



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Special Meeting

Dec. 16, 2021

Rulemaking, Action Item A Greenhouse Gas Emissions Program 2021 Rulemaking Climate Protection Program

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Attachments

- A1. Proposed Climate Protection Program Rules – New Division 271
- A2. New Division 271 – Edits Highlighted from the Notice of Proposed Rulemaking
- A3. Proposed Changes to Division 12 – Edits Highlighted
- A4. Proposed Changes to Division 12 – Edits Incorporated
- B. Reader’s Guide to the Proposed Climate Protection Program Rules
- C. Comments and DEQ responses
- D. Lists of Potentially Covered Entities
- E. Calculations for OAR 340-271-9000 Tables 2 and 4
- F. OBI Comments and Macroeconomic Impact Analysis (prepared by Energy Strategies, LLC, and RECON Insights, LLC)

DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachments A1 and A3 as part of Chapter 340 of the Oregon Administrative Rules.

Language of Proposed EQC Motion:

“I move that the commission adopt the proposed rules and rule amendments in Attachments A1 and A3 of this staff report as part of Chapter 340 of the Oregon Administrative Rules.”

Introduction

The Department of Environmental Quality is recommending that the Environmental Quality Commission adopt proposed rules and rule amendments that are part of chapter 340 of the Oregon Administrative Rules to establish the Climate Protection Program (CPP), a new program to limit greenhouse gas emissions from certain sources in Oregon.

Request for Other Options

The proposed program is designed to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly those communities disproportionately burdened by the effects of climate change and air contamination. To achieve this purpose, DEQ considered numerous options that were informed by prior consideration of greenhouse gas reduction programs by the Oregon legislature, other jurisdictions' greenhouse gas programs, and extensive public outreach and engagement. DEQ held scoping and technical workshops, public town hall meetings, convened a rulemaking advisory committee and considered comments from committee members and the public. DEQ also worked with community-based organizations that represent environmental justice communities most impacted by climate change and air pollution. This included providing resources for community-based organizations' participation on the advisory committee and supporting their ongoing community-capacity building activities on climate change. DEQ also provided resources for a community-based organization to hold meetings on climate change issues, including a workshop on this rulemaking.

During the public comment period, DEQ welcomed input on any part of the proposal and specifically requested input on the following:

- Covered entities and emissions proposed to be regulated by the Climate Protection Program (see OAR 340-271-0110)
- Emissions caps and cap reduction trajectory to reduce emissions through 2050 (see Table 2 in OAR 340-271-9000)
- Use of cost containment measures including banking and trading of compliance instruments and multiple-year compliance periods
- Deployment of cost containment and equity measures through an alternative compliance pathway for regulated entities -- community climate investments
- Compliance instrument distribution methodology (see OAR 340-271-0420)
- Process for covered stationary sources to identify and implement the best available emission reductions to decrease greenhouse gas emissions (see OAR 340-271-0300 through 340-271-0390)

Overview

Short summary

The purpose of the Climate Protection Program 2021 rulemaking is to establish a new program that sets an enforceable and declining limit, or cap, on greenhouse gas emissions from fossil fuels used in Oregon, including diesel, gasoline, natural gas, and propane. These fossil fuels are used in transportation, residential, commercial and industrial settings. The primary mechanism for the CPP is placing declining caps on fossil fuel suppliers rather than end-users. However, the

proposed CPP also includes a component designed to regulate site-specific greenhouse gas emissions at certain manufacturing facilities.

The proposed CPP was shaped by extensive public and stakeholder engagement and input. Informed by this, the purposes of the Climate Protection Program are to:

- Reduce greenhouse gas emissions in Oregon as part of a national and global effort to avoid the worst effects of climate change;
- Protect and improve public health by reducing emissions of other air contaminants in addition to greenhouse gases; and
- Enhance the public welfare of Oregon communities, particularly environmental justice communities (including, communities of color, tribal, communities experiencing lower incomes, and rural communities) by reducing other air contaminants that negatively impact public health, and reducing their dependence on fossil fuels.

To support these purposes, the proposed CPP:

- Requires that fuel suppliers and certain stationary sources reduce greenhouse gas emissions resulting from their activities;
- Is designed so that it will also lead to reduced emissions of other air contaminants that harm public health;
- Prioritizes emissions reductions in environmental justice communities disproportionately burdened by the effects of climate change and air contamination;
- Provides fuel suppliers with different compliance options to minimize economic impacts to businesses and consumers; and
- Allows covered fuel suppliers to meet part of their compliance obligations with an alternative known as community climate investments that are designed to reduce the use of fossil fuels in Oregon communities.

Outreach efforts and public and stakeholder involvement

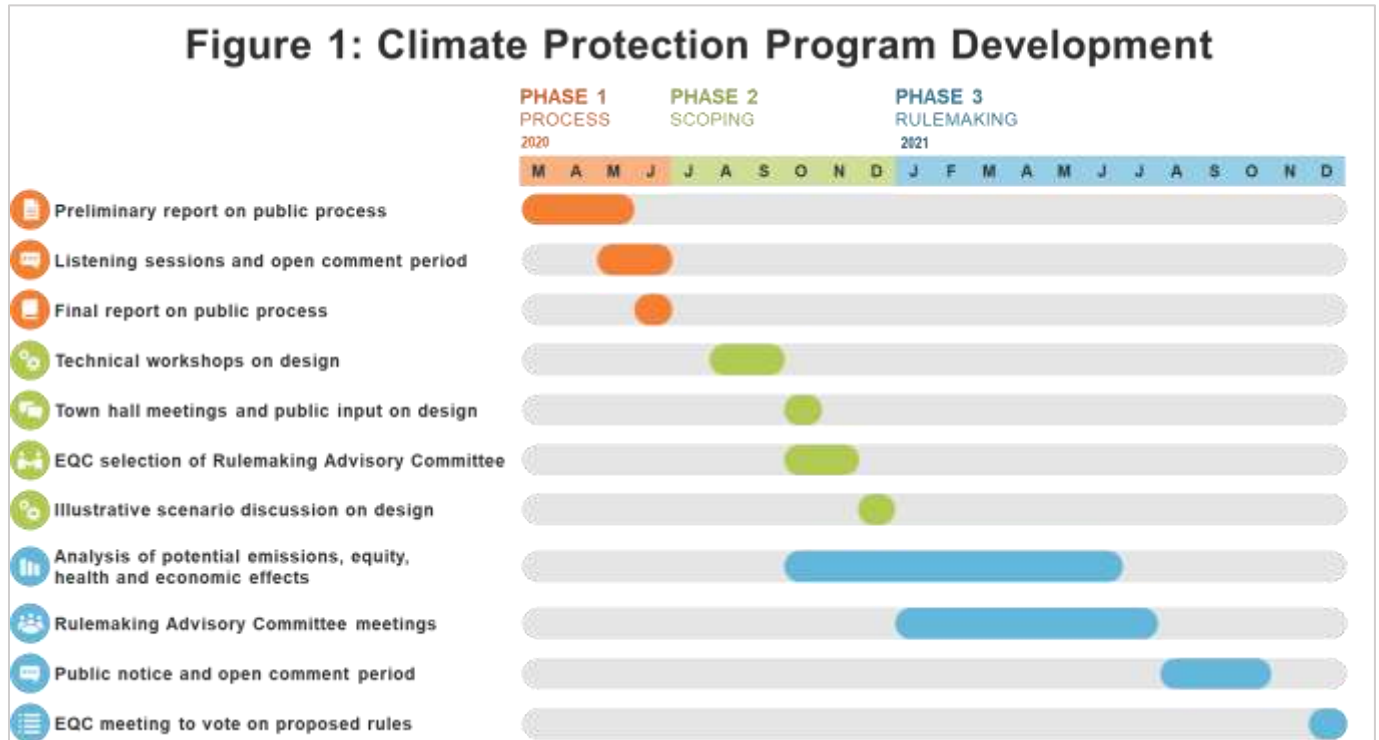
The proposed CPP is informed by discussions and extensive input provided by the public and stakeholders throughout 2020 and 2021 and by DEQ's rulemaking advisory committee.

DEQ used a three-phase approach to develop the proposed rules for the Climate Protection Program. The first phase, in the summer and fall of 2020, was an initial assessment and engagement with the public on the process DEQ and EQC should use for the program's development to establish enforceable limits on greenhouse gasses from key sectors in Oregon.

The second phase included a series of meetings and technical workshops for the public and stakeholders to hear about goals, interests, concerns and ideas on the scope of the Climate Protection Program. Hundreds participated in these program scoping activities in 2020. These activities included:

- An information session to kick off the public engagement process
- Discussions with environmental justice organizations, industry, tribes, environmental groups and potentially regulated entities
- Seven workshops to discuss specific program design elements in August, September and December 2020

- Three town halls in October 2020 to present the purpose and potential elements of a new program to reduce greenhouse gas emissions
- All meeting were open to the public with opportunities for public comments



These pre-rulemaking activities informed the scope and process DEQ used in the formal rulemaking, including the rulemaking advisory committee, and the identification of three program goals:

- Achieving significant emissions reductions,
- Prioritizing equity, and
- Containing costs.

DEQ began the formal rulemaking process at the beginning of 2021, following EQC appointment of the rules advisory committee in December 2020. During the rulemaking, the 34-member rulemaking advisory committee also served as the fiscal advisory committee. The advisory committee included members from potentially regulated businesses, environmental justice and community-based organizations, tribes, as well as other parties. The advisory committee met seven times from January through July 2021 providing input to DEQ on the design of the CPP including the program purposes and scope, key regulatory requirements, and potential fiscal impacts. All meetings were open to the public and included opportunities for public comment. At the final advisory meeting, DEQ reviewed the draft fiscal impact statement for the draft rules, and received input from the committee.

The current proposed CPP rules also reflect changes made in response to comments received during the formal rulemaking comment period that opened on August 5, 2021 and closed on October 25, 2021. DEQ received 7,620 comments at the close of the comment period, including 93 comments received at two public hearings, one of which was convened and led by the Environmental Quality Commission.

Affected parties

The following parties will be directly affected by the proposed rules:

- Suppliers of liquid fuels (gasoline and diesel, including blends) and propane that exceed a certain thresholds of greenhouse gas emissions
- Natural gas utilities, termed as “local distribution companies” in the proposed rules
- Certain specified facilities that already hold air contamination permits
- Nonprofit organizations and others that may receive funds as community climate investments that pay for projects that reduce greenhouse gas emissions

Comments overview

Extensive public comments have informed the proposed Climate Protection Program. As stated above, DEQ received 7,620 comments during the formal comment period. This includes single comments that were signed by multiple organizations, some comments that may have been submitted twice, but on different days, one comment that included multiple individual comments on behalf of an organization’s membership, and one comment that was presented on behalf of a natural gas utility’s customers. More details on the content of the comments submitted to DEQ are available in Attachment C to this report. All comments are available on the [DEQ rulemaking website](#).

A significant majority of comments – seventy-five percent – expressed concern over climate change impacts for current and future Oregonians, emphasized the need for Oregon to act now to do its part to reduce GHG emissions through programs like the Climate Protection Program, and stressed the importance of ensuring equity in Climate Protection Program design. Most of these comments supporting action to reduce Oregon’s greenhouse gas emissions requested that the CPP rules require deeper emission reductions and include more emission sources in the program’s scope.

General themes of other comments were concerns over affordable compliance options for fossil fuels suppliers, and potential fossil fuel price increases and impacts for industrial users, small businesses, farms and others customers.

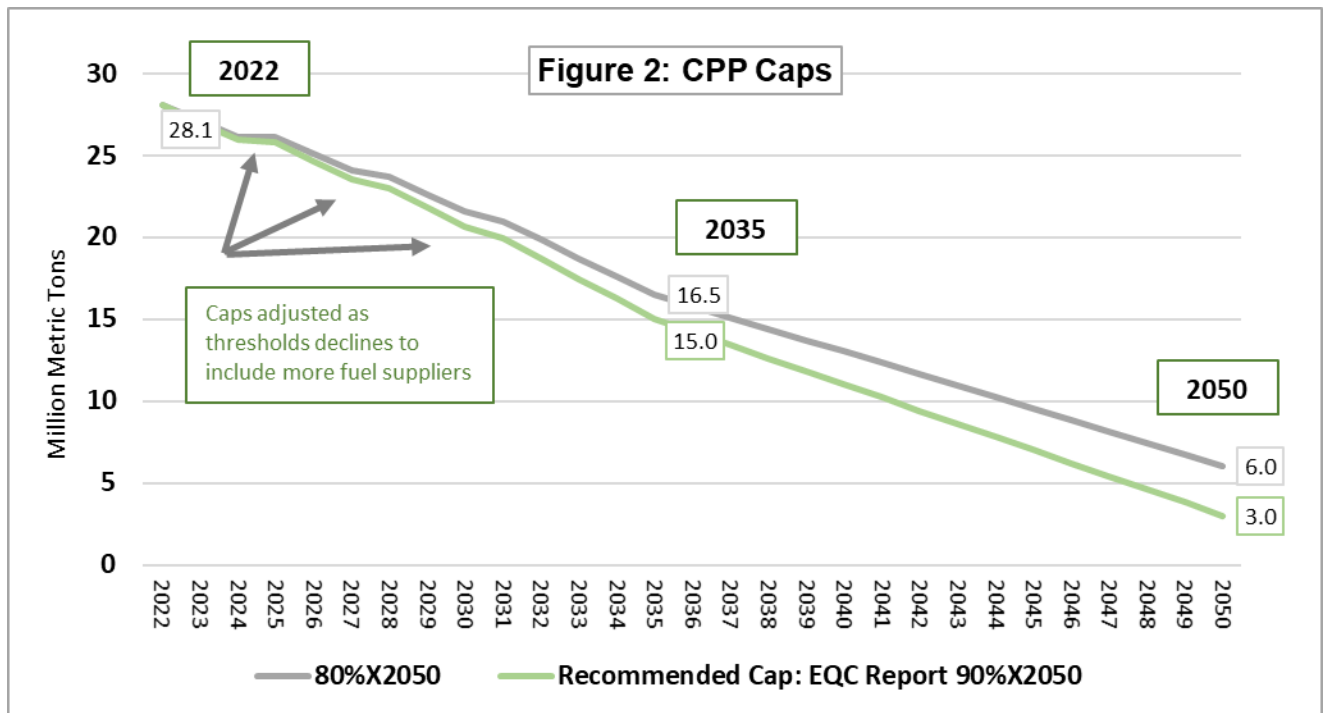
Key changes in the final proposed rules (relative to the draft rules included in the Notice of Proposed Rulemaking)

Though not a comprehensive list of all changes, this section summarizes key changes in the proposed rules made in response to public comment and feedback from the commission.

Rate and Extent of Declining Emissions Caps for Covered Fuel Suppliers

At the meeting of the Environmental Quality Commission on November 18, 2021 a majority of commissioners expressed preliminary views about the rate and degree of emissions reductions that the program should be designed to achieve – suggesting that the rules be written to achieve a ninety percent reduction in emissions by 2050 rather than eighty percent (and fifty percent by 2035). These views largely reflect comments received during the public comment period, where many supported more significant emissions reductions by 2050, as well as an earlier interim target than 2035. Other comments requested that DEQ set less stringent early emissions reductions targets to allow more time for planning and implementing actions to reduce emissions.

While the approach for determining the program baseline, based on average emissions from 2017 to 2019, remains unchanged, the final proposed rules have a cap reduction to fifty percent (from the baseline) by 2035 and ninety percent by 2050 for all covered entities. DEQ is proposing this change to support deeper emissions reductions by 2035 and 2050, while still providing covered entities time to comply with the program, along with the other cost containment features, such as three-year compliance periods, to support cost-effective compliance.



Best Available Emissions Reduction (BAER) Program Component

One component of the proposed CPP is to require certain stationary sources of greenhouse gas emissions to reduce those emissions through a technology-based standard, termed as “best available emissions reductions” or BAER. The BAER component of the program is proposed for certain types of facilities and certain types of emissions that cannot readily be addressed through limits on fuel suppliers, such as facilities that receive natural gas directly from an interstate

pipeline (which can only be regulated by a federal agency (the Federal Energy Regulatory Authority, or FERC)), and industrial process emissions resulting from inputs other than natural gas that are inherently part of or necessary to the product output (i.e semiconductor manufacturing). The proposed CPP rules require these facilities to utilize best available technology to limit or reduce greenhouse gas emissions, including a process to periodically update those requirements to reflect technological changes.

DEQ received a significant amount of comment on the best available emissions reduction approach for stationary sources. Most of the comments expressed concern that emission reductions from sources covered by the proposed BAER approach are not guaranteed and could even increase over time. DEQ has heard from the rulemaking advisory committee and the public that on-site emissions reductions are important for stationary sources since emissions are generated at specific geographic locations, which is of particular concern for nearby communities. Many of these comments requested a mandatory target be included under the BAER approach, or that BAER sources be included under the annual caps for covered fuels suppliers. Other comments requested a threshold lower than proposed for a BAER assessment for either existing or new sources. Comments also expressed concerns that there was little detail on the timeline to conduct the BAER assessments and implementation of any BAER orders by DEQ.

DEQ also received comments that manufacturers vary significantly in their processes and activities, production operations, technologies and even business practices. These variations occur from one industry to the next, and even among facilities within the same industry. Stationary sources will have to pursue reductions achievable and relevant to their specific operations. Several comments on the BAER approach emphasized that some industries and sources have limited opportunities to reduce emissions with available technologies, while others may have more opportunities to reduce emissions with available technologies.

DEQ continues to support the site-specific BAER approach to help target available emissions reduction opportunities specific to each facility, but DEQ has also added a proposed rule -- OAR 340-271-0300, which establishes general expectations for emission reductions at covered stationary sources. The general expectations include reducing total emissions from these covered sources and reducing total covered emissions that are the result of combustion of solid or gaseous fuels by fifty percent by 2035 from the average of 2017 through 2019 emissions. DEQ will evaluate whether these general expectations are being achieved in program reviews beginning after 2029, after sufficient time has passed for sources to implement the requirements of BAER orders.

DEQ believes these facilities will need adequate time to conduct a BAER assessment after being notified by DEQ. In response to concerns over timeliness, DEQ has modified the proposed rule so that a covered stationary source must submit a BAER assessment within nine months following DEQ's notice. DEQ will also provide a public update if DEQ has not issued a BAER order within eighteen months following that notice.

DEQ has clarified in the proposed rules that the final determination of what technology is required will be made by the agency, and that the agency may verify any information submitted

in a BAER assessment. DEQ must consider input from the public and nearby communities before issuing a BAER order. DEQ may also consult with industry experts and third-party organizations before issuing a BAER order.

Community Climate Investments

Community Climate Investments are one means that covered fuel suppliers may elect to use to meet the reductions in greenhouse gas emissions required under the proposed rules. Other means include substituting renewable fuels for fossil fuels, purchasing excess compliance instruments from other covered fuel suppliers, raising prices to reduce demand, and other demand reduction actions. Under the proposed rules, a covered fuel supplier may elect to meet part of their compliance obligation by contributing funds to an approved Community Climate Investment entity that, in turn, uses those funds to reduce emissions in communities in Oregon.

DEQ also received a significant volume of comments on the Community Climate Investments (CCI) component of the proposed program. Most of those comments stressed that CCIs must achieve verifiable emissions reductions that, on average, represent at least one ton of anthropogenic greenhouse gas emission reductions for each CCI credit distributed by DEQ. Comments also emphasized that since some communities are disproportionately impacted by air contamination and climate change, CCIs needed to better focus on bringing benefits and reducing burdens on those communities.

Informed by these comments and recognizing the potential benefits of CCIs as a potential way in which a covered fuel supplier can meet a limited percentage of its compliance obligations, DEQ is proposing further changes to the draft rule, OAR 340-271-0900, to further focus the use of CCIs to avoid or reduce environmental burdens in environmental justice communities. DEQ also has made changes to the proposed rule in OAR 340-271-0920 to clarify that DEQ's review of CCI entity applications is based on the applicant achieving the purposes of CCIs and implementing eligible projects.

DEQ has also refined the proposed rules to reflect that CCI entities will need to invest in capacity-building in environmental justice communities across the state so that they can participate fully in projects that benefit their communities. Finally, the proposed rules have also been refined to reflect that DEQ will also need to conduct outreach to environmental justice communities on CCIs and assure full participation on the equity advisory committee.

Contribution Amount to Earn Community Climate Investment Credits

Many of the CCI comments from stakeholders, advisory committee members and the public focused on four key design elements: how many CCI credits a covered fuel supplier may use (percentage of compliance obligation that can be met with CCIs), how many CCI credits a covered fuel can be issued (issue limit for CCIs), how long a covered fuel supplier can use a CCI credit (banking of CCI credits) and how much a covered fuel supplier would need to contribute to receive a CCI credit (CCI contribution amount).

In the Notice of Proposed Rulemaking, DEQ proposed setting the contribution amount to earn one CCI credit based on the a social cost of carbon value developed by the Interagency Working

Group on Social Cost of Greenhouse Gases. The contribution amount began at \$81 in 2023 (2021\$) and increased by a little more than a dollar per year (2021\$) on average, over time. As noted above, many commenters expressed the critical importance that CCIs truly be an alternative compliance mechanism that achieves equivalent reductions of greenhouse gas emissions to direct reductions by fuel suppliers. This will require that, on average, projects funded by CCIs reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit. DEQ also received comments that basing the CCI contribution amount solely on the social cost of carbon would be insufficient to achieve this level of emissions reductions, particularly if CCIs are prioritized for environmental justice communities. A contribution amount based only on the social cost of carbon would not include many costs indirectly associated with emissions reductions, including environmental justice community outreach and capacity building costs, administrative and indirect costs such as emissions calculations and monitoring, project development costs, and also potential costs associated with job training for emission reduction project implementation.

DEQ did not find data sources specific to Oregon to inform the cost to reduce one ton of greenhouse gas emissions for the types of projects that are eligible and prioritized under the proposed rules. However, DEQ has reviewed marginal abatement cost analyses for such projects and considered the role of Oregon's energy mix. In addition, DEQ has asked for and received feedback from the agency's expert consultants (ICF). Based on information provided in comments and upon continued review by the agency of the likely range of costs of projects in terms of cost per ton of GHG reduction, DEQ has increased the contribution amount for a CCI credit to begin at \$107 in 2023 (2021\$), with a rate of increase of one dollar (2021\$) per year to reflect the likely increase in average costs as lower cost projects are completed earlier in the program. As in the initial draft rules, the proposed rules also include an adjustment for increases in consumer prices over the life of the program.

