoir is equal to one credit.
- The reserve account will contain credits from all of the fuel producers that are required to contribute to it, but DEQ will only retire credits up to the contribution of an individual fuel producer in the case that CO₂ has been released from a storage reservoir. If the released amount of CO₂ is larger than the contribution by that fuel producer, DEQ may require the fuel producer to retire the balance.
- DEQ will invalidate credits in the reserve account instead of holding the fuel producer responsible for replacing them in cases of unintentional or accidental release of stored CO₂, or an intentional release that the fuel producer is not responsible for and could not prevent.

Given the relative novelty of these projects, especially within the context of a low carbon fuel standard program, DEQ's current thinking is that credits should be held permanently in the reserve account subject to a review by 2030. That timeline would provide additional time and experience with these kinds of storage projects. In that review, DEQ will also consider other aspects of its rules around CCS projects, such as the risk calculation and which projects are eligible to apply to the agency.

Risk calculation

DEQ plans to place a risk calculation in its rules in the same manner as California's risk calculation. California's risk calculation can be found in Appendix G on pages 137-139 of their CCS protocol, available here: https://ww2.arb.ca.gov/sites/default/files/2020-03/CCS_Protocol_Under_LCFS_8-13-18_ada.pdf

Refining eligibility requirements for CCS projects

In the absence of adopting a CCS protocol similar to California's and agency capacity to review more complex or novel forms of CCS, DEQ believes it is appropriate to limit the scope of which pathways with CCS we will process as original applications. Based on agency experience with the Red Trail pathway, DEQ is proposing to limit the eligibility for Fuel Pathway Applications that employ carbon capture and sequestration to just those that are geologically sequestering CO₂ in a form that meets the permit requirements for a Class VI underground injection control well as defined by US EPA².

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² <https://www.epa.gov/uic/class-vi-wells-used-geologic-sequestration-carbon-dioxide>