DEQ will monitor the cost of CCI projects in terms GHG reductions being achieved per CCI credit issued through the work plan and reporting requirements in order to assure that this component of the program is achieving at least one MT CO₂e of GHG reduction, on average, per CCI credit. If necessary to achieve this level of reduction, DEQ will make recommendations to the EQC for changes to the program rules relating to the contribution amount to earn a CCI.

Banking and Issuance Limits of Community Climate Investment Credits

In the Notice for Proposed Rulemaking, the draft rules allowed a covered fuel supplier to meet 10 percent of its compliance obligation for the first compliance period (2022-2024), rising to 15 percent in the second compliance period (2025-2027) and 20 percent for the third and subsequent compliance periods. In addition, CCIs issued to covered fuel suppliers could be banked without limitation into the future. DEQ received stakeholder and public comment that under these conditions covered fuel suppliers may acquire a significant amount of CCIs early in the program, and then hold or bank them long-term for use in the future. This could raise both implementation and program efficiency issues for the CPP.

DEQ is not proposing to change the percentages related to the use of CCIs for compliance obligations, though DEQ received comments urging the commission on both sides of this

question (some seeking an increase and some a decrease in these usage percentages). However, to address the concern about an over-reliance on banking, DEQ is adding a limit on how long a CCI credit may be held before it expires (two compliance periods, each of which is three years). After this time, a CCI credit would be cancelled if it remains unused. DEQ believes this change will moderate the use of CCIs early in the program, while also allowing time for the CCI program to develop a consistent stream of projects that reduce emissions. In addition, this will retain the ability of fuel suppliers to use CCIs as an alternative compliance method if they are unable to achieve emissions reductions through the substitution of lower carbon fuels. Early in the program this is important as fuel suppliers adjust to the regulation and develop compliance strategies. Based on the rate of decline of the caps in the early years of the program, DEQ anticipates that compliance will be achievable even if CCI credits are limited to 10 percent of a compliance obligation. Later in the program CCIs will become more important as the rate of decline increases. Coupled with this change, DEQ has also revised the proposed rules to remove provisions that limit the number of CCI credits that DEQ would issue in a compliance period to a covered fuel supplier.

CCI Entities and Projects

DEQ received many comments asking for changes to the requirements for entities to qualify as a recipient of CCI funds. DEQ is proposing revisions in response to these comments. DEQ anticipates that there will be a small number of entities that have the capacity and qualifications to oversee projects on a statewide basis. However, the small number of entities would be expected to work with a wide variety of local and community-based organizations as subcontractors and partners in different capacities in order to implement eligible projects across Oregon.

CCI entities must be 501(c)(3) non-profit organizations. The application requirements and qualifications for a CCI entity are focused primarily on the applicant's past experience and capabilities, rather than on specific projects or project types that they anticipate funding. This reflects the expectation that most project implementation will occur through local and community focused subcontractors rather than through the entities authorized to receive CCI contributions directly. The details of what CCI funds will be used for will be established through work plans and contractual written agreements, and CCI contributions will not be allowed until these requirements are in place. DEQ has also streamlined the work plan and reporting requirements in the proposed rules. DEQ has also re-organized and consolidated the provisions proposed in OAR 340-271-0950 regarding the types of eligible CCI projects. These provisions are now included in OAR 340-271-0900.

CCI Community Engagement

DEQ revised the proposed rules to further strengthen community engagement, particularly with environmental justice communities, including communities of color, tribes, communities experiencing lower income and rural communities. DEQ will appoint an equity advisory committee to inform DEQ on the CCI portion of the program. DEQ's proposed revisions include expanded opportunities for the equity advisory committee to inform CCI implementation, including review of CCI entity applications, work plans, and project types. DEQ will convene an equity advisory committee of Oregonians that represent multiple areas of expertise, interest, and lived experience, including environmental justice, climate impacts on communities, pollution impacts on communities, opportunities for economic development, and expertise in greenhouse gas emissions. As noted above, the proposed rules allow CCI entities to use CCI proceeds to pay the costs of CCI project development and implementation, including outreach, capacity building, and CCI monitoring and reporting costs. The proposed rules have also been revised to reflect that DEQ also will have responsibilities for community outreach and engagement.

Climate Protection Program Review

DEQ will conduct a review of the Climate Protection Program at least every five years, as well as a review of the CCI component and pricing every two years. This review will include summaries of activities relating to both covered fuel suppliers and covered stationary sources. The program review will include, for example, summaries of covered fuel suppliers' demonstrations of compliance, distribution of compliance instruments, activity relating to trading of compliance instruments, covered stationary source requirement activities, and enforcement actions taken that involved civil penalties, if applicable. The program reviews will include DEQ's recommendations regarding any potential changes to the CPP.

As noted above, DEQ has revised the proposed rule in OAR 340-271-0800(2), such that beginning after 2029, program reviews will review whether emission reductions from covered stationary sources align with the general expectations in OAR 340-271-0300.

In response to comments regarding the potential for significant unintended program impacts including increases in fuel and/or natural gas prices, DEQ has added proposed OAR 340-271-0800(3). This proposed rule provides that if the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than twenty percent higher than the change in cost for the same fuel over the same period in each of the states adjacent to Oregon (not including California), DEQ will investigate and report on the cause(s) to the commission, and include recommendations on alternatives to ameliorate or reduce such impacts. Such alternatives could include, but are not limited to, temporary deferrals, changes to caps and issuance of additional compliance instruments, or changes to the compliance instrument reserve. If necessary, such actions could be taken on an expedited basis via a temporary rule. Another proposed rule, OAR 340-271-8110, also authorizes DEQ to extend reporting or demonstration of compliance deadlines as DEQ deems necessary or appropriate and will issue written notice of any extensions.

Common terms

Terms

- “Best available emissions reduction order” or “BAER order” means a DEQ order that establishes the required actions to limit covered emissions from a covered stationary source.
- “Cap” means the total number of compliance instruments generated by DEQ for each calendar year, applicable to the covered emissions from covered fuel suppliers.
- “Climate Protection Program” is the program proposed in this rulemaking.
- “Community climate investment credit” or “CCI credit” or “credit” means an instrument issued by DEQ to track a covered fuel supplier’s payment of community climate investment funds, and which may be used by covered fuel suppliers in lieu of a compliance instrument, as further provided and limited in this division.
- “Community climate investments,” “community climate investment funds” or “CCI funds” means money paid by a covered fuel supplier to a community climate investment entity to support implementation of DEQ-approved community climate investment projects and any interest that accrues on the money while it is held by a CCI entity or subcontractor.
- “Community climate investment entity” or “CCI entity” means a nonprofit organization that has been approved by DEQ to implement projects using community climate investment funds.
- “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one MT CO₂e of greenhouse gases by a covered fuel supplier.
- “Covered emissions” means the greenhouse gas emissions for which covered entities may be subject to the requirements of the CPP.
- “Covered entity” means an air contamination source subject to the requirements of this division, who could be either or both a covered fuel supplier or a covered stationary source.
- “Covered fuel supplier” means the local distribution companies and suppliers of liquid fuels and propane subject to certain requirements of the CPP.
- “Covered stationary source” means the permitted air contamination sources subject to certain requirements of the CPP.
- “Environmental justice communities” means communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

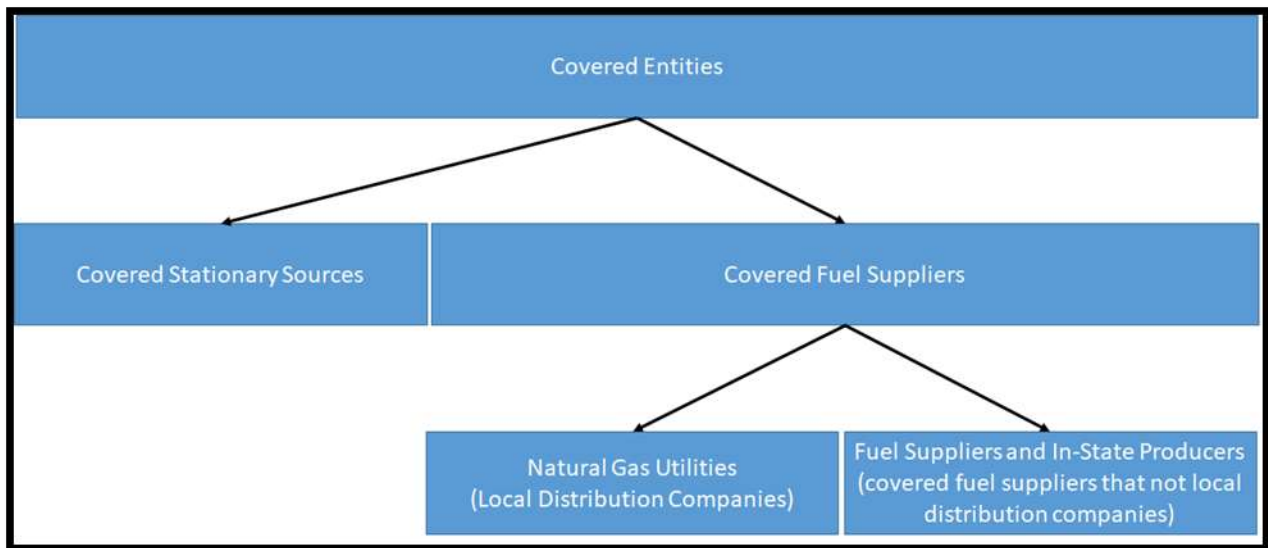
Acronyms

- “BAER” means best available emissions reduction.
- “CCI” means community climate investment.
- “CPP” means the Oregon Climate Protection Program proposed in this rulemaking.
- “Metric tons of CO₂e” or “MT CO₂e” means metric tons of carbon dioxide equivalent.

A Note About Key Terms Used in the CPP

The proposed CPP will limit emissions from two groups: (1) Covered Fuel Suppliers, which include utilities supplying natural gas to customers for use in Oregon, and gasoline, diesel and propane suppliers supplying those fuels to customers for use in Oregon; and (2) Covered Stationary Sources, which include a small number of industrial facilities that receive and use natural gas directly from an interstate pipeline, and a small number of industrial facilities that have significant greenhouse gas emissions from inputs other than natural gas (such as semiconductor manufacturing). The Covered Fuel Suppliers will be regulated under a cap and reduce approach; the Covered Stationary Sources will be regulated under a best available technology approach.

Figure 3



Statement of Need

Establish the Climate Protection Program

What need would the proposed rule address?

Climate change caused by greenhouse gas emissions has detrimental effects on the overall public health, safety and welfare of the State of Oregon. Reducing greenhouse gas emissions will avoid the worst effects of climate change including drought, wildfire, heat waves, and sea level rise. These changes have a disproportionate impact on environmental justice communities in Oregon, including coastal and rural communities as well as more urban communities that do not have the resources to adapt to these conditions. Environmental justice communities include communities of color, communities with lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and typically disproportionately harmed by environmental and health hazards, including seniors, youth and persons with disabilities. Environmental justice communities are disproportionately burdened by the effects of climate change and air contamination.

Transitioning from fossil fuels to renewable fuels, such as electricity, renewable diesel, and ethanol also will benefit Oregon's economy by providing new opportunities for producing energy in-state, and by lowering air contaminants and improving public health in Oregon communities.

How would the proposed rule address the need?

The proposed new division of rules in OAR chapter 340, division 271 would establish the Climate Protection Program. The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. To support these purposes, the proposed program:

- Requires that covered entities reduce greenhouse gas emissions,
- Supports reduction of emissions of other air contaminants that are not greenhouse gases,
- Prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities,
- Includes compliance flexibility options to help covered entities pursue the most cost-effective emission reductions, minimizing potential costs to businesses and consumers, and
- Promotes benefits in environmental justice communities.

How will DEQ know the rule addressed the need?

With existing and available information reported to DEQ's Greenhouse Gas Reporting Program, DEQ will be able to track over time how covered entities are reducing covered emissions. DEQ will track covered fuel suppliers' compliance with declining emissions caps

for each compliance period with compliance instruments and CCI credits to ensure the total number submitted equal total compliance obligations for each compliance period to ensure the emissions are allowable. DEQ will track the greenhouse gas emissions reductions achieved through CCI project implementation using reports submitted by approved CCI entities. DEQ will track covered stationary sources' compliance with best available emissions reduction determinations through permitting and annual reporting. DEQ will conduct a program review for community climate investments every two years to evaluate the greenhouse gas emissions reductions and other air contaminant emissions reductions achieved. DEQ will conduct broader program reviews every five years. These reviews will be based in part on the annual reports submitted by CCI entities.

Enforcement Provisions

What need would the proposed rule address?

EQC rules cannot be appropriately enforced unless they are classified within OAR Chapter 340, Division 12. Consistent with other regulatory programs administered by DEQ, the proposed rules will classify certain violations and establish or clarify penalty assessment criteria for the Climate Protection Program regulation.

How would the proposed rule address the need?

The proposed rules will add to or modify OAR chapter 340, division 12 relating to violations of the Climate Protection Program and Greenhouse Gas Reporting Program regulations.

Under the proposed Climate Protection Program (OAR chapter 340, division 271), each metric ton of CO₂e of a compliance obligation that a covered fuel supplier fails to meet (by providing a compliance instrument or CCI credit) will be a separate violation of the CPP requirements. DEQ will assess civil penalties for such violations according to OAR chapter 340, division 12. According to ORS 468.130 and OAR 340-012-0145(4), DEQ may assess a single base penalty and aggregate multiple occurrences of a violation under the "O" factor in the division 12 penalty assessment formula. DEQ may also assess multiple base penalties for groups of violations.

How will DEQ know the rule addressed the need?

OAR Chapter 340, Division 12 will be amended to describe Climate Protection Program and amend Greenhouse Gas Reporting Program violations and enforcement criteria.

Rules Summary

As OAR 166-500-0030(1)(e) requires, the following are included to provide a brief summary of the proposed new rules and existing rules affected by this rulemaking.

OAR chapter 340, division 271

RULE NUMBER	RULE TITLE	EXPLANATION
0010	Purpose and Scope	Describes the purposes of the Climate Protection Program, including to reduce greenhouse gas emissions that cause climate change from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities.
0020	Definition	Defines terms relating to this division of rules.
0030	Acronyms	Defines acronyms relating to this division of rules.
0090	Overview of Program Provisions for Covered Entities and CCI Entities	Provides an outline of the program-related rules of this division.
0100	Oregon Climate Protection Program Requirements	Describes general requirements for covered entities.
0110	Covered Entity and Covered Emissions Applicability	Describes the covered stationary sources and covered fuel suppliers to which this division of rules apply.
0120	Changes in Covered Entity Ownership and Changes to Related Entities	Describes covered entity requirements for reporting to DEQ on changes in ownership and changes to related entities.
0130	Cessation of Covered Entity Applicability	Describes the conditions under which a person ceases to be a covered entity.
0150	Covered Entity Permit Requirements	Describes the covered fuel supplier requirements for obtaining a CPP permit and describes the covered stationary source requirements for obtaining a CPP permit addendum.
0300	CPP Goals for Covered Stationary Sources	Describes emission reduction goals for covered stationary sources.
0310	Best Available Emissions Reduction Assessments for Covered Stationary Sources	Describes the requirements for BAER assessments that covered stationary sources must conduct and submit to DEQ.
0320	DEQ Best Available Emissions Reduction Determination Order	Describes the DEQ process for making BAER orders that establish the required actions that a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken. The DEQ BAER order process includes acquiring input from the public

		and community organizations located near the source.
0330	Compliance with a BAER order	Describes the requirements for covered stationary sources in order to comply with the requirements of a DEQ BAER order, including amending DEQ permits, implementing the BAER order requirements, and regular reporting to DEQ.
0390	Recordkeeping requirements related to BAER	Describes the recordkeeping requirements for covered stationary sources.
0410	Generation of Compliance Instruments	Describes how DEQ generates compliance instruments, each of which authorizes a covered fuel supplier to emit one metric ton of carbon dioxide equivalent (MT CO ₂ e) of greenhouse gas emissions. The total amount of compliance instruments DEQ will generate is equal to annual emissions caps in Table 2.
0420	Distribution of Compliance Instruments to Covered Fuel Suppliers	Describes how DEQ will distribute compliance instruments to covered fuel suppliers.
0430	Holding Compliance Instruments	Describes how covered fuel suppliers can bank compliance instruments that have not yet been used to demonstrate compliance.
0440	Compliance Periods	Describes a compliance period as three years with the first including calendar years 2022, 2023 and 2024.
0450	Demonstration of Compliance	Describes how covered fuel suppliers must demonstrate compliance once per compliance period for its total compliance obligations for covered emissions. The covered fuel supplier may use compliance instruments or CCI credits, but there is a limit to the percent of its total compliance obligations that can be achieved with CCI credits for each compliance period.
0490	Recordkeeping Requirements Related to Demonstration of Compliance	Describes the recordkeeping requirements for covered fuel suppliers related to demonstrating compliance.
0500	Trading of Compliance Instruments	Describes requirements for covered fuel suppliers to be able to trade compliance instruments.
0510	Compliance Instrument Trade Notifications and Process	Describes requirements for covered fuel suppliers to notify DEQ of trades of compliance instruments.

0590	Recordkeeping Requirements Related to Trading	Describes the recordkeeping requirements for covered fuel suppliers related to trades.
0810	Covered Fuel Supplier Application for Community Climate Investment Credits	Describes how covered fuel suppliers may receive CCI credits from DEQ after contributing funds to one or more CCI entity(ies).
0820	Generation and Distribution of Community Climate Investment Credits	Describes how DEQ will generate and distribute CCI credits to covered fuel suppliers, including the contribution amount required to earn a CCI credit.
0830	Holding Community Climate Investment Credits	Describes how covered fuel suppliers can bank CCI credits that have not yet been used to demonstrate compliance for no more than two demonstration of compliance deadlines.
0890	Recordkeeping Requirements Related to Community Climate Investment Funds	Describes the recordkeeping requirements for covered fuel suppliers related to CCIs.
0900	Purposes of Community Climate Investments and Eligible Uses of CCI Funds	Describes the purposes of CCIs, including to achieve reductions of at least one MT CO ₂ e of greenhouse gas emissions per CCI credit distributed by DEQ on average as well as other purposes. CCI funds may only be spent on projects that reduce anthropogenic greenhouse gas emissions in Oregon and for related costs, such as reporting and capacity building.
0910	Application to DEQ for Approval as a Community Climate Investment Entity	Describes the criteria and application requirements for organizations that apply to be CCI entities approved by DEQ.
0920	DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities	Describes the DEQ process for making CCI entity-related approvals and written agreements, including consultation with the equity advisory committee. The written agreement must be approved before an entity receives final approval as a CCI entity and is authorized to receive CCI funds.
0930	Requirements for Community Climate Investment Entities	Describes the requirements for CCI entities, including financial controls, work plans to propose eligible projects and calculation methodologies that will be used to estimate emission reductions. Work plans must be approved by DEQ prior to a CCI entity beginning work.

0950	Equity Advisory Committee and Environmental Justice Community Engagement	Describes the DEQ-appointed equity advisory committee and DEQ's commitment to engage with environmental justice communities on CCI-related topics.
0990	Recordkeeping Requirements for Community Climate Investment Entities	Describes the recordkeeping requirements for CCI entities.
8000	Program Review	Describes DEQ's program review and reporting to the EQC.
8100	Additional Compliance Enforcement Authority	Describes additional enforcement authority for the DEQ Director to act on violations of the CPP division of rules.
8110	Deferrals	Describes how DEQ may extend deadlines.
8120	Severability	Describes how each provision of this division is severable and that any remaining provisions will continue in full force and effect.
9000	Tables	Describes tables referenced in this division of rules.

OAR chapter 340, division 12

RULE NUMBER	RULE TITLE	EXPLANATION
0054	Air Quality Classification of Violations	Describes certain violations of division 271, the Oregon Climate Protection Program, as Class I violations and others as Class II violations.
0135	Selected Magnitude Categories	Describes certain violations of division 271, the Oregon Climate Protection Program, and division 215, the Greenhouse Gas Reporting Program, as major magnitude.
0140	Determination of Base Penalty	Describes the base penalty for any violation of the division 271, the Oregon Climate Protection Program.

Rules Affected, Authorities, Supporting Documents

Lead division

Office of Greenhouse Gas Programs

Program or activity

Climate Protection Program

OAR Chapter 340 action

Adopt				
340-271-0010	340-271-0020	340-271-0030	340-271-0090	340-271-0100
340-271-0110	340-271-0120	340-271-0130	340-271-0150	340-271-0300
340-271-0310	340-271-0320	340-271-0330	340-271-0390	340-271-0410
340-271-0420	340-271-0430	340-271-0440	340-271-0450	340-271-0490
340-271-0500	340-271-0510	340-271-0590	340-271-0810	340-271-0820
340-271-0830	340-271-0890	340-271-0900	340-271-0910	340-271-0920
340-271-0930	340-271-0950	340-271-0990	340-271-8000	340-271-8100
340-271-8110	340-271-8120	340-271-9000		
Amend				
340-012-0054	340-012-0135	340-012-0140		

Statutory Authority - ORS				
468.020	468.065	468.090	468.095	468.100
468.110	468.115	468.120	468.126	468.130
468.135	468.140	468A.025	468A.040	468A.045
468A.050	468A.135			

Statutes Implemented - ORS				
459.995	459A.655	459A.660	459A.685	468.020
468.035	468.090	468.095	468.100	468.110
468.115	468.120	168.126	468.130	468.135
468.140	468A.010	468A.015	468A.025	468A.040
468A.045	468A.050	468a.060	468A.135	

Documents relied on for rulemaking

Document title	Document location
DEQ and ICF analysis and modeling study on program options to reduce greenhouse gas emissions	https://www.oregon.gov/deq/ghgp/Pages/modelingstudy.aspx
Oregon Greenhouse Gas Reporting Program	https://www.oregon.gov/deq/aq/programs/Pages/GHG.aspx
Oregon Clean Fuels Program, including scenarios for extension of the program post 2025	https://www.oregon.gov/deq/ghgp/cfp/Pages/default.aspx
Cleaner Air Oregon	https://www.oregon.gov/deq/aq/cao/Pages/default.aspx
Oregon Regional Haze Program	https://www.oregon.gov/deq/aq/Pages/Haze.aspx
DEQ Facility Profiler-Lite Interactive Viewer	https://hdcgex1.deq.state.or.us/Html5viewer291/?viewer=FacilityProfilerLite
Oregon Environmental Justice Task Force Handbook	https://www.oregon.gov/gov/policy/environment/environmental_justice/Documents/2016%20Oregon%20EJTF%20Handbook%20Final.pdf
Oregon Health Authority Climate and Health Report 2020	https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20in%20Oregon%202020%20-%20Full%20Report.pdf
2010-2020 Regional Climate and Health Monitoring Report	https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/RCHMR_2021Update_Final.pdf
Executive Order 20-04, Office of the Governor, State of Oregon	https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf
U.S. Interagency Working Group on Social Cost of Greenhouse Gases Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, February 2021	https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf
U.S. EPA, 40 Code of Federal Regulations, Part 98, Mandatory Greenhouse Gas Reporting	https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr98_main_02.tpl
InvestigateWest: Mapping Climate Vulnerability	https://www.invw.org/2021/02/24/mapping-climate-vulnerability/

Washington Environmental Health Disparities Map	https://fortress.wa.gov/doh/wtn/WTNIBL/
Vancouver Community Health and Climate Change: Mapping Exposure, Sensitivity, and Adaptive Capacity to Four Health-Related Climate Hazards	https://storymaps.arcgis.com/stories/7bf7141bb6fd41fb9b61a02cfbc61ecd
U.S. EPA PDS and Title V Permitting Guidance for Greenhouse Gases	https://www.epa.gov/sites/production/files/2015-12/documents/ghgpermittingguidance.pdf
U.S. EPA RACT/BACT/LAER Clearinghouse (RBLC)	https://cfpub.epa.gov/RBLC/index.cfm?action=Home.Home&lang=en
California Cap-and-Trade Program	https://ww2.arb.ca.gov/our-work/programs/cap-and-trade-program
Colorado Greenhouse Gas Emissions and Energy Management and Audit Program for Manufacturing in Colorado: Rulemaking Information	https://cdphe.colorado.gov/greenhouse-gas-emissions-and-energy-management-and-audit-program-for-manufacturing-in-colorado
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs-Delaware Climate Action Plan Supporting Technical Greenhouse Gas Mitigation Analysis Report	https://documents.dnrec.delaware.gov/energy/Documents/Climate/Plan/DNREC%20Technical%20Report.pdf
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs-Pennsylvania Climate Action Plan 2021	www.depgreenport.state.pa.us/elibrary/GetDocument?docId=3925177&DocName=2021PENNSYLVANIA CLIMATE ACTION PLAN.PDF %28NEW%29 9/21/2023
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs-Pennsylvania Climate Action Plan 2018	http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=1454161&DocName=2018%20PA%20CLIMATE%20ACTION%20PLAN.PDF %22color: blue%3b%22%3e%28NEW%29%3c/span%3e
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs-Electrification and Decarbonization for Mid-sized Municipalities: A Case-Study Marginal Abatement Cost Analysis	https://cedar.wvu.edu/wwuet/973/
Regional Greenhouse Gas Initiative	https://www.rggi.org/program-overview-and-design/elements

Washington Clean Air Rule	https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Closed-rulemaking/WAC-173-442-441-Overview
Alberta Emission Offset System	https://www.alberta.ca/alberta-emission-offset-system.aspx
Nova Scotia Cap-and-Trade Program	https://climatechange.novascotia.ca/cap-trade-regulations
American Carbon Registry	https://americancarbonregistry.org/
Climate Action Reserve	http://www.climateactionreserve.org/how/program/
Macroeconomic Impact Analysis prepared by Energy Strategies, LLC and RECON Insights, LLC and provided to DEQ	Oregon Department of Environmental Quality 700 NE Multnomah St. Suite 600 Portland OR 97232

Fee Analysis

This rulemaking does not include the proposed adoption of any new or amended fees.

Covered stationary sources may need to pay permit modification fees as a result of the proposed rules in order to update their operations and permits to comply with requirements in a DEQ BAER order. As proposed, this would occur no more than once every five years. For sources with an air contaminant discharge permit, fees will depend on the type of modification, as defined in OAR 340-216-0030 and permit fees are described in OAR 340-216-8020 Table 2. For sources with a Title V permit, fees will depend on the type of modification described in OAR chapter 340, division 218 and permit fees are described in OAR 340-220-0050.

Statement of Fiscal and Economic Impact

Scope and approach of fiscal impacts analysis

The focus of this statement is the fiscal impact of the Climate Protection Program on covered entities and indirectly the impacts on businesses and consumers in Oregon. Climate change is impacting Oregon's environment, air, water, and economy. Oregonians are already experiencing the reality of increased wildfire risk as a result of climate change, as well as other extreme impacts. The significant economic losses, negative health impacts, and environmental damage caused by climate change inaction demonstrates the importance of reducing greenhouse gas emissions with regulations such as the Climate Protection Program.

This fiscal impact statement does not quantify or calculate the costs of climate change in Oregon, or the benefits that the state will realize if climate change is limited relative to current trends. This fiscal impact statement assesses the fiscal and economic impact of the proposed rules. DEQ has revised the proposed rules and the fiscal impact statement in response to comments received on the Notice of Proposed Rulemaking. The following fiscal impact statement is revised to reflect these changes.

This assessment is divided into two main categories of impacts: direct and indirect, which are discussed below.

The Climate Protection Program has two key program constructs for reducing greenhouse gas emissions in Oregon:

- An annually declining cap on greenhouse gas emissions that requires emissions reductions from covered fuel suppliers, and
- A process to determine and require the best available greenhouse gas emissions reductions from covered stationary sources.

The program offers various options and flexibility for covered entities to comply such that a given covered entity may reduce its emissions in a way that aligns with its particular circumstance, perspective, and business needs.

The cap on emissions from covered fuel suppliers is a market-based regulatory approach to reduce greenhouse gas emissions from combustion of fuels supplied in Oregon. This piece of the program does not mandate the use of any particular type of fuel or technology. Instead, it defines a total limit on all covered emissions resulting from the supply of covered fuels for use in Oregon. The limit decreases annually, and covered fuel suppliers must reduce emissions resulting from the use of fuels that they supply over time. DEQ will distribute free compliance instruments directly to each covered fuel supplier. As the total limit, or cap, decreases each year, DEQ will distribute fewer compliance instruments accordingly. The covered fuel suppliers will submit the compliance instruments once every three years for emissions that occurred during that period, allowing the covered fuel suppliers to plan for and respond to annual variability in fuel demand. Covered fuel suppliers that need additional compliance instruments beyond what they are allocated can acquire compliance instruments through trading with suppliers that have excess instruments;

they also can bank compliance instruments that are surplus in one period for use in a subsequent period. In addition to compliance instruments, covered fuel suppliers can also elect to acquire community climate credits by contributing funds to a community climate investment (CCI) entity. Contributions to approved CCI entities will result in DEQ issuing CCI credits to the fuel supplier. CCI funds are then used to fund projects that reduce anthropogenic greenhouse gas emissions and benefit Oregon communities, prioritizing investments that will benefit environmental justice communities. The degree to which covered fuel suppliers may use CCI credits to meet their compliance obligations is limited, however.

Covered fuel suppliers also are likely to meet part of their compliance obligations by replacing or substituting fossil fuels with renewable or lower carbon fuels. In the case of gasoline and diesel fuel suppliers, this could occur by increased use/substitution of renewable and/or lower carbon fuels consistent with Oregon's Clean Fuels Standard. In the case of natural gas, this could occur through increased use of renewable natural gas or through substitution of hydrogen produced with renewable energy. To some degree, covered fuel suppliers are also expected to increase prices of fossil fuels to consumers as the permits allowing them to supply those fuels become scarcer over time. The potential economic impacts of these actions are addressed in more detail, below.

The best available emissions reduction (BAER) approach is a site-specific approach to reduce certain remaining covered greenhouse gas emissions at industrial facilities. BAER includes an assessment of the options available to each covered stationary source to reduce covered emissions. DEQ can consider each source's specific circumstances and impacts on nearby communities in determining requirements for emissions reductions. This might include practices, processes or technologies that are available and cost-effective, but that also maximize covered emissions reductions.

Statement of Cost of Compliance

Covered entities DIRECT IMPACTS

Potential impacts to covered fuel suppliers

Administration, permitting, reporting, and recordkeeping

DEQ is proposing to require covered fuel suppliers to register in DEQ's electronic system, apply for a permit, report information to demonstrate compliance once every three years, and retain records of reported information for seven years.

One-time costs to covered fuel suppliers would be associated with staff time to register with the program and apply for a permit. On-going costs would be associated with reporting to demonstrate compliance and retaining records. The costs of complying with the proposed program are likely to vary from one entity to another, depending on existing reporting and recordkeeping activities and depending on how each entity chooses to comply with the Climate Protection Program requirements. Covered fuel suppliers are already reporting to

DEQ's Greenhouse Gas Reporting Program, subject to the Oregon Clean Fuels Program, or both. Therefore, they are already reporting to DEQ and reporting the greenhouse gas emissions data used for the Climate Protection Program. They may already have staff available to take on new reporting requirements. These entities also already retain records for seven years, but this recordkeeping requirement may result in additional costs for some covered fuel suppliers if they need to add capacity to their existing systems in order to retain additional records required for the Climate Protection Program. Other costs incurred would be in relation to allocating time and resources for demonstrating compliance to DEQ. The use of a three-year compliance period helps to reduce these on-going costs because the demonstration of compliance only occurs once every three years.

DEQ did not have any specific information to quantify costs associated with administrative requirements but expects covered fuel suppliers to experience minimal fiscal impact for these requirements. DEQ notes that the EPA has estimated from no costs to a higher end cost of approximately \$4,000 (adjusted for inflation) for tracking and reporting greenhouse gas emissions in the Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule. DEQ received an estimate in a written comment from a rulemaking advisory committee member that is a representative of potentially covered fuel suppliers suggesting that these costs may range from \$4,000 to up to \$40,000 (2020\$) per year. The higher end of the range is based on labor, recordkeeping, and reporting costs for an entity that may need to train new staff to conduct program administration. DEQ did not receive any additional comments on DEQ's estimated costs of administration, permitting, reporting, and recordkeeping included in the Notice of Proposed Rulemaking. DEQ does not have additional information to determine the precise costs relating to the administration of the Climate Protection Program, but expects it to be within the above range during a year in which demonstration of compliance is required, which occurs once every three years.

Reducing greenhouse gas emissions

In the proposed program, DEQ will distribute compliance instruments directly to covered fuel suppliers, without any direct cost or price paid by the fuel suppliers for the instruments, and those compliance instruments are then used to demonstrate compliance with the program's greenhouse gas emissions limits. Covered fuel suppliers therefore will only incur costs related to program compliance (not accounting for costs associated with meeting other requirements such as permitting, recordkeeping and reporting discussed in the above section) if the quantity of compliance instruments is insufficient to cover the the emissions associated with the volumes of covered fuels that they supply during a compliance period.

Program rules include the specific number of compliance instruments that DEQ will distribute annually to each local distribution company (natural gas utility), which provides greater certainty about long-term compliance options. The distribution methodology for suppliers of liquid fuels and propane is based on each of these entities' share of total emissions from that fuels sector based on volumes supplied and carbon intensity. This approach is used because of the high annual variability in covered emissions in gasoline and diesel markets. Additional aspects of this approach include:

- The proportional calculation incorporates emissions from biofuels. This is important because fuel suppliers may choose to supply biofuels or renewable fuels instead of fossil fuels as a way to reduce emissions and compliance obligations. Incorporating emissions from biofuels into the calculation of each entity's proportion means that entities that switch to supplying more biofuels will receive a greater total number of compliance instruments, and therefore may have lower compliance costs. This incentive to reduce emissions is built into the compliance instrument distribution methodology.
- A portion of compliance instruments are held in a reserve for suppliers of liquid fuels and propane that don't have the necessary data to calculate a proportion or that become covered after proportions have already been calculated and DEQ has already distributed instruments for the year. This reserve ensures that new entrants to the program still receive compliance instruments.

The number of compliance instruments DEQ distributes each year will decline with the declining program caps on emissions. The declining caps over time are established in the program rules, which will allow covered fuel suppliers time to plan for and implement program compliance strategies. In response to preliminary feedback from the commission, DEQ has revised the annual caps in the final proposed rules relative to the caps proposed in the Notice of Proposed Rulemaking (in order to achieve a fifty percent reduction by 2035 and ninety percent by 2050). The emission caps reductions also respond to updates in data available after the notice was posted. Due to the lowering of caps, covered fuel suppliers are required to make more emissions reductions sooner, which could result in greater or earlier economic impacts from the program.

The following paragraphs estimate the cost to comply with the program for a covered fuel supplier for each MT of CO₂e emissions resulting from the use of those fuels in Oregon that are in excess of the amount authorized by the compliance instruments the fuel supplier receives from DEQ. If emissions caps are reduced more quickly, and DEQ therefore distributes fewer compliance instruments to each fuel supplier, a greater total amount of emissions will be subject to these costs. DEQ has not revised the per MT CO₂e cost estimates, but with a faster cap decline it is more likely that the costs will be in the higher end of the ranges estimated below.

If the proposed regulations result in fuel suppliers restricting their supplies, this could result in price increases for businesses and consumers, particularly in the short term. Price increases could lead businesses (particularly those that are heavily reliant on natural gas, gasoline or diesel) to shift operations to outside of Oregon in order to avoid these costs. This is sometimes referred to as leakage of business or greenhouse gas emissions. DEQ does not have additional information to estimate the potential or economic impacts of leakage, but wants to make sure that the commission recognizes this potential. The proposed rules include several provisions designed to mitigate or avoid these impacts, but much will depend on how effective other programs are in reducing demand for fossil fuels, including the Clean Fuels Program, vehicle emissions standards, incentives for electrification, and energy efficiency programs.

Covered fuel suppliers may achieve compliance by reducing the greenhouse gas emissions resulting from fuels usage over time to levels that ensure any compliance instruments they receive from DEQ will cover their compliance obligations. For example, a covered fuel supplier could supply less fossil fuels in favor of more alternatives, such as biofuels and other clean fuels. This reduces emissions and therefore their compliance obligations in the CPP. A covered fuel supplier could also supply less fuel overall in order to reduce emissions they are responsible for under the program. In this case, that reduced supply could both increase costs to consumers and businesses, and result in opportunity costs to fuel suppliers from lost sales. There may be other costs associated with choosing to comply by directly reducing emissions, such as for equipment, retrofits, supplies, labor, increased administration, or other operational impacts. There may also be impacts on business profitability in the near-term. DEQ expects costs or savings will vary over time as technologies emerge, vary by fuel type, and vary for each covered fuel supplier.

As part of program development, DEQ contracted with ICF to analyze greenhouse gas emissions reductions under an emissions cap program in Oregon. As part of the study, ICF evaluated cost ranges for emissions reductions from fuels based on external studies and internal ICF analysis. These ranges, which are discussed below, represent net present value and account for cumulative emissions reductions achieved across the modeled policy scenarios and study period of 2022 through 2050, rather than a cost for a particular snapshot in time.

The costs below should not be interpreted as costs per ton of emissions; rather, these are costs per ton of emissions reduced. This distinction is important in the context of the proposed program because compliance instruments are proposed to be distributed without cost to recipients. Therefore, the cost to covered fuel suppliers are for emissions they need to reduce – the difference between the distribution of compliance instruments and the fuel suppliers’ actual compliance obligations resulting from the emissions associated with the volumes and types of fuels they supply during the compliance period. In addition, the cost estimates included below do not represent a potential direct cost to a covered fuel supplier. In actuality, different costs may be borne by different parties, depending on different compliance strategies and various policies. This may include fiscal impacts to the covered fuel supplier, pass through costs to its customers, but also may include costs to others, such as an electric utility and its customers, and could also incorporate savings from incentives and government programs.

ICF estimated costs to reduce emissions from natural gas may range from \$64 to \$188 (2020\$) per metric ton of emissions reduced. These estimated costs are dependent on the strategy chosen from a range of different strategies. The costs estimated here include the cost of equipment (such as for energy efficiency or electrification) and fuel costs, assuming introduction of renewable natural gas into the supply.

For fossil fuels other than natural gas, the estimated costs to reduce emissions may range from \$50 to \$55 (2020\$) per metric ton of emissions reduced. The costs estimated here include the costs of vehicles, such as electric vehicles or alternative fuel vehicles, as well as costs for alternative fuels, assuming they replace emissions from regulated fuels, such as

gasoline or diesel. The cost ranges are based on available information, but may be higher or lower, depending on business decisions, technologies advancements, and changes to complementary policies over time. For example, the Oregon Clean Fuels Program is a complementary policy that creates incentives to transition to lower-carbon fuels over time. This may result in reduced costs of biofuels over time, which could in turn reduce the costs of compliance in the Climate Protection Program.

The above estimates may be helpful context given the different compliance options available to covered fuel suppliers. For example, a covered fuel supplier may also choose to contribute funds to earn CCI credits or purchase compliance instruments in a trade, and may be more likely to do so if these choices are less expensive than the cost to reduce emissions. These options are discussed further below.

By using a program-wide cap with compliance flexibility options, the proposed program allows each covered fuel supplier many options to comply with the program beyond directly reducing greenhouse gas emissions. DEQ is proposing to allow various program compliance options to mitigate costs:

- Three-year compliance periods can moderate costs within each compliance period. This provides covered fuel suppliers with time to implement emissions reduction strategies and helps to better account for weather-related changes to emissions or other annual variability.
- The ability to bank unused compliance instruments into the future helps covered fuel suppliers achieve compliance in the most cost-effective manner throughout time. If emissions reductions are less costly in early years of the program, a covered fuel supplier could reduce emissions early and save unused compliance instruments for use in later years when additional emissions reductions may be more costly. Covered fuel suppliers could incur indirect costs from using this approach. This could be for potential foregone profits in the near-term due to adjustments to their business activities to reduce emissions early. However, DEQ only expects covered fuel suppliers to choose this compliance option if it makes business sense for the long-term and those early emissions reductions are expected to be lower cost than later emissions reduction.
- A covered fuel supplier may choose to use CCI credits for up to 10 percent of its compliance obligations in the first compliance period, 15 percent in the second compliance period, and 20 percent in each compliance period thereafter. Use of a CCI credit represents one metric ton of allowable greenhouse gas emissions. Covered fuel suppliers receive CCI credits from DEQ when they demonstrate that they have contributed funds to a DEQ-approved CCI entity to support implementation of projects that reduce greenhouse gas emissions. Under the proposed rules, the contribution required to receive one CCI credit begins at \$107 in 2023 (2021\$) and increases by \$1 per year (2021\$), over time. This contribution amount was set based on likely project implementation costs, specifically the likely range of costs to reduce to emissions by one ton for each CCI credit issued. The contribution to receive one CCI credit in a given year also will be adjusted for inflation. A covered fuel supplier may choose to use this compliance option at its discretion. DEQ believes a covered fuel supplier may do so if it determines this is a

more cost-effective option than reducing their emissions directly by curtailing the quantity of fossil fuels supplied, or by acquiring additional compliance instruments through a trade. The CCI credit price is only applicable to the portion of a compliance obligation that a covered fuel supplier chooses to achieve with CCI credits. While proposed program rules allow up to a certain percent (depending on the compliance period) of a compliance obligation to be achieved with CCI credits, the use of CCI credits is not required. DEQ increased the contribution amount to earn a CCI credit in order to assure that this component of the program achieves the necessary level of emissions reductions. DEQ also modified the proposed rules to limit banking of CCI credits, which may result in higher costs if covered fuel suppliers would have otherwise earned CCI credits early (subject to the limit on the number of CCI credits that can be earned) and banked them for use in later years. While a contribution of CCI funds to a CCI entity is a cost to the covered fuel supplier, the contribution benefits the public due to the implementation of projects that reduce greenhouse gas emissions and have other co-benefits. This is further described in the section below describing indirect benefits to the public.

- The ability to trade compliance instruments allows covered fuel suppliers to achieve the program cap on emissions collectively, which can result in cost savings across the program compared to an approach where each covered fuel supplier must individually achieve the same level of emissions reductions. Trading can allow covered fuel suppliers that are able to reduce emissions cost-effectively or quickly to trade unused instruments with other covered fuel suppliers that require more time to reduce emissions. Covered fuel suppliers will be able to determine the price at which they are willing to trade compliance instruments, and DEQ plays no role in that decision-making. Specific prices are therefore likely to vary per trade, but in the aggregate trading allows for a more efficient allocation of resources and promotes cost-effective emissions reductions. The cost of acquiring a compliance instrument may be less than the CCI credit price, but the price of trades will not be known until the program begins and trades occur.

In any given year, but especially as the program progresses and the caps become lower over time, covered fuel suppliers may use any combination of the above compliance options. There are countless ways (and costs) in which to comply. It is possible that in a given year a covered fuel supplier will comply by acquiring CCI credits up to the allowable percent limit while also changing supplies, and/or acquiring additional compliance instruments through trading. Overall, DEQ expects that allowing for the varying options for achieving compliance discussed above will mitigate the costs of compliance for a given covered fuel supplier, and therefore mitigate the overall costs of the program.

These multiple combinations make it difficult to estimate the potential fiscal impacts. The above discussion describes some of them as compared to CCI credits because DEQ expects that any contributions to earn CCI credits may be the highest compliance cost for covered fuel suppliers, particularly in early years of the program. This may partly be due to the proposed base cap being equal to the average covered emissions from 2017 through 2019, meaning, on average, a covered fuel supplier continuing operations at the same level as in those years could comply fully for several years by acquiring CCI credits even if it was not

reducing emissions as quickly as the cap declines. However, as commenters have noted, compliance with the program could become more expensive over time as opportunities to reduce emissions become constrained and as the necessary dollar contribution amount to receive a CCI credit increases. Example scenarios relating to CCI funds are described below.

In this first example, a covered fuel supplier's baseline emissions for the first few years of the program are 1,000,000 MT CO₂e. Over time, the number of compliance instruments the covered fuel supplier receives from DEQ will decrease as caps decrease. As an example, assume the covered fuel supplier receives a distribution of 950,000 compliance instruments for 2023, then it will need to either reduce emissions or find a way to comply with the remaining 50,000 MT CO₂e of its emissions from that year if it seeks to continue to emit 1,000,000 MT CO₂e. The covered fuel supplier could choose to contribute CCI funds to support projects that reduce greenhouse gas emissions, and at \$107 (2021\$) per CCI credit in 2023, the required contribution would be \$5.35 million to earn 50,000 CCI credits. Later in the program, the distribution of compliance instruments decreases and the allowable usage of CCI credits increases. Now assume the covered fuel supplier receives 800,000 compliance instruments for 2028. If the covered fuel supplier still wants to supply fuels that have 1,000,000 MT CO₂e of covered emissions, it would need to either reduce emissions or find a way to comply with the remaining 200,000 MT CO₂e. It could choose to earn CCI credits and at \$112 (2021\$) per CCI credit in 2028, the total contribution would be \$22.4 million to earn 200,000 CCI credits. Alternatively, in any year, the covered fuel supplier may seek a compliance instrument trade at a lower price (than that for CCI credits) or may decide to increase prices to reduce demand.

For a second example, take a covered fuel supplier with baseline emissions of 100,000 MT CO₂e. Under the proposed rules, this supplier would not be covered until 2025 (when the threshold for suppliers subject to the program declines to that level). Assume the supplier receives 95,000 compliance instruments from DEQ for 2026. It would need to either reduce emissions or find a way to comply with the remaining 5,000 MT CO₂e of emissions if it seeks to continue to emit 100,000 MT CO₂e. The covered fuel supplier could choose to contribute CCI funds to support projects that reduce greenhouse gas emissions, and at \$110 (2021\$) per CCI credit in 2026, the total contribution would be \$550,000 to earn 5,000 CCI credits. Later in the program, the distribution of compliance instruments decreases further, and the allowable usage of CCI credits increases. Now assume the covered fuel supplier receives 80,000 compliance instruments for 2031. If the covered fuel supplier still has 100,000 MT CO₂e of covered emissions, it would need to either reduce emissions or find a way to comply with the remaining 20,000 MT CO₂e if it seeks to emit 100,000 MT CO₂e. It could choose to earn CCI credits and at \$115 (2021\$) per CCI credit in 2031, the total contribution would be \$2.3 million to earn 20,000 CCI credits. Alternatively, in any year, the covered fuel supplier may seek a compliance instrument trade at a lower price or may decide to increase prices to reduce emissions.

As the cap continues to decline over time, covered fuel suppliers would receive fewer compliance instruments. If, for example, in the third compliance period, a covered fuel supplier receives fewer compliance instruments than 80 percent of its baseline emissions, the use of CCI credits would no longer be sufficient to allow it to avoid taking actions to reduce

emissions by reducing the volume of fuels (through price increases) or increasing the mix of renewable or lower carbon fuels, or by acquiring additional compliance instruments through a trade.

Enforcement

There are costs related to being involved in an enforcement action that includes correcting the violation and the payment of civil penalties, if assessed. The proposed enforcement rule changes would not have an economic impact on covered entities unless they violate the program rules.

Potential impacts to covered stationary sources

Administration, permitting, reporting, and recordkeeping

DEQ is proposing to require covered stationary sources to register in DEQ's electronic system, submit progress reports annually, review reports every five years, prepare a BAER assessment and implementation plan no more than once every five years, and submit a completion report when any required actions from a BAER order have been fully implemented. Sources must also apply for a CPP permit addendum after receiving a BAER order to incorporate the CPP requirements into permits, and must retain records of reported information for ten years. DEQ is proposing the records retention requirement of ten years to ensure overlap from one five-year review report to the next.

One-time costs would be associated with staff time to register with the program. On-going costs would be associated with applying for a CPP permit addendum any time DEQ issues a BAER order (following a BAER assessment that occurs at most once every five years), reporting information and retaining records. For a source that must modify a permit to incorporate the BAER order requirements, a fee may be incurred each time it must apply for a CPP permit addendum. See discussion in Fee analysis section above.

The costs of complying with the proposed program vary from one entity to another, depending on existing reporting and recordkeeping activities. Covered stationary sources are already reporting to DEQ's Greenhouse Gas Reporting Program, have DEQ air permitting requirements, and therefore may already have staff available to take on new reporting and permitting requirements. The recordkeeping requirement may result in additional costs for some covered stationary sources that do not currently retain records for longer than seven years (as required by DEQ's Greenhouse Gas reporting program) or if they need to add capacity to their existing systems in order to retain additional records required for the Climate Protection Program. Other costs incurred would be in relation to allocating time and resources for reporting new information to DEQ. Covered stationary sources may experience a fiscal impact due to these administrative requirements. DEQ did not have any specific information to quantify costs associated with administrative requirements but expects covered stationary sources to experience minimal fiscal impact. EPA has estimated costs to entities for tracking and reporting greenhouse gas emissions in the Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions, Final Rule (GHG Reporting). Adjusted for inflation, EPA estimated these costs as ranging from \$0 to \$6,854 (2020\$) per year. The higher end of the range is based on labor, recordkeeping, and

reporting costs for relevant industry. While there were comments that DEQ's estimates were low, DEQ did not receive any comments with specified alternatives to DEQ's estimated costs of administration, permitting, reporting, and recordkeeping included in the Notice of Proposed Rulemaking. DEQ does not have additional information to determine the precise costs relating to the administration of the Climate Protection Program, and acknowledges that it could be different than as estimated in this report from EPA. DEQ notes that if the costs were twice as high as the EPA estimates, the costs could range from \$0 to \$13,708 (2020\$).

BAER assessments and reducing greenhouse gas emissions

Under the proposed regulations, existing permitted air contamination sources that have annual covered emissions above the threshold and new sources that are anticipated to have covered emissions above the threshold are subject to the best available emissions reduction (BAER) approach. This requirement is a site-specific approach in which DEQ will determine the best available emissions reduction strategies and require each covered stationary source to implement those strategies. In setting requirements for each permit holder individually, DEQ can consider strategies to reduce covered emissions that are available, feasible, and cost-effective for that individual source. DEQ expects that accounting for site-specific considerations will mitigate the costs for a given covered stationary source, and therefore mitigate the overall costs of the program. The costs of complying with the proposed program will likely vary from one entity to another, depending on the business and the strategies DEQ requires of each covered stationary source to reduce covered emissions and comply with the Climate Protection Program requirements.

Covered stationary sources will be required to conduct a BAER assessment no more than once every five years. Costs to conduct and complete a BAER assessment will be dependent on whether or not a source has existing technical and professional staff resources that can conduct this type of emissions and technology assessment, or whether they may need to contract with a third-party consulting firm to assist. DEQ made an effort to balance the timeliness and costs of the BAER approach by allowing sources nine months to conduct the assessments, which gives them time to first determine the most cost-effective approach for conducting the assessment, such as comparing costs of different consulting firms. Costs will also depend on the industry type and will be specific to the complexity of each source's individual business. While some comments stated that DEQ's estimates were low, DEQ did not receive any comments with specific alternatives to DEQ's estimated costs to conduct a BAER assessment included in the Notice of Proposed Rulemaking. DEQ estimated the cost to conduct a complex BAER assessment might require approximately 150-300 hours of professional time at a rate of \$200 per hour. DEQ provides a range of costs a business may incur to complete a BAER assessment, either in-house, through a consultant, or both, in Table 1.

Table 1		
Estimated costs of completing a BAER assessment		
Hours of Professional Time	Facility Professional Resources	Consultant Fee
150	\$5,000 - \$30,000	\$5,000 - \$30,000
300	\$10,000 - \$60,000	\$10,000 - \$60,000

In the proposed program, covered stationary sources are also required to submit an implementation plan and five-year review reports. The requirement to submit either of these reports would occur no more than once every five years. Some information in either of these reports may be similar to information compiled for and submitted in a BAER assessment, though the time and effort to compile and submit either of these reports would be significantly less. The cost of compiling and submitting an implementation plan or review report may be toward the low range of costs for a BAER assessment discussed above, although DEQ does not have additional information to determine the precise costs and acknowledges that they could be different than described above.

Each source will have to implement the required strategies from a DEQ-issued BAER order in order to comply and these strategies will reduce covered emissions. Costs to implement strategies that reduce greenhouse gas emissions will vary by strategy, business, and industry. Strategies to reduce emissions vary and can include fuels, processes, equipment, technology, systems, actions, and other methods and techniques, such as business practices or other alterations to operations to result in greenhouse gas emissions reductions. Some example industry types that may be impacted by the proposed program include, but are not limited to:

- Cement manufacturing
- Chemical manufacturing
- Fruit and vegetable preserving and specialty food manufacturing
- Iron and steel mills
- Polystyrene foam product manufacturing
- Semiconductor and related device manufacturing

To inform this fiscal analysis, DEQ researched studies on strategies to reduce greenhouse gas emissions across different industries, consulted with its contractor ICF, and sought input from stationary sources and stakeholders. As part of program development, DEQ contracted with ICF to analyze greenhouse gas emissions reductions under an emissions cap program in Oregon. As part of the study, ICF assumed some cost ranges to reduce emissions from industrial stationary sources based on external studies. The estimated costs for a given source to reduce greenhouse gas emissions, based on various strategies and industries, range from \$47 to \$190 (2020\$) per metric ton of emissions reduced. The low estimate is based on EPA's Global Non-CO2 report and may represent some costs to reduce emissions for polystyrene foam product manufacturing. The high estimate is based on the McKinsey and Company marginal cost abatement study and may represent some costs to reduce emissions

for cement manufacturing. These costs can be assumed to account for equipment, supplies, labor and increased administration required for businesses to comply. These costs also represent net present value and therefore account for cumulative emissions reductions achieved across a given time period from that study, rather than a cost for a particular snapshot in time. It is important to note that these costs do not necessarily represent a potential direct cost to a covered stationary source, but rather represent the total cost per metric ton to achieve emissions reductions. In actuality, different costs may be borne by different parties, depending on the strategy, and the covered stationary source may pass through some costs to consumers of its products. The cost range is based on best available information, but may be higher or lower, depending on facility-specific conditions, business decisions, and technological advancements over time. DEQ received comments stating that these estimated costs are low, but DEQ did not receive comments with specific alternative costs.

Covered stationary sources will only bear costs for the required reductions in covered emissions, and would not have a cost associated with all of their emissions. Additionally, there is no additional cost to reduce covered emissions after successfully implementing all requirements from a BAER order. Therefore, the cost of compliance for a covered stationary source will depend on the actions and strategies required in the BAER order. There may be instances where a BAER order does not require a source to take any actions because they may be determined to achieve the best available emissions reductions at that time. In these cases, there would be no cost to reduce emissions.

There could be negative economic effects on a regulated business if the proposed regulation were to result in curtailed production or closure in response to the requirements. It is possible that operations could shift to an area outside of Oregon that is not subject to this regulation, which is sometimes referred to as leakage of business or greenhouse gas emissions. Some rulemaking advisory committee members noted that this was higher risk for businesses and industries that faced out-of-state competition and had higher energy costs.

The BAER approach does not limit or curtail production, but requires the implementation of strategies, practices and technologies to maximize emissions reductions. DEQ does not have additional information to estimate the potential or economic impacts of leakage but recognizes the negative economic impacts of business and job loss that could occur, despite proposed provisions to allow covered entities flexibility in an effort to decrease the chances of curtailment or closures in direct response to regulations.

Enforcement

There are costs related to being involved in an enforcement action that includes correcting the violation and the payment of civil penalties, if assessed. The proposed enforcement rule changes would not have an economic impact on covered entities unless they violate the program rules.

Large businesses – businesses with more than 50 employees

Based on 2018 and 2019 Greenhouse Gas Reporting Program data, DEQ estimates that approximately 61 large businesses may be directly affected by these rules. The impacts described in the Cost of Compliance section above apply to:

- Large businesses that are suppliers of liquid fuels and propane that are subject to the emissions cap requirements may incur costs described in the covered fuel suppliers' subsection above. DEQ estimates there are approximately 45 such businesses.
- Large businesses that are natural gas utilities that are subject to the emissions cap requirements may incur costs described in the covered fuel suppliers' subsection above. DEQ has identified 3 such businesses.
- Large businesses that are permitted air contamination sources subject to the best available emissions reduction approach may incur costs described in the covered stationary sources subsection above. DEQ estimates there are approximately 13 such businesses.

Small businesses – businesses with 50 or fewer employees

ORS 183.336 Cost of Compliance Effect on Small Businesses

Based on current Oregon Department of Employment data and 2018 and 2019 Greenhouse Gas Reporting Program data, DEQ estimates that approximately four small businesses may be directly affected by these rules. The impacts described in the covered entities section above apply to:

- Covered fuel suppliers subject to the proposed declining cap on emissions requirements:
 - DEQ estimates that with declining thresholds of applicability over the first ten years of the program, there are approximately four small businesses that may become covered fuel suppliers supplying liquid fuels or propane.
 - There are no small businesses that are natural gas utilities.
- Covered stationary sources subject to the proposed process to determine and require the best available emissions reductions:
 - DEQ estimates there are no small businesses that are covered stationary sources.

Estimated number of small businesses and types of businesses and industries with small businesses subject to the proposed rule

Based on current Oregon Department of Employment data and 2018 and 2019 Greenhouse Gas Reporting Program data, DEQ estimates that approximately four small businesses may be directly affected by these rules. As shown below in Table 2, these are all suppliers of liquid fuels and/or propane.

Table 2		
Small business counts by sector and at different thresholds		
Covered Sector	Threshold	Count of Small Businesses
Covered fuel suppliers supplying liquid fuels or propane (suppliers of liquid fuels and propane)	Greater than or equal to 200,000 MT CO ₂ e (covered beginning 2022)	0
	Greater than or equal to 100,000 MT CO ₂ e and less than 200,000 MT CO ₂ e (covered beginning 2025)	2
	Greater than or equal to 50,000 MT CO ₂ e and less than 100,000 MT CO ₂ e (covered beginning 2028)	1
	Greater than or equal to 25,000 MT CO ₂ e and less than 50,000 MT CO ₂ e (covered beginning 2031)	1
Covered fuel suppliers that are natural gas utilities	N/A (covered beginning 2022)	0
Covered stationary sources (air permit holders)	Greater than or equal to 25,000 MT CO ₂ e (covered beginning 2022)	0

Projected reporting, recordkeeping and other administrative activities including costs of professional services, required for small businesses to comply with the proposed rule

Costs to small business associated with reporting, recordkeeping and other administrative are discussed in the administration, permitting, reporting, and recordkeeping subsections of the covered entities section above.

Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule

Costs to small business associated with equipment, supplies, labor and increased administration are discussed in the reducing greenhouse gas emissions subsections of the covered entities section above.

Mitigation measures for small businesses

To mitigate small business impacts, DEQ is proposing points of direct regulation and emissions thresholds that will exclude the vast majority of small businesses from being subject to program requirements. For the approximately four small businesses that DEQ currently anticipates to be covered, the proposed declining threshold for inclusion over the first nine years of the program will delay some small business inclusion and provide more time to plan for emissions reductions and other compliance-related activities. None of the

identified four directly regulated small businesses would have compliance obligations before 2025, and the earliest demonstration of compliance requirements for them would not be due until 2028.

Additionally, DEQ has developed the proposed program in a way that allows covered fuels suppliers to have optionality in how they comply with the cap and allows covered stationary sources to provide information to DEQ on their available opportunities and necessary timeline to reduce greenhouse gas emissions. See the discussions in the reducing greenhouse gas emissions subsections of the covered entities section above for more detail.

For covered fuel suppliers, a proposed program-wide cap with compliance flexibility options allows each entity many options to comply with the program while mitigating costs. An entity could adjust its business to reduce emissions to remain below the declining threshold for inclusion, or, if regulated, could reduce emissions in alignment with DEQ's free distribution of compliance instruments. Alternatively, if it is more cost effective for a covered fuel supplier, the businesses can use the various compliance options that are further described in the Covered entities section above, including:

- Three-year compliance periods
- The ability to bank or save unused compliance instruments for use in the future
- The ability to trade compliance instruments
- The option to earn CCI credits

Small businesses with compliance obligations beginning in 2025 or later have at least three years to plan for compliance with the program and acquire sufficient compliance instruments with these options.

Even though DEQ estimates there are no small businesses that are covered stationary sources, the site-specific regulatory approach allows individual business and industry considerations to be taken into account by DEQ as it sets requirements to reduce emissions. The sources also have the opportunity to provide DEQ with information they may want considered when they conduct and submit a BAER assessment. Requiring the best available emissions reductions strategies can account for the costs of various strategies and therefore can mitigate costs to businesses while maximizing emissions reductions.

DEQ expects that allowing for these program features and varying options for achieving compliance will likely mitigate costs, and allow covered entities, especially those that are small businesses, to determine the most cost-effective compliance pathway for their business. This will therefore also likely mitigate the overall costs of the program.

For any small businesses that becomes subject to the program, costs may be reduced compared to large businesses, depending on the nature of the business and actions taken to reduce emissions to meet the program requirements.

How DEQ involved small businesses in developing this proposed rule

DEQ convened a rulemaking advisory committee that included representatives from membership organizations that represent small businesses including but not limited to the

Oregon Fuels Association and Oregon Business & Industry. DEQ also provided notice of this rulemaking to entities currently reporting to the Greenhouse Gas Reporting Program and Clean Fuels Program, which include a number of small businesses.

Community climate investment entities

DIRECT IMPACTS

Non-profit organizations approved by DEQ to be community climate investment entities will receive funds from covered fuel suppliers and use those funds to create or expand projects that reduce greenhouse gas emissions. Participation as a CCI entity is voluntary.

CCI entities may benefit from the proposed program by an increase in opportunities to participate in work to reduce greenhouse gas emissions and to develop projects that will particularly benefit Oregon environmental justice communities. Project implementation costs incurred would be supported by the CCI funds received from covered fuel suppliers, along with administrative and reporting costs related to project implementation. There would also be some initial administrative costs to obtain DEQ approval and to propose new projects, which would not be supported by CCI funds.

Public

DIRECT IMPACTS

The proposed rules do not impose any direct fiscal or economic effects on the public.

INDIRECT IMPACTS

DEQ recognizes that as covered entities comply with the program, there will be indirect impacts, both potential costs and benefits, to consumers and businesses throughout Oregon. These impacts will change over time. While DEQ is unable to quantify these indirect impacts, DEQ recognizes that compliance costs for fuel suppliers likely will be passed on, and may disproportionately impact businesses and industries that face out-of-state competition and are more reliant on natural gas and transportation fuels. Disproportionate indirect impacts also could be felt by environmental justice communities that have difficulty transitioning to clean energy sources, and that are less resilient to price impacts. These communities include communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

As part of program development, DEQ contracted with ICF and its subcontractor Cascadia to conduct a co-benefits and equity assessment. This qualitative assessment found that overall, the proposed program could result in positive co-benefits and equity benefits. The assessment was for five indicators (local air quality; ecosystem health & resilience; energy security; employment & workforce development; housing burden) and for five identified communities of concern (communities of color, tribal nations, elderly populations, low-income urban communities, low-income rural communities). The design and implementation of the CCI funds and projects was a key driver of these results.

Potential climate change impacts

Climate change caused by greenhouse gas emissions is having detrimental effects on the overall public health, safety and welfare of Oregonians, and there are costs associated with climate inaction. For example, a recent DEQ Wildfire Smoke Trends and the Air Quality Index report found that over 1.2 million acres burned in wildfires in 2020 and there are increases statewide in the number of days per year that wildfire smoke results in unhealthy air quality for sensitive groups. DEQ also receive public comment noting that the 2020 Labor Day fires cause over \$1 billion in estimated damages and that the 2012 fire season caused \$2.1 billion in healthcare costs. DEQ recognizes the scope of these costs, although this assessment does not quantify the costs and benefits associated with climate change and public welfare.

There are a number of existing programs, other developing actions, and state budget allocations to address climate impacts. For example, Senate Bill 762 (2021) provides \$195 million and statewide comprehensive strategies to promote wildfire risk reduction, response, and recovery. This bill is an important step in acknowledging the state's climate future. There is other spending throughout the state budget, including funds available to address infrastructure compromised during extreme events and to support the development of programs that take action on climate change. To that end, greenhouse gas emissions reductions achieved from the Climate Protection Program that decrease climate change risks could create positive economic benefits and improvements in public welfare statewide.

These benefits may include avoidance of future state costs to mitigate or adapt to impacts of climate change, such as the impact of extreme heat and the impacts of severe drought on agricultural or other natural resource sectors. DEQ does not have additional information to estimate the specific costs of climate change inaction in Oregon.

Indirect impacts to consumers and businesses that are not directly regulated

Members of the public and businesses purchase transportation fuels, natural gas and propane and goods for their use. The proposed program is likely to affect the prices of these commodities as fuel suppliers take actions to comply with the Climate Protection Program. Impacts will vary for the residential, commercial, and industrial sectors depending particularly on how intensively people currently use fossil fuels.

Examples of potential impacts may include:

- Fuel costs are likely to change. These may be cost increases or, if clean alternative fuels that reduce emissions are more cost-effective than the fossil fuels they would replace, then the retail fuel prices may decrease. In addition, if businesses experience price changes, they likely will pass on these changes to their customers.
- If a covered fuel supplier acquires compliance instruments by paying for them in a trade, or by paying for CCI credits, then these costs likely will be passed on to customers. For example, businesses that are not directly regulated may use fuels, such as natural gas, to power on-site operations. These businesses could see an increase in the cost of fuel as a result of the regulation of their fuel supplier.

- If clean technologies that reduce emissions are less cost-effective than the fuels or existing operations they would replace, then the price of goods for consumers could increase.
- Implementation of CCI projects may reduce costs to some. For example, if CCI credits are used to weatherize a building the heating costs to the occupant may be reduced even if the cost per unit of natural gas or propane used for heating increases.

DEQ received comments that included a macro-economic impact analysis of the proposed rules carried out by Energy Strategies, LLC and RECON Insights, LLC. That analysis projects that the program will result in higher prices for gasoline, diesel and natural gas. The projected increases are generally greater after 2035. For gasoline, the report states that "the CPP could add \$0.10 to \$0.36 per gallon to the cost of motor gasoline, between 2025 and 2050", representing a three to seven percent increase in the cost of a gallon of gasoline by 2050. A similar range of potential cost increases is projected for diesel. For natural gas, the report projects a larger price increase, peaking at just under 60 percent in 2040, after which time the degree of increase relative to the reference case is projected to decline. DEQ notes that according to the U.S. Energy Information Agency, over the last 15 years residential prices for natural gas in Oregon have declined by about 25 percent. Over the same period, industrial prices have declined by about 50 percent.

DEQ does not have a comparable analysis of costs. However, DEQ notes that to date the cost impacts of the Clean Fuels Program have been very modest (\$0.04 per gallon), and that the analyses for extension of the Clean Fuels Program indicate that the costs of renewable and lower carbon fuels are declining relative to fossil fuels as production volumes increase. This, along with accelerating rate of adoption of electric vehicles in Oregon, shows that for transportation fuel suppliers CO₂e emissions can be reduced in line with CPP cap reductions, and that this is likely possible with very modest price effects – in line with the Energy Strategies, LLC and RECON Insights, LLC projections of between 10 and 36 cents per gallon by 2050.

For natural gas, the more limited availability of renewable natural gas (relative to renewable transportation fuels) means that there is a greater potential for price impacts. Reducing demand for natural gas, through energy efficiency and through switching of some uses to clean electricity, will be necessary to avoid more significant price impacts. Development of hydrogen as a fuel source, using renewable electricity during off-peak times, is likely to be an important part of the pathway in this sector.

Recognizing these uncertainties, DEQ has revised the portion of the rules on program review that if the cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than twenty percent higher than the change in cost for the same fuel over the same period in each of the states adjacent to Oregon (not including California), DEQ will investigate and report on the cause(s) to the commission. In these circumstances, the commission could order a deferral of compliance for a limited period of time, change caps and distribute additional compliance instruments, or take other actions to avoid economic impacts and provide for a smoother transition to clean energy sources.

Potential impacts to Oregon's economy

Price changes will affect the economy as businesses and other consumers adjust to changes in the costs of fuels or goods, as discussed above. Businesses and consumers that are able to transition to lower carbon energy sources sooner may realize savings, while those that have difficulty transitioning may experience larger increases in costs.

As part of program development, DEQ contracted with ICF to analyze the macroeconomic impacts of potential program options to implement an emissions cap in Oregon. Across multiple program design scenarios, ICF concluded a program of this type could significantly reduce greenhouse gas emissions while maintaining the overall health of the economy. While changes were small as compared to the size of the economy, the study showed net positive trends for gross state product, income, and jobs. Net employment changes in 2050 were projected between 14,100-19,700 jobs. Net gross state product impacts in 2050 were projected between 1,350 to 1,730(\$Mil)(\$2020) and net income impacts in 2050 were projected between 820 and 1,100(\$Mil)(\$2020). Reduced fuel costs were found to outweigh costs of investments, with the trend increasing over time. This increased personal income and allowed for more spending throughout the economy. Investments in clean transportation were found to result in consumer fuel and energy cost savings.

As noted above, DEQ also received comments which included a macroeconomic analysis commissioned by Oregon Business and Industry and conducted by Energy Strategies, LLC and RECON Insights Group, LLC on potential CPP impacts. This analysis found potential macroeconomic impacts during the first half of the program to be generally minor, with most significant negative impacts after 2035. This study found different job impacts compared to the ICF study, with the most impacted industries being petroleum and natural gas suppliers as well as certain industries that are more reliant on natural gas, such as chemical, food, and wood products and pulp and paper manufacturing. Despite negative job impacts to certain industries, the broader manufacturing sector overall was shown to have economic gains through 2050. It is worth noting that both this study and ICF's study are based on available information and current technology. As we have seen in the electricity and renewable fuels sectors, technology will change over the next thirty years. As noted above, technological change will be particularly important in the arena of natural gas, both in terms of renewable natural gas and hydrogen as alternatives to conventional fossil gas.

As noted by some rulemaking advisory committee members, while the contribution amount to earn CCI credits was used to estimate potential costs for regulated entities, the reinvestment of CCI funds in the state's economy was not estimated nor included in ICF's macroeconomic modeling. This was also not accounted for in the analysis conducted by Energy Strategies, LLC and RECON Insights Group, LLC referred to above. The monetized health benefits were also not included in the ICF analysis, meaning the results of ICF's analysis understate the economic benefits of the proposed program. The cumulative monetized value of public health benefits over the program's time horizon of 2022 to 2050 were projected to \$2.29 billion (2020\$). In addition to the modeling study results, reducing greenhouse gas emissions can be accompanied by economic growth. Between 2005 and 2019, statewide emissions in Oregon have declined by five percent while gross domestic

product for the state has grown on average over four percent per year during the same period.

Potential positive economic impacts

Members of the public may also see economic benefits related to the creation of new green jobs, including through implementation of approved projects that receive community climate investment funds. The implementation of these projects may require hiring and training new staff or contractors. DEQ is not able to quantify the fiscal impact of these potential new green jobs.

DEQ cannot quantify specific potential fiscal impacts related to installation of more efficient technology throughout Oregon as a result of the Climate Protection Program because compliance with the program is not prescriptive and there are many pathways to an energy transition. However there may be positive economic impacts and comments pointed DEQ to some estimates. For example, according to Brennan Borlaug, et al., an electric vehicle may save its owners between \$11,000 and \$14,000 in fuel costs over the expected life of the vehicle, and the US Department of Energy estimates that in Oregon, the per-mile cost to drive an electric vehicle may be roughly one third of the per-mile cost of gasoline. Additionally, in 2016 the American Council for an Energy-Efficient Economy estimated that high-efficiency electric heat pumps could save Oregon consumers approximately \$2,000 to \$3,000 over the systems' lifetimes when compared to gas furnaces. Modeling for the California Energy Commission in 2019 found that electric heat pumps could be approximately 80 percent less expensive to operate than a gas furnace with renewable natural gas.

Community climate investments may encourage these types of technologies throughout Oregon. The types of projects and communities that may be impacted by this are not yet determined as this will be informed by the equity advisory committee and is part of program implementation. For example, a project that improves energy efficiency in low-income households may create economic benefit for those households. This portion of the program also has the opportunity to bring monetized benefits to environmental justice communities. These communities include communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities. DEQ is not able to quantify the fiscal impact on project impacts or cost savings related to implementation of projects using CCI funds.

Potential negative economic impacts

The proposed program could affect the public if regulated businesses alter the price of goods and services in response to the cost to comply with the Climate Protection Program. For example, consumers could experience price increases for fuel such as the cost of a gallon of gasoline at a gas station or the cost of natural gas for a residential or commercial customer. Estimating projected retail prices is complex and relies on a number of assumptions and policies. It is also important to note that DEQ is not an economic regulator and cannot set

requirements for how regulated businesses do or do not alter their retail prices of goods or fuels. DEQ did not estimate impacts to the public on the costs of goods or fuels.

In addition to the macroeconomic impacts analysis mentioned above by Energy Strategies, LLC and RECON Insights Group, LLC, DEQ received comments that cited preliminary analysis of the costs of compliance with the CPP for Oregon's three natural gas utilities. The three natural gas utilities each conducted preliminary analysis of the CPP, at the request of the Oregon Public Utility Commission. One of the utilities showed potential cost increases of 39% percent for industrial bills by 2050, with modest cost savings for residential customers over the same period. Results varied by utility, customer class, compliance strategy, and by modeling assumptions. For example, another utility estimated residential costs could increase by 2040 by 33%, commercial costs by 40%, and industrial costs by 81%. Another utility estimated residential costs could increase by 2040 by 75%, commercial costs by 94%, and industrial costs by 107%.

CCI funds may be spent on projects that reduce greenhouse gas emissions by reducing energy consumption, such as through greater efficiency. Proposed program rules prioritize these projects for environmental justice communities. By accelerating the transition of residential, commercial, industrial, and transportation-related uses of fossil fuels to lower carbon sources of energy, CCI projects have the potential to reduce potential negative economic impacts from fuel price increases. It is worth noting that the studies conducted by ICF and other external parties did not analyze the potential benefits from reinvestment of CCI funds.

The proposed program could have negative economic effects on the public if businesses providing jobs and contributing to local economies were to curtail production or close in response to regulatory requirements. These operations could shift to an area outside of Oregon that is not subject to this regulation, which is sometimes referred to as leakage. DEQ recognizes that employment plays a key role in public health, and that negative economic impacts through job loss could occur despite proposed provisions to allow business flexibility in an effort to decrease the chances of business closures or employee layoffs in direct response to regulations.

Potential positive health impacts

Environmental justice communities are disproportionately burdened by the effects of climate change, air contamination, and by energy costs. The proposed program is intended to reduce greenhouse gas emissions to address climate change and support reductions of co-pollutants, such as toxic air contaminants and criteria pollutants. Emissions reductions achieved from the Climate Protection Program that decrease co-pollutant health risks could create positive economic benefits and improvements in public health and welfare statewide. DEQ did not have specific information to quantify all costs or benefits associated with public welfare.

Program rules prioritize the spending of CCI funds on projects that reduce greenhouse gas emissions, reduce other air contaminants emissions, promote benefits for environmental justice communities, and accelerate the transition to lower carbon fuels. As a result, CCI projects may support positive health impacts for Oregon communities. For example, CCI

funds may be used to support vehicle electrification, which may reduce exposure to particulate matter for communities near transportation corridors.

As part of program development, DEQ contracted with ICF to analyze the public health impact of an emissions cap program in Oregon. Across multiple program design scenarios, ICF concluded a program of this type could significantly reduce statewide adverse health impacts due to changes in criteria pollutant emissions from on-road mobile sources and other sources. The cumulative monetized value of public health benefits over the program's time horizon of 2022 to 2050 could be up to \$2.29 billion (2020\$). This analysis is a conservative estimate of the potential health benefits, as it did not incorporate all potential benefits. For example, the model used for the health analysis only assessed greenhouse gas emissions reductions from fuel combustion, but did not capture emissions reductions from industrial processes. Additionally, it analyzed reductions in the co-pollutants of particulate matter and its precursors, but did not capture the benefits of reductions of other co-pollutants, such as air toxics. The model monetized several health outcomes, such as avoided heart attacks and hospital visits, but did not capture all health outcomes that may be affected by air contamination, did not capture health outcomes related to CCI projects, and did not capture indirect health outcomes, such as adverse health impacts from extreme weather caused by climate change. DEQ also received public comment identifying specific potential positive health impacts. For example, according to Jonathan J Buonocore, et al., burning fossil fuels in buildings in Oregon was responsible for at least 20 premature deaths and over \$221 million in health impacts in 2017.

Oregon Department of Environmental Quality

DEQ staff will implement the program and provide assistance to covered entities about how to comply with program rules, and provide outreach and assistance to members of the public and nonprofits interested in the CCIs portion of the program. When a covered stationary source submits a CPP permit addendum application to DEQ, DEQ staff will incorporate requirements from the DEQ BAER order into the existing or new permit. DEQ is currently conducting an agency-wide process to house most data in an Environmental Data Management System, or EDMS, which is being developed in coordination with a third-party contractor. The new reporting requirements and emissions tracking for the Climate Protection Program is also being incorporated into EDMS and the funding needed to implement and maintain this are already supported in existing contracts.

Other governments

DIRECT IMPACTS

The proposed rules do not impose any direct fiscal or economic effects on federal, state, or local agencies or tribal governments.

INDIRECT IMPACTS

Federal, state, and local agencies and tribal governments are consumers of fuels and goods. The indirect impacts of the CPP on government entities will be the same as on other

consumers of transportation fuels, natural gas, and propane. See the discussion on the potential impacts to the public above.

Local or tribal government representatives, such as city or county health staff, planning staff, and other officials, may also be impacted by the need to participate in meetings related to the implementation of the Climate Protection Program. This may include time to research and understand potential air quality concerns, Climate Protection Program regulations, and time spent attending meetings. DEQ is not able to quantify these fiscal impacts, but recognizes that time spent may affect local or tribal government budgets for travel or other expenses.

Documents relied on for fiscal and economic impact

Document title	Document location
Estimates of costs provided to DEQ	Oregon Department of Environmental Quality 700 NE Multnomah St. Suite 600 Portland OR 97232
Oregon Greenhouse Gas Reporting Program data	https://www.oregon.gov/deq/air/programs/Pages/GHG-Emissions.aspx
DEQ and ICF analysis and modeling study on program options to reduce greenhouse gas emissions	https://www.oregon.gov/deq/ghgp/Pages/modelingstudy.aspx
U.S. Interagency Working Group on Social Cost of Greenhouse Gases Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, February 2021	https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf
U.S. EPA Global Non-CO2 Greenhouse Gas Emission Projections & Mitigation Potential: 2015-2050, October 2019	https://www.epa.gov/sites/production/files/2019-09/documents/epa_non-co2_greenhouse_gases_rpt-epa430r19010.pdf
McKinsey & Company Decarbonization of industrial sectors: the next frontier, June 2018	https://www.mckinsey.com/~media/mckinsey/business%20functions/sustainability/our%20insights/how%20industry%20can%20move%20toward%20a%20low%20carbon%20future/decarbonization-of-industrial-sectors-the-next-frontier.pdf
Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule (GHG Reporting), EPA, September 2009	https://www.epa.gov/sites/production/files/2015-07/documents/regulatoryimpactanalysisghg.pdf
U.S. Inflation Calculator	https://www.usinflationcalculator.com/
Oregon Department of Employment	Employment Department

data	875 Union Street NE Salem OR 97311
U.S. Department of Commerce, Bureau of Economic Analysis, Gross Domestic Product by State	https://www.bea.gov/data/gdp/gdp-state
America's New Climate Economy: A Comprehensive Guide to the Economic Benefits of Climate Policy in the United States	https://files.wri.org/d8/s3fs-public/americas-new-climate-economy.pdf
Brennan Borlaug, et al., Levelized Cost of Charging Electric Vehicles in the United States, Joule 4, 1470–1485, July 15, 2020	https://www.cell.com/joule/pdfExtended/S2542-4351(20)30231-2
U.S. Dept. of Energy, eGallon: What It Is and Why It's Important	https://www.energy.gov/articles/egallon-what-it-and-why-it-s-important
U.S. Energy Administration Information, Oregon Natural Gas Industrial Price	https://www.eia.gov/dnav/ng/hist/n3035or3a.htm
U.S. Energy Administration Information, Oregon Price of Natural Gas Delivered to Residential Consumers	https://www.eia.gov/dnav/ng/hist/n3010or3A.htm
Comparative Energy Use of Residential Gas Furnaces and Electric Heat Pumps	https://www.aceee.org/sites/default/files/publications/researchreports/a1602.pdf
The Challenge of Retail Gas in California's Low-Carbon Future – Technology Options, Customer Costs, and Public Health Benefits of Reducing Natural Gas Use	https://www.energy.ca.gov/resources/publications/energy-commission-publications?combine=CEC-500-2019-055&field_publication_classification_target_id=All&field_publication_program_target_id=All
Wildfire Smoke Trends and the Air Quality Index	https://www.oregon.gov/deq/wildfires/Documents/WildfireSmokeTrendsReport.pdf
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs-Delaware Climate Action Plan Supporting Technical Greenhouse Gas Mitigation Analysis Report	https://documents.dnrec.delaware.gov/energy/Documents/Climate/Plan/DNREC%20Technical%20Report.pdf
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs-Pennsylvania Climate Action Plan 2021	www.depgreenport.state.pa.us/elibrary/GetDocument?docId=3925177&DocName=2021PENNSYLVANIA CLIMATE ACTION PLAN.PDF >%28NEW%29 9/21/2023
DEQ and ICF analyses of the marginal abatement costs of various types of	http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=1454161&DocName=20

greenhouse gas reduction programs- Pennsylvania Climate Action Plan 2018	18%20PA%20CLIMATE%20ACTION%20PLAN.PDF%20%20%20%3cspan%20style%3D%22color:blue%3b%22%3e%28NEW%29%3c/span%3e
DEQ and ICF analyses of the marginal abatement costs of various types of greenhouse gas reduction programs- Electrification and Decarbonization for Mid-sized Municipalities: A Case-Study Marginal Abatement Cost Analysis	https://cedar.wvu.edu/wwuet/973/
Oregon Public Utility Commission Docket #: UM 2178, Natural Gas Fact Finding Per EO 20-04 PUC Year One Work Plan, utility modeling and presentations	https://apps.puc.state.or.us/edockets/docket.asp?DocketID=22869
Macroeconomic Impact Analysis prepared by Energy Strategies, LLC and RECON Insights, LLC and provided to DEQ	Oregon Department of Environmental Quality 700 NE Multnomah St. Suite 600 Portland OR 97232
Jonathan J Buonocore et al 2021 Environ.Res. Lett. 16 054030	https://doi.org/10.1088/1748-9326/abe74c

Advisory committee fiscal review

DEQ and the EQC appointed the Greenhouse Gas Emissions Program 2021 Rulemaking Advisory Committee.

As ORS 183.333 requires, DEQ asked 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 reduce that impact.

Would the draft rule have a fiscal impact?

The committee reviewed the draft fiscal and economic impact statement and no committee members objected to DEQ’s finding that there would be a fiscal impact to businesses. There was concern among some committee members that the fiscal impact analysis did not discuss or address the rising economic and public costs of climate inaction. Relatedly, some suggested DEQ undertake a more comprehensive analysis of the regulatory impacts of these rules. Oregon law does not require such an analysis, and DEQ does not have the resources to undertake analysis of this depth and breadth.

Other committee members commented that DEQ described the fiscal impact to regulated entities with general estimates that were not sufficiently quantified. Committee members also expressed concern that the fiscal analysis of the indirect impacts to businesses and consumers (residential, commercial and industrial) as users of these fuels was not quantified.

Particular concern was noted for businesses and industries that faced out of state competition and had higher energy costs and for smaller businesses that might have high energy costs. DEQ acknowledged that the data and information required to fully quantify these impacts was not available, but incorporated more robust discussion in the fiscal impact statement that was included in the Notice of Proposed Rulemaking. DEQ has also incorporated additional information provided in comments into this fiscal impact statement for the EQC staff report.

Other members also noted that the draft regulations would have additional health and climate benefits that were not quantified. Members also noted that the cost to acquire CCI credits were used to estimate potential direct costs for regulated entities, but the benefits of the reinvestment of CCI funds to the state's economy were not estimated. Therefore, benefits for environmental justice communities were not completely accounted for. The ICF study did however conclude that the program would bring co-benefits to the state and would bring equity benefits to each community of concern identified for the study.

In response to these comments, DEQ incorporated additional discussion on these topics and included additional estimates provided by committee members, but acknowledges the data and information required to fully quantify these fiscal impacts is not available or within the scope of this analysis. DEQ has also incorporated additional estimates provided in comments into this fiscal impact statement for the EQC staff report.

What would the extent of the impact be?

Some committee members felt that direct costs to covered entities could be larger than the ranges included in the draft fiscal impact statement. In the fiscal impact statement that was included in the Notice of Proposed Rulemaking, DEQ incorporated additional cost estimates provided by committee members. DEQ has also included additional cost information provided in comments received in this fiscal impact statement for the EQC staff report.

Would the draft rules have a significant adverse impact on small businesses, and if so, what are recommendations for potential mitigation?

Advisory committee members believed that there would be a significant adverse impact on small businesses. As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules' fiscal impact on small businesses. The proposed rules include several aspects to mitigate costs for small businesses, including:

- Having the point of direct regulation be at the level of fuel suppliers rather than individual industrial and commercial facilities.
- Tiered implementation of the program through application of declining thresholds for fuel suppliers over time, which will delay regulatory costs for most smaller businesses, with none of the identified four directly regulated small businesses having compliance obligations before 2025
- A minimum threshold for inclusion in the program of 25,000 MT CO₂e of covered emissions annually for covered stationary sources
- Three -year compliance periods for covered fuel suppliers to demonstrate compliance to moderate costs and reduce program administrative requirements,

- which in combination with the declining threshold results in at least three additional years for small businesses to adjust to and plan for the program requirements
- Multi-year implementation timelines for covered stationary sources to take actions to reduce covered emissions to moderate costs and reduce program administrative requirements
 - Multiple compliance options for covered fuel suppliers including the ability to choose emissions reduction strategies, bank or save unused compliance instruments for use in the future, trade compliance instruments with other covered fuel suppliers, and the option to fund CCIs
 - Site-specific regulatory approach for covered stationary sources to account for industry- and business-specific available opportunities for reducing emissions

Advisory committee members' comments are summarized in a written meeting summary and an audio recording of the meeting when the draft fiscal impact statement was discussed is also available on the rulemaking website. Written comments received in relation to this discussion are also available on the rulemaking website.

Housing Cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-squarefoot detached, single-family dwelling on that parcel. DEQ determined the proposed rules will have no impact on the supply of housing or land for residential development. The proposed rules will not impact the cost of labor or administration related to such development, but could have an effect on development costs because they could indirectly affect the price of materials used for such construction. For example, the indirect impact on the price of materials could occur if covered entities subject to the proposed Climate Protection Program increase fuel prices, and if the companies that manufacture construction materials then pass through those increased costs in the price of their materials. If fuel prices increased, that would also increase the costs of operating construction equipment related to development of a single-family dwelling. As another example, the cost of cement used in the development could increase as a result of the proposed program. See the discussion on the potential impacts to the public above. Because these impacts are indirect, and depend on the individual decisions of multiple businesses before resulting in land development cost increases, DEQ is unable to estimate the amount of the increased costs. DEQ did receive a comment disagreeing with DEQ's determination regarding the impact of the rules on the supply of housing, land for residential development, and labor and administrative costs.

Federal Relationship

Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules are “in addition to federal requirements” since there are no federal regulations that require the reduction of greenhouse gas emissions from most of the affected parties.

It is possible that one Clean Air Act regulation could apply in certain limited circumstances to some covered stationary sources that hold Title V Operating Permits and that modified their source in a manner that subjected the source to New Source Review. Those requirements have been adopted by the EQC as OAR 340-224-0010(1)(c). The regulatory trigger that applies those regulations is very different from the Climate Protection Program proposed in these rules, which will likely result in more sources being required to undertake a BAER assessment and being subject to implement requirements from BAER orders. If that limited circumstance occurs and a source triggers New Source Review and is required by EPA to analyze Best Available Control Technology, then that analysis may or may not be similar to the proposed requirement for covered stationary sources that is the BAER assessment. Therefore, the required actions in a BAER order may or may not be similar to EPA requirements for a source to implement BACT. Therefore, in order to achieve the greenhouse gas emissions reduction goals described in this notice, DEQ concludes that this proposed program is warranted, notwithstanding that there is a federal regulation that could regulate greenhouse gas emissions from some covered stationary sources. The proposed rules protect the environment and residents of Oregon by reducing greenhouse gas emissions.

What alternatives did DEQ consider if any?

In designing the Climate Protection Program, DEQ considered many alternatives contained in the proposed rule. Extensive outreach with stakeholders beginning in March 2020, input from the advisory committee in 2021, and public comment throughout the process informed the design of the program. Documentation is in the rulemaking record.

Land Use

Considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
- Resources, objects, or areas identified in the statewide planning goals, or
- Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that these proposed rules are not expected to significantly affect land use under OAR 660-030-005 because the rules are not reasonably expected to have significant effects on either: (a) resources, objectives or areas identified in the statewide planning goals; or (b) present or future land uses identified in acknowledged comprehensive plans.

The proposed regulations are directed at fuel suppliers and certain air-permitted facilities (“stationary sources”), but are not expected to have significant direct effects on land use. With respect specifically to stationary sources, the proposed regulations would be consistent with state land use law because any stationary sources that has received a Climate Protection Program permit addendum will already have demonstrated land use compliance when they obtained or will obtain their underlying Air Quality permit. The air quality permit programs require that a new business provide a Land Use Compatibility Statement from local

government when applying for a permit. This assures that the business has an approved use for the property where it is located. Existing permittees have provided Land Use Compatibility Statements, which are on file with DEQ.

DEQ also notes that the proposed regulations, and in particular the requirements directed at fuel suppliers, are consistent with the statewide land use program as follows:

LCDC Goal 12 (Transportation) is: to provide and encourage a safe, convenient and economic transportation system. By creating a program for a planned transition to clean energy for transportation fuels and natural gas, the proposed CPP rules comply with the objectives of Goal 12 to provide an economic transportation system. The planning requirements of Goal 12 and its implementing rules do not apply to the proposed CPP, although local and regional planning to reduce dependence on vehicular travel will support the CPP by reducing demand for transportation fuels.

LCDC Goal 13 (Energy) requires that : "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy * * *." The planning requirements of Goal 13 apply to local and regional land use planning, and not to the proposed CCP rules. By conserving the use of natural gas and encouraging the use of renewable fuels, the proposed CPP rules are supportive of Goal 13.

LCDC Goal 6 (Air, Water and Land Resources Quality) is: "To maintain and improve the quality of the air, water and land resources of the state." The goal provides, in pertinent part, that:

"All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not:

1. Exceed the carrying capacity of such resources, considering long range needs;
2. Degrade such resources; or
3. Threaten the availability of such resources."

The proposed CPP rules are consistent with Goal 6. They will set limits on discharges resulting from the use of transportation fuels and natural gas and propane in Oregon that are consistent with the carrying capacity of our environment, and that will help assure the availability of air, water and land resources for future Oregonians.

For these reasons, the proposed CPP rules comply with applicable LCDC statewide planning goals.

EQC Prior Involvement

DEQ has provided regular informational updates on this rulemaking since the July 2020 commission meeting. EQC appointed the rulemaking advisory committee for this rulemaking at the December 2020 EQC meeting. Since then, DEQ has provided rule development updates to the EQC at the March 2021, May 2021, July 2021, September 2021 and November 2021 meetings. EQC hosted one of the two public hearings for this rulemaking on Sept. 30, 2021.

Advisory Committee

Background

DEQ and the EQC convened the GHGCR2021 rulemaking advisory committee. The 34-member committee included members from the regulated community, environmental justice and community-based organizations, tribes, as well as other indirectly affected or interested parties. The committee met seven times. The committee's webpage is:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rghgcr2021.aspx>.

The committee members were:

GHGCR2021 Advisory Committee	
Name	Representing
Zach Baker (replaced by Nora Apter for meetings 5-7)	Climate Solutions (Oregon Environmental Council)
Pam Barrow	Food Northwest
Peter Brandom	City of Hillsboro
Haley Case-Scott	Beyond Toxics & NAACP Eugene/Springfield
Rebecca Descombes (replaced by William Miller for meetings 6-7)	Native American Youth & Family Center
Darren Engle	Pacific Propane Gas Association
Taren Evans	Coalition of Communities of Color
Mike Freese	Oregon Fuels Association
Brendon Haggerty	Multnomah County Health Department
Erin Hansell-Heideman	Blown Away Ranch
John Hillock	Wallowa County
Jana Jarvis	Oregon Trucking Associations
Bob Jenks	Citizens' Utility Board
Nels Johnson	Northwest Natural
Dan Kirschner	Northwest Gas Association
Dylan Kruse	Sustainable Northwest
Casey Kulla	Yamhill County
Jan Lee	Oregon Association of Conservation Districts
Oriana Magnera	Verde
Tim Miller	Oregon Business for Climate
Sharla Moffett	Oregon Business & Industry
Martha Moore	EVRAZ

Mark Petrie	Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
Ellen Porter	Roseburg Forest Products
Allie Rosenbluth	Rogue Climate
Don Sampson	Affiliated Tribes of Northwest Indians
Amy Schlusser	Green Energy Institute
Steve Smith	Phillips 66
Paul Snyder	Tillamook Creamery Association
Alyn Spector	Cascade Natural Gas
Jeff Stone	Association of Nurseries
Kathryn VanNatta	NW Pulp & Paper Association
Ranfis Villatoro	BlueGreen Alliance
Keith Wilson	Titan Freight

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - Greenhouse Gas Emissions Cap and Reduce
 - Greenhouse Gas Programs
 - Greenhouse Gas Reporting
 - Clean Fuels Program
- Posted regularly updating information on DEQ's websites, including how to participate in the advisory committee process.

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee was asked to discuss and provide input on a regulatory framework for the proposed Climate Protection Program and draft rules. Agendas, meeting materials, and meeting summaries are available on the committee's webpage at:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rghgcr2021.aspx>.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Aug. 5, 2021, filing notice with the Oregon Secretary of State for publication in the September 2021 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Greenhouse Gas Emissions Program 2021](#);
- Emailing approximately 21,393 interested parties on the following DEQ lists through GovDelivery:
 - DEQ Public Notices
 - Rulemaking
 - Greenhouse Gas Emissions Cap and Reduce
 - Greenhouse Gas Programs
 - Greenhouse Gas Reporting
 - Clean Fuels Program
 - Landfill Gas Emissions Updates
- Notifying the EPA by GovDelivery
- Emailing regulated parties subject to the Oregon Greenhouse Gas Reporting Program
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senator Lee Beyer, Chair, Senate Committee on Energy and Environment
 - Representative Pam Marsh, Chair, House Committee on Energy and Environment
 - Senator Peter Courtney, Senate President
 - Representative Tina Kotek, House Speaker
- Emailing advisory committee members
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public Hearings

DEQ held two public hearings to receive oral comments and received 28 comments at the first hearing hosted by DEQ and 65 comments at the second hearing hosted by the EQC. Later sections of this document include DEQ's responses to the written and oral comments received during the open public comment period. Audio recordings of original comments are posted on the [DEQ rulemaking website](#).

Presiding Officers' Record

Hearing 1

Date	Sept. 22, 2021
Place	Virtual meeting held remotely on Zoom
Start Time	4 p.m.

End Time	7 p.m.
Presiding Officer	Cory-Ann Wind, DEQ Clean Fuels Program Manager

Presiding Officer’s Report:

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that the hearing was being recorded. Pre-registered commenters were invited to comment and the presiding officer also asked people who wanted to present verbal comments to indicate their intent to present comments through the webinar or phone functions. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices. As Oregon Administrative Rule 137-001-0030 requires, the content of the rulemaking notice was summarized.

There were 123 attendees at the hearing by webinar or telephone. There were 28 oral commenters.

Hearing 2

Date	Sept. 30, 2021
Place	Virtual meeting held remotely on Zoom
Start Time	4 15 p.m.
End Time	7 25 p.m.
Presiding Officer	Kathleen George, Chair, Oregon Environmental Quality Commission

Presiding Officer’s Report:

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that the hearing was being recorded. Pre-registered commenters were invited to comment and the presiding officer also asked people who wanted to present verbal comments to indicate their intent to present comments through the webinar or phone functions. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices. As Oregon Administrative Rule 137-001-0030 requires, the content of the rulemaking notice was summarized.

There were 185 attendees at the hearing by webinar or telephone. There were 65 oral commenters.

Response to Comments

In response to multiple requests for extension of the comment period, DEQ extended the original 60 day public comment period by 21 days in order to allow further opportunity to submit comment on the proposed rules. DEQ accepted public comment on the proposed rulemaking from Aug. 6, 2021, until 4 p.m. on Oct. 25, 2021.

Please see Attachment C for a summary of all comments received during the public comment period and DEQ's responses. Original written comments are posted on the [DEQ rulemaking website](#).

Implementation

Notification

If approved, the proposed rules would become effective upon filing, expected to occur on or about Dec. 16, 2021. DEQ would notify affected parties by:

- Notifying affected parties by e-mail
- Updating relevant webpages with information for affected parties
- Publishing the adopted rules in the Oregon Bulletin

Compliance and enforcement

The proposed rule changes include amendments to Division 12. DEQ staff will coordinate with the Office of Compliance and Enforcement to implement the changes.

Outreach

If the proposed rules are approved, DEQ will:

- Provide assistance on the Climate Protection Program and requirements to affected parties.
- Provide general education to decision makers, interested stakeholders, and the general public about the Climate Protection Program.
- Conduct outreach to new potential community climate investment entities.
- Conduct outreach to potential equity advisory committee members.
- Notify agency staff of the program requirements including permit writers that work with impacted stationary sources.

Reporting Systems

DEQ would:

- Modify the Environmental Data Management System, or EDMS to handle registration, permitting, and reporting for covered fuel suppliers and reporting for covered stationary sources. If a particular form in EDMS is not ready by a deadline for permitting or reporting, DEQ may develop an alternative.
- Engage with stakeholders in the modification of this electronic reporting system.

- Develop user guides and provide guidance on how to use the registration and reporting tool.

Training

DEQ would conduct training for:

- Affected parties subject to new requirements.
- Affected parties on how to use any new and updated electronic reporting systems.

Five-Year Review

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts some of the proposed rules from the five-year review because the proposed rules would amend or repeal an existing rule. ORS 183.405(4).

The following rules are exempt from the five-year review:

- 340-012-0054
- 340-012-0135
- 340-012-0140

Five-year rule review required

No later than Dec. 16, 2026, DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

Rules Subject to Five Year Review				
340-271-0010	340-271-0020	340-271-0030	340-271-0090	340-271-0100
340-271-0110	340-271-0120	340-271-0130	340-271-0150	340-271-0300
340-271-0310	340-271-0320	340-271-0330	340-271-0390	340-271-0410
340-271-0420	340-271-0430	340-271-0440	340-271-0450	340-271-0490
340-271-0500	340-271-0510	340-271-0590	340-271-0810	340-271-0820
340-271-0830	340-271-0890	340-271-0900	340-271-0910	340-271-0920
340-271-0930	340-271-0950	340-271-0990	340-271-8000	340-271-8100
340-271-8110	340-271-8120	340-271-9000		

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3)

Accessibility Information

You may review copies of all documents referenced in this announcement at:
Oregon Department of Environmental Quality
700 NE Multnomah St., Ste. 600
Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Nicole Singh, DEQ Headquarters, 503-869-2119, (800-452-4011, ext. 5622 toll-free in Oregon).

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



State of Oregon Department of Environmental Quality

Draft Rules – Division 271

Edits Incorporated

Note: These are all new rules.

Division 271 Oregon Climate Protection Program

340-271-0010

Purpose and Scope

(1) This division establishes rules and requirements for the Climate Protection Program for certain air contamination sources that emit greenhouse gases or that cause greenhouse gases to be emitted.

(2) Climate change caused by anthropogenic greenhouse gas emissions has detrimental effects on the overall public welfare of the State of Oregon. Reducing greenhouse gas emissions and mitigating climate change will improve the overall public welfare of Oregon. In particular, reducing greenhouse gas emissions will improve the welfare of environmental justice communities.

(a) Fuel combustion and industrial processes result in emissions of greenhouse gases, which are air contaminants that cause climate change;

(b) Reducing greenhouse gas emissions may also reduce emissions of other air contaminants, which may improve air quality for Oregon communities; and

(c) Environmental justice communities in Oregon are disproportionately burdened by air contamination, including through disproportionate risk of the impacts of climate change.

(3) The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. To support these purposes, this division:

(a) Requires that covered entities reduce greenhouse gas emissions;

(b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;

(c) Prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities;

(d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and

(e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements in part through contributing community climate investment funds to support projects that reduce greenhouse gas emissions and prioritize benefits for environmental justice communities in Oregon.

(4) DEQ administers this division in all areas of the State of Oregon and subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement OAR 340-271-0150(3) of this division within its area of jurisdiction.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050 and 468A.135.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045, 468A.050 and 468A.135.

340-271-0020

Definitions

The definitions in OAR 340-200-0020, OAR 340-215-0020, and this rule apply to this division. If the same term is defined in this rule and either or both OAR 340-200-0020 and OAR 340-215-0020, the definition in this rule applies to this division. If the same term is defined in OAR 340-200-0020 and OAR 340-215-0020, but not in this rule, then the definition in OAR 340-215-0020 applies to this division.

(1) “Air contamination source” has the meaning given the term in ORS 468A.005. Air contamination sources include, without limitation, stationary sources, fuel suppliers, in-state producers, and local distribution companies.

(2) “Best available emissions reduction order” or “BAER order” means a DEQ order establishing required actions the owner or operator of a covered stationary source must take to limit covered emissions from the covered stationary source. The BAER order will identify the conditions and requirements that must be included in the CPP permit addendum.

(3) “Biomass-derived fuels” has the meaning given the term in OAR 340-215-0020. Biomass-derived fuels include, without limitation, biomethane, biodiesel, renewable diesel, renewable propane, woody biomass, and ethanol.

(4) “Cap” means the total number of compliance instruments generated by DEQ for each calendar year.

(5) “Climate Protection Program permit addendum” or “CPP permit addendum” means written authorization that incorporates the requirements of this division into a permit by amending an Air Contaminant Discharge Permit or a Title V Operating Permit.

(6) “Climate Protection Program permit” or “CPP permit” means a permit issued to a covered fuel supplier according to this division.

(7) “Community climate investment credit” or “CCI credit” or “credit” means an instrument issued by DEQ to track a covered fuel supplier’s payment of community climate investment funds, and which may be used in lieu of a compliance instrument, as further provided and limited in this division.

(8) “Community climate investments,” “community climate investment funds” or “CCI funds” means money paid by a covered fuel supplier to a community climate investment entity to support implementation of community climate investment projects and any interest that accrues on the money while it is held by a CCI entity or subcontractor.

(9) “Community climate investment entity” or “CCI entity” means a nonprofit organization that has been approved by DEQ as a CCI entity and that has entered into a written agreement with DEQ consistent with OAR 340-271-0920 to implement projects supported by community climate investment funds.

(10) “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one MT CO₂e of greenhouse gases. Compliance instruments may not be divided into fractions.

(11) “Compliance obligation” means the total quantity of covered emissions from a covered fuel supplier rounded to the nearest metric ton of CO₂e.

(12) “Compliance period” means a period of multiple consecutive calendar years, as described in OAR 340-271-0440.

(13) “Covered emissions” means the greenhouse gas emissions described in any of subsections OAR 340-271-0110(3)(b), (4)(b) and (5)(b), for which covered entities may be subject to the requirements of this division.

(14) “Covered entity” means an air contamination source subject to the requirements of this division. A covered entity may be either a covered fuel supplier, a covered stationary source, or both.

(15) “Covered fuel supplier” means an air contamination source that is either:

(a) A fuel supplier or in-state producer as described in OAR 340-271-0110(3); or

(b) A local distribution company as described in OAR 340-271-0110(4).

(16) “Covered stationary source” means an air contamination source described in OAR 340-271-0110(5).

(17) “Designated representative” means the person responsible for certifying, signing, and submitting any registration, report, or form required to be submitted according to this division, on behalf of a covered entity. For the owner or operator of a covered stationary source with an Oregon Title V Operating Permit, the designated representative is the responsible official and certification must be consistent with OAR 340-218-0040(5).

(18) “Environmental justice communities” means communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

(19) “Evaluation period” means a period of multiple consecutive calendar years, as described in Table 5 in OAR 340-271-9000, that DEQ uses to evaluate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company.

(20) “New source” means a source that by December 31, 2021 did not commence construction and did not submit all necessary applications to DEQ according to OAR chapter 340 divisions 210 and 216.

(21) “Nominal electric generating capacity” has the meaning given in ORS 469.300.

(22) “Shut down” means that all operations of a covered entity are permanently shut down, including but not limited to decommissioning and cancelling air permits. Permanent shutdown may include continued operations of space heaters and water heaters as necessary to support decommissioning activities.

(23) “Related entity” means any direct or indirect parent company, direct or indirect subsidiary, company that shares ownership of a direct or indirect subsidiary, or company under full or partial common ownership or control.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0030

Acronyms

(1) “BAER” means best available emissions reduction.

(2) “CCI” means community climate investment.

(3) “CFR” means Code of Federal Regulations.

(4) “CPI-U West” means the US Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items.

(5) “CPP” means Oregon Climate Protection Program established in this division.

(6) “DEQ” means Oregon Department of Environmental Quality.

(7) “EQC” means Environmental Quality Commission.

- (8) “EPA” means US Environmental Protection Agency.
- (9) “IRS” means US Internal Revenue Service.
- (10) “LRAPA” means Lane Regional Air Pollution Agency.
- (11) “Metric tons of CO₂e” or “MT CO₂e” means metric tons of carbon dioxide equivalent.
- (12) “US” means United States.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0090

Overview of Program Provisions for Covered Entities and CCI Entities

- (1) OAR 340-271-0100 describes general requirements for covered entities.
- (2) OAR 340-271-0110 describes which air contamination sources are covered entities subject to the requirements of the CPP.
- (3) OAR 340-271-0120, OAR 340-271-0130, and 340-271-0150 describe covered entity requirements including notifying DEQ of changes in ownership, operational control, and related entities; cessation of applicability; and requirements to obtain CPP permits and CPP permit addendums, respectively.
- (4) OAR 340-271-0300 through OAR 340-271-0390 describe the provisions that apply to covered stationary sources.
- (5) OAR 340-271-0410 through OAR 340-271-0890 and OAR 340-271-9000 describe the provisions that apply to covered fuel suppliers.
- (6) OAR 340-271-0900 through OAR 340-271-0990 describe the provisions for how DEQ will approve CCI entities and how CCI entities will implement eligible projects supported by CCI funds.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0100

Oregon Climate Protection Program Requirements

- (1) A person who owns or operates a covered entity must comply with the rules in this division. Compliance with this division does not relieve a person who owns or operates a covered entity of the obligation to comply with any other provisions of OAR chapter 340, as applicable.

(2) CPP permit or CPP permit addendum. A person who owns or operates a covered entity identified in OAR 340-271-0110 must apply for and hold a CPP permit or CPP permit addendum according to OAR 340-271-0150 that authorizes the person's covered emissions and subjects the person to the requirements of this division.

(3) Reporting. A person who owns or operates a covered entity must submit reports and attestations required in this division, as applicable.

(4) Recordkeeping. A person who owns or operates a covered entity must develop and retain all records required in this division, as applicable.

(5) A person who owns or operates a covered entity must use forms and reporting tools approved and issued by DEQ for all certifications, attestations and submissions. All submissions must be made electronically unless otherwise requested or approved by DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0110

Covered Entity and Covered Emissions Applicability

(1) Calculations of covered emissions, compliance obligations and distribution of compliance instruments will be based on emissions data and information in emissions data reports submitted by a person described in this rule and required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340, division 272. For any person that does not submit sufficient information in compliance with OAR chapter 340 divisions 215 and 272, calculations will be informed by additional best data available to DEQ. For any person that has not registered and reported according to division 215, such calculations will be based on the best data available to DEQ, following all reporting requirements and assumptions that would be applicable had the person reported according to that division.

(2) A covered entity is subject to the requirements of this division for its covered emissions described in this rule. A person remains a covered entity until cessation is met according to OAR 340-271-0130.

(3) Applicability for fuel suppliers and in-state producers. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in any applicability determination calendar year that equal or exceed the threshold for applicability listed in Table 1 in OAR 340-271-9000. All persons that are related entities must aggregate their emissions together to determine applicability and each becomes a covered fuel supplier if applicability is met. When applicability is met, each person is a covered fuel supplier beginning with the calendar year a person becomes a covered fuel supplier, as provided in Table 1 in OAR 340-271-9000. Once a person is a covered fuel supplier, the person remains a covered fuel supplier until the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a fuel supplier or in-state producer that imports, sells, or distributes fuel for use in Oregon, and is one or more of the following:

(A) A dealer, as that term is defined in ORS 319.010 that is subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax in OAR chapter 735, division 170;

(B) A seller, as that term is defined in ORS 319.520, that is subject to the Oregon Use Fuel Tax in OAR chapter 735, division 176;

(C) A person that produces, imports, sells, or distributes gasoline or distillate fuel oil for use in Oregon and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax in OAR chapter 735, divisions 170 and 176; or

(D) A person that either produces propane in Oregon or imports propane for use in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of propane and liquid fuels (including, for example and without limitation, gasoline and petroleum products) imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels;

(ii) Emissions that are from the combustion of fuels used for aviation including, for example and without limitation, aviation gasoline, kerosene-type jet fuel, and alternative jet fuel; and

(iii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems.

(4) Applicability for local distribution companies. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a local distribution company that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

- (i) Emissions that are from the combustion of biomass-derived fuels;
- (ii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems;
- (iii) Emissions that result from non-combustion-related processes that use natural gas, as determined by DEQ; and
- (iv) Emissions from natural gas delivered to an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

(5) Applicability for stationary sources. A person is a covered stationary source if the person is described in subsection (a), unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is either or both of the following:

(A) The person owns or operates an existing source required to obtain either a Title V Operating Permit or an Air Contaminant Discharge Permit and that has annual covered emissions described in subsection (b) that equal or exceed 25,000 MT CO₂e in 2018 or in any subsequent calendar year; or

(B) The person owns or operates a new source, or proposes to own or operate a new source, required to obtain either or both a Title V Operating Permit or an Air Contaminant Discharge Permit and that has a potential to emit annual covered emissions described in subsection (b) that will equal or exceed 25,000 MT CO₂e in any calendar year.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that are from either or both processes or the combustion of solid or gaseous fuels, including emissions from combustion for both energy production and processes.

(B) Covered emissions do not include:

- (i) Emissions that are from the combustion of biomass-derived fuels;
- (ii) Biogenic CO₂ emissions from solid fuels;
- (iii) Emissions that are from the combustion of liquid fuels or propane;
- (iv) Emissions from natural gas, compressed natural gas, or liquefied natural gas used on-site that was delivered by a local distribution company;
- (v) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;

(vi) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills;

(vii) Emissions from an air contamination source that is owned or operated by an interstate natural gas pipeline that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission; and

(viii) Emissions from an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0120

Changes in Covered Entity Ownership and Changes to Related Entities

(1) Changes in ownership or operational control.

(a) If a covered entity undergoes a change in ownership or operational control, the new person that owns or operates the covered entity must notify DEQ in writing within 30 days of the ownership or operational control change. The person must submit a complete and accurate notification, including providing the following information:

(A) The name of the previous owner or operator;

(B) The name of the new owner or operator;

(C) The date of ownership or operator change;

(D) Name of the designated representative;

(E) Information about each person that was a related entity prior to the change in ownership or operational control, subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(F) Information about each person that is a related entity after the change in ownership or operational control, subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit.

(b) The covered entity continues to be a covered entity following a change in ownership or operational control, until it meets the cessation requirements in OAR 340-271-0130. Any other covered entity that was a related entity also continues to be a covered entity following the change in ownership or operational control, until it meets the cessation according to OAR 340-271-0130.

(c) Following a change in ownership or operational control, a covered fuel supplier that holds

a compliance instrument or CCI credit according to OAR 340-271-0430 or OAR 340-271-0830 continues to hold the compliance instrument or CCI credit according to each rule, as applicable.

(2) Changes to related entities of covered fuel suppliers.

(a) If a person subject to any regulations in OAR chapter 340 becomes a new related entity to a covered fuel supplier due to a change in ownership or operational control, the designated representative of the covered fuel supplier must notify DEQ in writing within 30 days of the ownership or operational control change. The designated representative must submit a complete and accurate notification, including providing the following information:

(A) Information about the new related entity, including legal name, full mailing address, and whether the person is a covered fuel supplier and holds a CPP permit;

(B) The name of the previous owner or operator of the new related entity;

(C) The name of the new owner or operator of the new related entity;

(D) The date of ownership or operator change for the new related entity; and

(E) Information about all other related entities subject to any regulations in OAR chapter 340, including legal names, full mailing addresses, and whether each is a covered fuel supplier and holds a CPP permit.

(b) If the person that is the new related entity to a covered fuel supplier identified in paragraph (a)(A) is not already a covered fuel supplier, the person:

(A) Becomes a covered fuel supplier beginning with the date of ownership or operator change;

(B) Must apply to DEQ for a CPP permit according to OAR 340-271-0150(1)(a)(B); and

(C) If the person is a covered fuel supplier, the person will have compliance obligations beginning with covered emissions from the calendar year in which the ownership or operator change occurred.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0130

Cessation of Covered Entity Applicability

(1) Cessation for covered fuel suppliers.

(a) A person that is a covered fuel supplier as described in OAR 340-271-0110 remains a covered fuel supplier until the person receives written notification from DEQ after either or

both:

(A) The person's annual covered emissions are 0 (zero) MT CO₂e for six consecutive calendar years; or

(B) The person was designated a covered fuel supplier in OAR 340-271-0110(3) and its annual covered emissions are less than 25,000 MT CO₂e for six consecutive calendar years and the person applies to DEQ according to subsection (c).

(b) After a covered fuel supplier identified according to paragraph (a)(A) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(A), DEQ will notify the designated representative of the covered fuel supplier in writing that cessation is met.

(c) In order for cessation according to paragraph (a)(B) to take effect, a covered fuel supplier must apply to cease being a covered fuel supplier by submitting the following information to DEQ on a form approved by DEQ:

(A) Information about the covered fuel supplier, including:

(i) Name and full mailing address, and website; and

(ii) Designated representative's contact information including name, title or position, phone number, and email address;

(B) Information about each related entity subject to any regulations in OAR chapter 340 for each of the six consecutive calendar years, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit;

(C) Information about remaining requirements that must be met according to this division at the time the application is submitted to DEQ; and

(D) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered fuel supplier] meets the eligibility for cessation as a covered fuel supplier according to Oregon Administrative Rules chapter 240, division 271. I understand that ceasing to be a covered fuel supplier means that [covered fuel supplier] will also cease to hold any compliance instruments and CCI credits.

(d) After the covered fuel supplier applying for cessation according to paragraph (a)(B) and subsection (c) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(B), DEQ will notify the designated representative of the covered fuel supplier in writing that the application for cessation is approved and that cessation is met.

(e) A person that ceases to be a covered fuel supplier according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered fuel supplier.

(f) When a person ceases to be a covered fuel supplier:

(A) The cessation does not change the compliance obligation for any year for which the person has already demonstrated compliance;

(B) Any remaining compliance instruments held by the person will be retired, held in reserve, or distributed by DEQ according to OAR 340-271-0430(3); and

(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-271-0830(1)(b).

(2) Cessation for covered stationary sources.

(a) A person that is a covered stationary source as described in OAR 340-271-0110 remains a covered stationary source until either of the following occur:

(A) The person's operations are changed such that all greenhouse gas emitting processes and operations cease to operate or are shut down. In order for cessation to take effect, the person must submit a written notification to DEQ certifying the cessation of all greenhouse gas emitting processes and operations; or

(B) The person's covered emissions are less than 25,000 MT CO₂e for five consecutive calendar years and the person has fully complied with any applicable BAER order and any related reporting requirements and has submitted any remaining required BAER assessment and five-year BAER report. In order for cessation to take effect, DEQ will notify the covered stationary source that cessation is met.

(b) This section does not apply to seasonal operational cessations or other temporary cessation of operations.

(c) A person that ceases to be a covered stationary source according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered stationary source.

(3) Any person that ceases to be a covered entity according to this rule must resume meeting the requirements of this division for any future year in which applicability is met.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0150

Covered Entity Permit Requirements

(1) A person described in either or both OAR 340-271-0110(3) or (4) must apply for a CPP permit as provided in this section.

(a) The person must apply for a CPP permit according to subsections (b) and (c) by the following deadlines:

(A) If DEQ notifies the person in writing that the person is a covered fuel supplier, then the person must apply to DEQ for a CPP permit within 30 days of the notification or by another date DEQ specifies in the notification that is at least 30 days after the date of the notification;

(B) If DEQ does not provide a notification according to paragraph (A), then the person must apply to DEQ for a CPP permit by whichever is later of February 14 of the calendar year a person becomes a covered fuel supplier or March 31 of the year after the first applicability determination calendar year that the person's emissions equal or exceed the threshold in Table 1 in OAR 340-271-9000; or

(C) If there was a change in ownership or operational control according to OAR 340-271-0120(2), then the person must apply to DEQ for a CPP permit within 45 days of the change in ownership or operational control.

(b) A person that submits a CPP permit application to DEQ must submit a complete and accurate application. The application for a CPP permit must be submitted to DEQ using a form approved by DEQ and include:

(A) Identifying information about the covered fuel supplier including name, full mailing address, and website, and designated representative's contact information including name, title or position, phone number, and email address;

(B) Information about each related entity subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(C) The following attestation, signed by the designated representative of the person considered a covered fuel supplier;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(c) DEQ may issue a CPP permit to a covered fuel supplier that submits a complete and accurate application. The permit may contain all applicable provisions of this division and such other conditions as DEQ determines are necessary to implement, monitor and ensure compliance with this division.

(2) The owner or operator of a new source that is a covered stationary source may not emit

any covered emissions prior to being issued a BAER order and a permit according to subsection (3)(c) and OAR 340-271-0330(1).

(3) The owner or operator of a covered stationary source required to apply for a CPP permit addendum according to OAR 340-271-0330(1) must submit a complete and accurate application to DEQ or LRAPA, as applicable, that complies with and includes information identified in this section.

(a) The application must include the following:

(A) Identifying information about the covered stationary source, including name and the name of the person that owns or operates the covered stationary source, full mailing address, the physical address of the covered stationary source, and a description of the nature of business being operated, the name, phone number and email address of the designated representative who is responsible for compliance with the permit, the permit number for an existing source, and the SIC or NAICS code of the covered stationary source;

(B) The name of a person authorized to receive requests from DEQ for additional data and information;

(C) The date DEQ notified the owner or operator of the covered stationary source of the BAER order established according to OAR 340-271-0320;

(D) A BAER implementation plan that includes the following:

(i) Identification of the actions that the owner or operator of the covered stationary source will take to comply with the BAER order; and

(ii) The schedule for implementing the requirements in the BAER order, consistent with any deadlines provided by DEQ in the BAER order, if applicable, and including an estimate of when all requirements from the BAER order will be completed;

(E) Any other information requested by DEQ; and

(F) The following attestation, signed by the designated representative of the covered stationary source;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(b) DEQ or LRAPA, as applicable, may issue a CPP permit addendum to the owner or operator of a covered stationary source that submits a complete and accurate permit modification application consistent with the requirements of OAR chapter 340, divisions 216 and 218, as applicable. The CPP permit addendum will be issued as a Category I permit

action according to OAR chapter 340, division 209. A CPP permit addendum will amend the covered stationary source's Air Contaminant Discharge Permit or Title V Operating Permit until the requirements in the addendum can be incorporated into the operating permit. The CPP permit addendum may contain all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and this division.

(c) If DEQ or LRAPA approves an application for an Air Contaminant Discharge Permit or Title V Operating Permit submitted by the owner or operator of a new source, then DEQ or LRAPA, as applicable, will incorporate the CPP conditions into the new operating permit and will not issue a separate CPP permit addendum. Such CPP conditions may contain all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and this division.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.135.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.135.

340-271-0300

CPP Goals for Covered Stationary Sources

CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:

- (1) Reduce total covered emissions from covered stationary sources and;
- (2) Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0310

Best Available Emissions Reduction Assessments for Covered Stationary Sources

(1) Requirement to conduct a BAER assessment.

(a) When notified in writing by DEQ, the owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(A) must submit a complete and accurate BAER assessment according to this rule. The owner or operator of the covered stationary source must submit a complete BAER assessment to DEQ not later than nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in its notice or DEQ approves an extension according to section (6).

(b) The owner or operator of a new or proposed covered stationary source described in OAR 340-271-0110(5)(a)(B) must submit a complete and accurate BAER assessment completed

according to this rule with its permit application submitted according to OAR chapter 340, division 216, or its notice of construction application submitted according to OAR chapter 340, division 210.

(2) BAER assessment requirements. BAER assessments submitted to DEQ must include the following:

(a) A description of the covered stationary source's production processes and a flow chart of each process;

(b) Identification of all fuels, processes, equipment, and operations that contribute to the covered stationary source's covered emissions, including:

(A) Estimates of annual average covered emissions identified in OAR 340-271-0110(5)(b). For existing covered stationary sources, estimates must be of current annual average covered emissions. For new sources, estimates must be of anticipated annual average covered emissions. Emissions must be identified in MT CO₂e, following methodologies identified in OAR chapter 340, division 215. This must also include and distinguish quantities and covered emissions of each fuel used to control air contaminants that are not greenhouse gases; and

(B) Estimates of current annual average type and quantity of all fuels used by the covered stationary source, and anticipated annual average fuel usage for new sources;

(c) Identification and description of all available fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions described in OAR 340-271-0110(5)(b). Strategies considered must include but are not limited to the strategies used by other sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality; and

(d) An assessment of each of the following for each strategy identified in subsection (c):

(A) An estimate of annual average covered emissions reductions achieved if the strategy were implemented compared to the emissions estimated in paragraph (b)(A);

(B) Environmental and health impacts, both positive and negative, if the strategy were implemented, including any impacts on air contaminants that are not greenhouse gases and impacts to nearby communities;

(C) Energy impacts if the strategy were implemented, including whether and how the strategy would change energy consumption at the covered stationary source, including impacts related to any fuel use that results in anthropogenic greenhouse gas emissions. Any energy-related costs must be included in the economic impacts assessment in paragraph (D), not the energy impacts assessment;

(D) Economic impacts if the strategy were implemented, including operating costs and the costs of changing existing processes or equipment or adding to existing processes and equipment. Any energy-related costs must be included in the economic impacts assessment,

not the energy impacts assessment in paragraph (C). The economic impacts assessment must include both costs and cost savings (benefits);

(E) An estimate of the time needed to fully implement the strategy at the covered stationary source; and

(F) A list of the information, resources, and documents used to support development of the BAER assessment, including, if available, links to webpages that provide public access to supporting documents.

(3) Upon receipt of a BAER assessment described in section (2), DEQ will review the submittal and if DEQ determines that any additional information, corrections, or updates are required then DEQ may provide the owner or operator of the covered stationary source with a written request to provide such information by a certain date or DEQ may issue the BAER order based on the information it has available. If DEQ requests that the owner or operator of the covered stationary source revise its BAER assessment according to this section, the owner or operator must provide such information no later than the deadline provided by DEQ.

(4) Five year BAER reports.

(a) Every five years following the date that DEQ issued a BAER order, the owner or operator of a covered stationary source must submit to DEQ a five year BAER report that includes an update of the information described in subsections (2)(a) through (c).

(b) If one or more new strategies are identified in a five year BAER report required in subsection (a) that have not previously been evaluated in a BAER assessment, DEQ may notify the owner or operator of the covered stationary source and require that it conduct a complete BAER assessment according to section (2) and submit it to DEQ. Such complete BAER assessment must also include:

(A) Evaluation of any new strategies identified and any previously identified strategies using any new information available at the time the assessment is being conducted; and

(B) Current status and analysis of the implementation of requirements in any prior BAER order(s).

(5) When notified in writing by DEQ, the owner or operator of a covered stationary source identified in section (1) may be required to conduct and submit an updated complete BAER assessment conducted according to this rule, in accordance with the following:

(a) DEQ may not require the owner or operator of a covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment. However, if DEQ determines the owner or operator of a covered stationary source submitted information that it knew or should have known was false, inaccurate, or incomplete to DEQ, then DEQ may require the owner or operator of the covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment;

(b) The updated BAER assessment must include assessment of new strategies and previously identified strategies and any new information available at the time the assessment is being conducted;

(c) The owner or operator of the covered stationary source must include current status and analysis of the implementation of requirements in any prior BAER order; and

(d) The owner or operator of the covered stationary source must submit the updated BAER assessment to DEQ not later than nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in the notice or DEQ approves an extension according to section (6).

(6) The owner or operator of a covered stationary source required to conduct a BAER assessment as described in sections (1) or (5) may request an extension of time to complete the BAER assessment by providing DEQ with a written request no fewer than 30 days prior to the submittal deadline. DEQ may grant an extension based on the following criteria:

(a) The owner or operator of the covered stationary source has demonstrated progress in completing the submittal; and

(b) A delay is necessary, for good cause shown by the owner or operator of the covered stationary source, related to obtaining more accurate or new data, performing additional analyses, or addressing changes in operations or other key parameters, any of which are likely to have a substantive impact on the outcomes of the BAER assessment.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0320

DEQ Best Available Emissions Reduction Order

(1) DEQ may issue a BAER order for each owner or operator of a covered stationary source that must submit a BAER assessment as provided in OAR 340-271-0310. A BAER order will establish the actions that the owner or operator of a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken.

(2) In establishing the requirements in a BAER order for a covered stationary source, DEQ may consider any information it deems relevant, and must consider the following:

(a) Information submitted in a BAER assessment;

(b) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques that maximize covered emissions reductions;

(c) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions used by sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality;

(d) A reasonable schedule and amount of time necessary to implement a strategy under consideration by DEQ to reduce covered emissions;

(e) Environmental, public health, and energy impacts of a strategy under consideration by DEQ to reduce covered emissions, including but not limited to air quality impacts for nearby communities and impacts related to switching to cleaner energy resources, zero-emissions energy resources, or renewable fuels;

(f) Economic impacts of a strategy under consideration by DEQ to reduce covered emissions including, but not limited to, costs so great that a new source could not be built or an existing source could not be operated, and cost-effectiveness of different strategies that would achieve similar covered emissions reductions;

(g) Processes and operations currently in use by and at the covered stationary source and the remaining useful life of the covered stationary source;

(h) Whether a strategy under consideration by DEQ to reduce covered emissions is achievable, technically feasible, commercially available, and cost-effective;

(i) Whether a strategy under consideration by DEQ to reduce covered emissions has an impact on the type or quality of good(s) produced by and at the covered stationary source, if applicable; and

(j) Input from the public and community organizations from nearby the covered stationary source.

(3) For the owner or operator of a covered stationary source required to register and report according to OAR chapter 340, division 215, DEQ will consider emissions data reports to assess whether covered emissions reductions are being achieved when establishing the requirements in a BAER order or for determining when to notify the owner or operator of a covered stationary source to conduct and submit an updated complete BAER assessment as described in OAR 340-271-0310(5).

(4) DEQ may verify information submitted in a BAER assessment.

(5) DEQ may consult with industry experts and third-party organizations before issuing a BAER order.

(6) DEQ will notify the owner or operator of a covered stationary source of a BAER order in writing. A BAER order is effective 30 days from the date of the notification unless, within that time, DEQ receives a written request for a hearing from the owner or operator of the covered stationary source according to section (7).

(7) The owner or operator of a covered stationary source may file with DEQ a written request for a contested case hearing to challenge a BAER order issued according to section (6). The request must be filed in writing within 30 days of the date that DEQ issued the BAER order and must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division

11.

(8) DEQ will provide a public status update if DEQ has not yet issued a BAER order after 18 months of the date on which DEQ notified the owner or operator of a covered stationary source that it must conduct a BAER assessment.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0330

Compliance with a BAER Order

(1) The owner or operator of a covered stationary source for which DEQ has issued a BAER order according to OAR 340-271-0320 must:

(a) Comply with the requirements in the BAER order; and

(b) Submit to DEQ or LRAPA, as applicable, a complete application for a CPP permit addendum according to OAR 340-271-0150(3) not later than 30 days after the date that the BAER order is final and effective.

(2) Reporting requirements.

(a) The owner or operator of a covered stationary source that has been issued a CPP permit addendum or operating permit that includes provisions related to a BAER order must submit an annual progress report to DEQ describing the progress in implementing the requirements in the BAER order. The annual progress reports are due to DEQ on or before February 15 of each year following the date that the notice of the BAER order is final and effective. The annual progress report must include:

(A) A description of the progress achieved in implementing the requirements in any BAER order;

(B) A schedule indicating dates for future increments of progress;

(C) A description of any increases or decreases in covered emissions that have occurred at the covered stationary source since the submission date of the most recently conducted complete BAER assessment; and

(D) An estimate of when all implementation of requirements of the BAER order will be complete.

(b) The owner or operator of a covered stationary source must submit a BAER order completion report to DEQ no later than 60 days after implementation of all requirements in the BAER order are complete, except for items related to continuous and ongoing requirements. The report must include:

(A) The final increments of progress achieved in fully implementing the requirements in the BAER order and the date the final increments of progress were achieved;

(B) A summary of the actions taken to fully implement the requirements in the BAER order;
and

(C) An estimate of the resulting covered emissions reductions that will be achieved now that the requirements in the BAER order are being implemented.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0390

Recordkeeping Requirements Related to BAER

(1) Recordkeeping requirements related to BAER assessments and five year BAER reports.

(a) The owner or operator of a covered stationary source that submits any information to DEQ related to a complete BAER assessment or five year BAER report conducted according to OAR 340-271-0310 must retain the following records, in paper or electronic format, for a period of at least ten years from the date the information is submitted to DEQ:

(A) A copy of the assessment or report submitted to DEQ;

(B) Any contract(s) with any independent third-party(ies) in relation to developing the assessment or report; and

(C) All other information and documentation used to support and inform development of the assessment or report.

(b) The owner or operator of the covered stationary source must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

(2) Recordkeeping requirements related to compliance with a BAER order.

(a) The owner or operator of a covered stationary source issued a BAER order must retain the following records, in paper or electronic format, for a period of at least ten years from the applicable date specified below:

(A) All records and information related to a BAER order including but not limited to a copy of the most recently submitted complete BAER assessment and a copy of DEQ's written BAER order from the effective date of the BAER order;

(B) A copy of the permit modification application for the CPP permit addendum or the applicable permit application from the date it is submitted to DEQ;

(C) A copy of each progress report from the date it is submitted to DEQ; and

(D) All other information and documentation related to actions taken to comply with requirements in a BAER order from the effective date of the BAER order.

(b) The owner or operator of a covered stationary source issued a BAER order must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0410

Generation of Compliance Instruments

(1) Each year, DEQ will generate the number of compliance instruments equal to the cap for a calendar year identified in Table 2 in OAR 340-271-9000.

(2) A compliance instrument is a regulatory instrument and does not constitute personal property, a security or any other form of property.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0420

Distribution of Compliance Instruments to Covered Fuel Suppliers

(1) DEQ will distribute compliance instruments according to this rule. DEQ will distribute compliance instruments from a cap according to sections (2) through (4) no later than March 31 of the calendar year of that cap.

(2) Annual distribution of compliance instruments to covered fuel suppliers that are local distribution companies. DEQ will annually distribute to each local distribution company, or to its successor(s) due to a change in ownership or operation, the number of compliance instruments from the calendar year's cap stated in Table 4 in OAR 340-271-9000.

(3) DEQ will establish a compliance instrument reserve for covered fuel suppliers that are new to the program and are not local distribution companies. DEQ will hold, according to subsection (4)(a), a subset of compliance instruments in the reserve from the caps identified in Table 2 in OAR 340-271-9000. Once a compliance instrument is placed in the reserve, it remains in the reserve until DEQ determines, at its discretion, to undertake one of the following actions:

(a) DEQ distributes the compliance instrument according to section (5) to a covered fuel supplier that is not a local distribution company;

(b) DEQ retires the compliance instrument because the compliance instrument reserve exceeds the size described in Table 3 OAR 340-271-9000, provided that after such retirements the size of the compliance instrument reserve will equal or exceed the reserve size described in Table 3; or

(c) DEQ distributes the compliance instrument to a covered fuel supplier that is not a local distribution company because the size of the compliance instrument reserve exceeds the reserve size described in Table 3 in OAR 340-271-9000**340-271-9000**. DEQ will only distribute compliance instruments from the reserve according to this subsection if there are at least 10,000 compliance instruments to distribute and if the remaining size of the reserve after this distribution will equal or exceed the reserve size described in Table 3 in OAR 340-271-9000. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company according to section (4)(b), except “total compliance instruments to distribute” means the total number of compliance instruments DEQ is distributing from the reserve according to this subsection.

(4) Annual distribution of compliance instruments to covered fuel suppliers that are not local distribution companies. DEQ will annually distribute compliance instruments from the applicable calendar year’s cap to covered fuel suppliers that are not local distribution companies as follows:

(a) If the size of the compliance instrument reserve is less than the reserve size described in Table 3 in OAR 340-271-9000 for the calendar year, then DEQ will calculate the difference and hold in the compliance instrument reserve that quantity of compliance instruments. Otherwise, the number of compliance instruments in the reserve will not be changed.

(b) Except for compliance instruments identified in Table 4 in OAR 340-271-9000 for distribution according to section (2) and the compliance instruments held in the reserve according to section (3) and subsection (4)(a), DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company as described in this subsection, based on available information from the evaluation period described in Table 5 in OAR 340-271-9000. If a covered fuel supplier or its related entities do not have available information for one or more of the years of the evaluation period, DEQ may exclude the covered fuel supplier and its emissions from this calculation. If the covered fuel supplier is excluded, then the distribution for the covered fuel supplier will be addressed using the methodology described in section (5).

(A) DEQ will use the following formula to calculate the number of compliance instruments to distribute to each covered fuel supplier:

*Number of Compliance Instruments = Total compliance instruments to distribute *
([Covered fuel supplier covered emissions + covered fuel supplier biofuel emissions] / Total
emissions)*

(B) As used in the formula in paragraph (A):

(i) “Total compliance instruments to distribute” means the cap for the calendar year, according to Table 2 in OAR 340-271-9000, minus the number of compliance instruments

identified in Table 4 in OAR 340-271-9000; and minus the number of compliance instruments placed into the compliance instrument reserve;

(ii) “Covered fuel supplier covered emissions” means the sum of a covered fuel supplier’s covered emissions during the evaluation period;

(iii) “Covered fuel supplier biofuel emissions” means emissions described in OAR 340-271-0110(3)(b)(B)(i) that result from the complete combustion or oxidation of the annual quantity of biomass-derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state during the evaluation period; and

(iv) “Total emissions” means the sum of “covered fuel supplier covered emissions” and “covered fuel supplier biofuel emissions” during the evaluation period for all covered fuel suppliers whose compliance instrument distribution is calculated according to this section.

(C) DEQ will distribute a number of compliance instruments to each covered fuel supplier using the formula in paragraph (A) and rounded down to the nearest whole number.

(D) Any remaining compliance instruments not distributed due to rounding will be held in the reserve.

(5) Distribution from compliance instrument reserve for new covered fuel suppliers that are not local distribution companies.

(a) A covered fuel supplier is eligible for a distribution from the compliance instrument reserve if it is not a local distribution company and if:

(A) The covered fuel supplier was excluded from the distribution in section (4) due to a lack of sufficient available information; or

(B) The person becomes a covered fuel supplier after DEQ has distributed the compliance instruments for that year according to section (4).

(b) A covered fuel supplier identified according to subsection (a) may request a distribution of compliance instruments from the reserve by submitting an application to DEQ, on a form approved by DEQ, that includes the information described in paragraphs (A) through (D). The covered fuel supplier must submit a separate application for each year for which it is seeking distribution of compliance instruments from the reserve.

(A) Information about the covered fuel supplier, including:

(i) Name and full mailing address; and

(ii) Designated representative’s contact information including name, title or position, phone number, and email address;

(B) The calendar year of covered emissions for which compliance instruments are requested;

(C) The reason for the request, including description of eligibility according to subsection (a); and

(D) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this application on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered fuel supplier] is a covered fuel supplier in the year indicated in this application and requests compliance instruments from the reserve according to the information included in this application.

(c) DEQ will review an application submitted according to subsection (b) to ensure that it meets the requirements of this section. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(d) If DEQ approves an application, DEQ may distribute one or more compliance instruments to the covered fuel supplier from the reserve. In determining the number of compliance instruments to distribute from the reserve to the covered fuel supplier, DEQ may consider:

(A) The number of compliance instruments the covered fuel supplier might have received according to section (4) if DEQ had sufficient available information to include the covered fuel supplier in that calculation;

(B) The number of compliance instruments in the reserve at that time;

(C) A maximum distribution amount that will not exceed the covered fuel supplier's covered emissions in that year; and

(D) A maximum distribution amount that will not exceed 300,000 compliance instruments per covered fuel supplier per year.

(6) Upon distribution of compliance instruments according to sections (2), (4), and (5), DEQ will notify the designated representative of each covered fuel supplier in writing of the availability of compliance instruments.

(7) DEQ will track distributed compliance instruments.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0430

Holding Compliance Instruments

When DEQ distributes a compliance instrument to a covered fuel supplier according to OAR 340-271-0420 or when a covered fuel supplier acquires a compliance instrument according to OAR 340-271-0500, the covered fuel supplier may continue to hold the compliance instrument until any of the following apply:

(1) The covered fuel supplier uses the compliance instrument toward its demonstration of compliance with a compliance obligation according to OAR 340-271-0450;

(2) The covered fuel supplier transfers the compliance instrument to another covered fuel supplier according to OAR 340-271-0500; or

(3) The covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When this occurs, DEQ may, at its discretion:

(a) Retire the compliance instrument; or

(b) If the covered fuel supplier is not a local distribution company:

(A) Hold the compliance instrument in the compliance instrument reserve described in OAR 340-271-0420(3); or

(B) Distribute the compliance instrument to a covered fuel supplier that is not a local distribution company. DEQ will only distribute the compliance instrument if there are at least 10,000 compliance instruments to distribute. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier according to OAR 340-271-0420(4)(b), except “total compliance instruments to distribute” means the total number of compliance instruments DEQ is distributing according to this paragraph.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0440

Compliance Periods

(1) Each compliance period is three consecutive calendar years.

(2) The first compliance period begins with calendar year 2022, and includes calendar years 2023 and 2024.

(3) A new compliance period begins with the calendar year following the last calendar year of the preceding compliance period.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025,

340-271-0450

Demonstration of Compliance

(1) DEQ will determine a covered fuel supplier's total compliance obligation for the compliance period as the sum of the covered fuel supplier's annual compliance obligation(s) for each year of a compliance period. DEQ will base its determinations on emissions calculated according to OAR 340-271-0110(1). DEQ will notify the covered fuel supplier of its determination.

(2) A covered fuel supplier must demonstrate compliance according to this rule by November 28 of the year following the end of each compliance period, or 25 days after DEQ's notification described in section (1), whichever is later.

(3) To demonstrate compliance for a compliance period, a covered fuel supplier must submit the following to DEQ:

(a) For each metric ton of CO₂e of the total compliance obligation, either a compliance instrument or a CCI credit, subject to the following limitations:

(A) A covered fuel supplier may only submit compliance instruments that DEQ distributed from the caps for the calendar years of the applicable compliance period or from caps for earlier compliance periods; and

(B) The quantity of CCI credits used to demonstrate compliance as a percentage of the total compliance obligation for the applicable compliance period may not exceed the allowable percentage specified in Table 6 in OAR 340-271-9000.

(b) A demonstration of compliance form, approved by DEQ that includes:

(A) Name and full mailing address of the covered fuel supplier;

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(C) Identification of the compliance period and calendar year(s) for which the covered fuel supplier is demonstrating compliance;

(D) The total compliance obligations in metric tons of CO₂e for the compliance period and listed separately for each calendar year in the compliance period;

(E) The total number of compliance instruments the covered fuel supplier is submitting to DEQ to demonstrate compliance, and separately the total number submitted from each calendar year's cap;

(F) The total number of CCI credits the covered fuel supplier is submitting to DEQ to demonstrate compliance; and

(G) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this report on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. It is the intent of [covered fuel supplier] to use the quantity of compliance instruments and credits listed on this form and submitted to DEQ for the demonstration of compliance. I certify that [covered fuel supplier] has not exceeded the allowable use of CCI credits. If any portion of these compliance obligations remain unmet after this submission, I understand that [covered fuel supplier] must still demonstrate compliance with the remaining portion and may be subject to enforcement action.

(4) Each metric ton of CO₂e of a compliance obligation for which a covered fuel supplier does not demonstrate compliance according to this rule is a separate violation of this division.

(5) If a change in ownership of a covered fuel supplier occurs, the person that owns or operates the covered fuel supplier as of December 31 in the final year of a compliance period is responsible for demonstration of compliance according to this rule for each annual compliance obligation during the compliance period. Compliance obligations may not be split or subdivided based on ownership changes during the compliance period or during any year within the compliance period.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0490

Recordkeeping Requirements Related to Demonstration of Compliance

(1) A person must retain the following records necessary for determining compliance obligations, in paper or electronic format, for a period of at least seven years beginning September 30 of the year following a year in which covered emissions occurred:

(a) Records according to the recordkeeping requirements of OAR chapter 340, divisions 215 and 272, as applicable;

(b) Copies of reports and forms submitted to DEQ related to determination of compliance obligations according this division and OAR chapter 340, divisions 215 and 272, including but not limited to:

(A) Applicable emissions data reports submitted according to OAR chapter 340, division 215; and

(B) Applicable verification statements submitted according to OAR chapter 340, division 272; and

(c) All other information and documentation used to calculate and report emissions and used to determine emissions and compliance obligations according to this division.

(2) A person must retain the following records necessary for supporting demonstration of compliance, according to OAR 340-271-0450, in paper or electronic format for a period of at least seven years following the deadline for demonstration of compliance in OAR 340-271-0450:

(a) Copies of reports and forms submitted to DEQ related to demonstration of compliance, including but not limited to demonstration of compliance forms; and

(b) All other information and documentation used to support demonstration of compliance.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0500

Trading of Compliance Instruments

(1) A covered fuel supplier may trade one or more compliance instruments only according to this rule. A covered fuel supplier may transfer one or more compliance instruments to another covered fuel supplier up to the amount that it has available and has not used to demonstrate compliance. A covered fuel supplier may acquire one or more compliance instruments from another covered fuel supplier.

(2) A covered fuel supplier may not engage in a trade of a compliance instrument involving, related to, in service of, or associated with any of the following:

(a) Fraud, or an attempt to defraud or deceive using any device, scheme or artifice;

(b) Use of any unconscionable tactic in connection with the transfer, by any person;

(c) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the compliance instrument being sold. A fact is material if it is reasonably likely to influence a decision by another person or by DEQ;

(d) Any activity intended to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition in the market for compliance instruments;

(e) A conspiracy in restraint of trade or commerce; or

(f) An attempt to monopolize holding of compliance instruments, or to combine, collude, or

conspire with any other person or persons to monopolize.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0510

Compliance Instrument Trade Notifications and Process

(1) Covered fuel suppliers that trade one or more compliance instruments must notify DEQ of the trade. The designated representatives of both the covered fuel supplier transferring the compliance instrument and the covered fuel supplier acquiring the compliance instrument must sign and submit a compliance instrument trade form that meets the requirements of this section, using a form approved by DEQ.

(a) The covered fuel supplier transferring one or more compliance instruments must sign first; and

(b) The covered fuel supplier acquiring the compliance instrument(s) must sign the same form and submit it to DEQ no later than one week after the transferring covered fuel supplier signs the form.

(c) All of the following must be included on a compliance instrument trade form:

(A) The agreed upon date of the trade.

(B) The total number of compliance instruments traded, and separately the total number traded from each calendar year's cap.

(C) The total price per compliance instrument (in US dollars), excluding any fees. If a specific dollar value is not paid for the compliance instrument, an estimate must be provided.

(D) As applicable, other information about the trade that DEQ determines is necessary to support DEQ's monitoring of trades and that DEQ includes on the form;

(E) The following information about the covered fuel supplier transferring the compliance instrument(s):

(i) Name and full mailing address of the covered fuel supplier.

(ii) Designated representative's contact information including name, title or position, phone number, and email address.

(iii) The following attestation, signed by the designated representative:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this form is true, accurate, and complete. [Covered fuel supplier] is transferring these compliance instruments to

[covered fuel supplier that is acquiring] for the price described in this form.

(F) The following information about the covered fuel supplier acquiring the compliance instrument(s):

(i) Name and full mailing address of the covered fuel supplier.

(i) Designated representative's contact information including name, title or position, phone number, and email address.

(iii) The following attestation, signed by the designated representative:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this form is true, accurate, and complete. [Covered fuel supplier] is acquiring compliance instruments from [covered fuel supplier that is transferring] for the price described in this form.

(2) When DEQ receives a compliance instrument trade form for one or more compliance instruments as described in section (1), DEQ will inform the applicant either that the submitted form is complete or that additional specific information is required to make the form complete. Upon receipt of a complete form signed by both covered fuel suppliers involved in a trade, DEQ will track traded compliance instruments. DEQ will notify the designated representative of the covered fuel supplier acquiring compliance instrument(s) in writing of availability of these compliance instruments. DEQ will notify the designated representative of the covered fuel supplier transferring compliance instrument(s) in writing that the covered fuel supplier no longer holds the compliance instruments. If DEQ determines that the form is incomplete, DEQ will not track the requested trade unless and until the applicant provides the additional information requested by DEQ to make the form complete, and such instruments will not be available to the covered fuel supplier acquiring the instruments.

(3) A covered fuel supplier acquiring one or more compliance instrument(s) in a trade may not use the compliance instrument(s) in other trades or toward demonstration of compliance with any compliance obligation until the trade has been reported to DEQ and DEQ has tracked the traded compliance instrument(s). Trades may only be reported to DEQ after DEQ has made the compliance instrument trade form available. DEQ will notify covered fuel suppliers when the compliance instrument trade form is available.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0590

Recordkeeping Requirements Related to Trading

(1) A person who transfers one or more compliance instruments in a trade according to OAR 340-271-0510 must retain the following records related to each trade, in paper or electronic format for a period of at least seven years following the submission date of a complete

compliance instrument trade form:

- (a) A copy of each compliance instrument trade form submitted to DEQ;
- (b) A copy of any invoice or documentation of monetary payment received related to the trade;
- (c) A statement from a financial institution showing receipt of any payment for the compliance instrument;
- (d) Documentation of any service or other qualitative compensation received related to the trade; and
- (e) A copy of all other data, reports, or other information related to the trade.

(2) A person who acquires one or more compliance instruments in a trade according to OAR 340-271-0510 must retain the following records related to each trade, in paper or electronic format for a period of at least seven years following the submission date of a complete compliance instrument trade form:

- (a) A copy of each compliance instrument trade form submitted to DEQ;
- (b) A copy of any invoice or documentation of monetary payment related to the trade;
- (c) A statement from a financial institution showing any payment for the compliance instrument;
- (d) Documentation of any service or other qualitative compensation provided related to the trade; and
- (e) A copy of all other data, reports, or other information related to the trade.

(3) Covered fuel suppliers must make the records retained according to this rule available to DEQ upon request. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0810

Covered Fuel Supplier Application for Community Climate Investment Credits

(1) A covered fuel supplier is eligible to receive one or more CCI credits if it contributes CCI funds according to this rule.

(a) The covered fuel supplier may receive CCI credits only for contributions to a CCI entity that has been approved by DEQ according to OAR 340-271-0920(1) and has entered into a written agreement with DEQ to accept and administer CCI funds according to OAR 340-271-

(b) A covered fuel supplier is not eligible to receive a CCI credit for any contribution made to a CCI entity prior to March 1, 2023.

(c) If more than one CCI entity is approved to accept funds according to subsection (a) the covered fuel supplier must contribute an equal amount of CCI funds to each CCI entity that may receive funds consistent with its agreement with DEQ according to OAR 340-271-0920(2). The contribution amount to each CCI entity may vary by up to one US dollar.

(2) A covered fuel supplier must apply to receive CCI credits by submitting an application to DEQ, on a form approved by DEQ that includes the information described in section (3). A covered fuel supplier may not submit an application to request CCI credits on behalf of another person.

(3) A covered fuel supplier that submits an application to DEQ to request CCI credits must submit a complete and accurate application. The application must include:

(a) Information about the covered fuel supplier, including:

(A) Name and full mailing address; and

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(b) The name of each CCI entity that received CCI funds from the covered fuel supplier;

(c) A copy of the receipt(s) described in OAR 340-271-0930(1)(a) received from each CCI entity;

(d) The total CCI funds (in US dollars) contributed to each CCI entity, excluding any fees; and

(e) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [Covered fuel supplier] contributed the community climate investment funds noted in this application to each community climate investment entity listed for the purposes of supporting eligible projects as described in OAR 340-271-0900.

(4) (a) A covered fuel supplier seeking to receive CCI credits in order to use them to demonstrate compliance for a particular compliance period must submit its application to DEQ no later than November 14 of the year it will demonstrate compliance according to OAR 340-271-0450, or 11 days after DEQ's notice described in OAR 340-271-0450(1), whichever is later.

(b) DEQ's determination of the quantity of CCI credits to generate and distribute is based on the amount of the covered fuel supplier's contribution to CCI entities, as documented in its application and the CCI credit contribution amount described in Table 7 in OAR 340-271-9000 that was in effect on the date the contribution was made, adjusted for inflation according to OAR 340-271-0820(3).

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0820

Generation and Distribution of Community Climate Investment Credits

(1) DEQ will review an application submitted according to OAR 340-271-0810 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If DEQ determines that the application is incomplete or does not meet the requirements of OAR 340-271-0810, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(2) DEQ will approve an application for CCI credits submitted by a covered fuel supplier if DEQ determines that the application is accurate and complete according to the requirements of OAR 340-271-0810, and DEQ determines that the CCI funds have been provided to an approved CCI entity that is in good standing according to OAR 340-271-0910 through OAR 340-271-0990.

(3) Approval of an application for CCI credits.

(a) Upon approval of an application for CCI credits, DEQ will notify the covered fuel supplier in writing that DEQ has approved the application and will generate and distribute to the covered fuel supplier the quantity of CCI credits approved according to subsection (b).

(b) The amount of CCI credits that DEQ will generate and distribute to the covered fuel supplier is one CCI credit for every verified contribution of the CCI credit contribution amount that a covered fuel supplier provides to a CCI entity, rounded down to the nearest whole number. The CCI credit contribution amount is the applicable amount in Table 7 in OAR 340-271-9000 for the date the contribution was made, with the CCI credit contribution amount adjusted for inflation and rounded to the nearest dollar using the inflation rate since January 2021, as provided by the United States Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items. DEQ will post the current, inflation adjusted CCI credit contribution amount on its website effective March 1 of each year. The formula for the adjustment is as follows:

$$\text{CCI Credit Contribution Amount} = \text{CCI Credit Contribution Amount in Table 7 in OAR 340-271-9000} * (\text{CPI-U West for January of the calendar year for the price in Table 7 in OAR 340-271-9000 that is currently in effect} / \text{CPI-U West for January 2021})$$

(4) A CCI credit is a regulatory instrument and does not constitute personal property, a

security or any other form of property.

(5) DEQ will track distributed CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0830

Holding Community Climate Investment Credits

(1) When DEQ distributes a CCI credit to a covered fuel supplier according to OAR 340-271-0820, the covered fuel supplier may continue to hold the CCI credit until any of the following apply:

(a) The covered fuel supplier uses the CCI credit toward its demonstration of compliance according to OAR 340-271-0450;

(b) Two demonstration of compliance deadlines described in OAR 340-271-0450(2) have passed since the date DEQ provided written notice of its approval of the CCI credit to the covered fuel supplier according to OAR 340-271-0820 and the covered fuel supplier has not used the CCI credit in its demonstration(s) of compliance. In such a case, DEQ will cancel the CCI credit. A cancelled CCI credit may not be used toward demonstration of compliance; or

(c) The covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When a covered fuel supplier ceases to be a covered fuel supplier, DEQ will cancel the CCI credit at the time of such cessation. A cancelled CCI credit may not be used toward any demonstration of compliance.

(2) Only a covered fuel supplier that receives a CCI credit from DEQ may hold the CCI credit. The covered fuel supplier may not trade the CCI credit.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0890

Recordkeeping Requirements Related to Community Climate Investment Funds

(1) A covered fuel supplier that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period of time that begins with the date it provides the CCI funds and lasts seven years after submitting all resulting CCI credits to demonstrate compliance or until the person ceases to be a covered fuel supplier:

(a) A copy of any invoice or documentation of monetary payment related to CCI funds;

(b) A statement from a financial institution showing any payments related to CCI funds;

- (c) A copy of any receipt received from a CCI entity; and
 - (d) All other information and documentation related to the CCI funds provided to a CCI entity.
- (2) A covered fuel supplier must retain the following records, in paper or electronic format, for a period that begins the date it applies for a CCI credit and lasts seven year after using the CCI credit to demonstrate compliance or until the person ceases to be a covered fuel supplier:
- (a) A copy of each application submitted to DEQ to request CCI credits; and
 - (b) All other information and documentation related to CCI credit(s) received from DEQ.
- (3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0900

Purposes of Community Climate Investments and Eligible Uses of CCI Funds

- (1) The purposes of community climate investments are to:
- (a) Provide covered entities with an optional means of meeting part of their compliance obligation for one or more compliance periods;
 - (b) Reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ;
 - (c) Reduce emissions of other air contaminants that are not greenhouse gases, particularly in or near environmental justice communities in Oregon;
 - (d) Promote public health, environmental, and economic benefits for environmental justice communities throughout Oregon to mitigate impacts from climate change, air contamination, energy costs, or any combination of these; and
 - (e) Accelerate the transition of residential, commercial, industrial and transportation-related uses of fossil fuels in or near environmental justice communities in Oregon to zero or to other lower greenhouse gas emissions sources of energy in order to protect people, communities and businesses from increases in the prices of fossil fuels.
- (2) A CCI entity may use CCI funds only for:
- (a) Implementing eligible projects in Oregon, which are actions that reduce anthropogenic greenhouse gas emissions that would otherwise occur in Oregon. Eligible projects include,

without limitation, actions that reduce emissions in Oregon resulting from:

- (A) Transportation of people, freight, or both;
- (B) An existing or new residential use or structure;
- (C) An existing or new industrial process or structure; and
- (D) An existing or new commercial use or structure.

(b) The costs of administering CCI funds and eligible projects, including costs of reporting and other requirements included in OAR 340-271-0930 and costs of capacity-building for implementation of eligible projects.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0910

Application to DEQ for Approval as a Community Climate Investment Entity

(1) To be eligible for DEQ approval as a community climate investment entity, an entity must demonstrate that it:

(a) Is authorized to do business in Oregon, and that it is exempt from federal taxation according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Has the capacity to administer and spend CCI funds to carry out eligible projects as specified in OAR 340-271-0900(2);

(c) Has or will have staff capable of conducting work associated with being a CCI entity according to this division;

(d) Has or will have staff or subcontractors capable of implementing eligible projects throughout Oregon; and

(e) Is not a covered entity or a related entity of a covered entity.

(2) An eligible entity described in section (1) may apply to be approved as a CCI entity to implement eligible projects directly or by agreement with one or more subcontractors, or both. Subcontractors are not CCI entities, and do not need to meet the eligibility requirements of section (1). However, a CCI entity may not use CCI funds to pay a subcontractor that is a covered entity or a related entity of a covered entity.

(3) An entity that seeks approval as a CCI entity must submit an application to DEQ, on a form approved by DEQ that includes the following:

(a) Information about the entity, including:

- (A) Name, full mailing address, and website address;
 - (B) Contact person's information including name, title or position, phone number, and email address;
 - (C) Information to describe how the entity meets the eligibility criteria in section (1);
 - (D) A copy of the entity's current articles of incorporation and bylaws, and a description of the mission of the entity and how being a CCI entity supports the mission;
 - (E) A description of the experience and expertise of key individuals, if known, who would be working to implement eligible projects with CCI funds or assigned work associated with the requirements of a CCI entity described in OAR 340-271-0930;
 - (F) A description of experience implementing or supporting implementation of eligible projects or project types, particularly in environmental justice communities in Oregon. This may include the experience of the key individuals described in paragraph (E) whether or not that prior experience occurred while working with the entity;
 - (G) Information regarding any violation by the entity related to federal or state labor laws within the preceding five years;
 - (H) The entity's IRS Form 990 for each of the three most recent years, if available; and
 - (I) Proof that the IRS has certified the entity as qualifying as an exempt organization according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);
- (b) Information about each known or planned subcontractors, as available, including:
 - (A) Name, full mailing address, and website address;
 - (B) Contact person's contact information including name, title or position, phone number, and email address;
 - (C) Confirmation that the subcontractor is not a covered entity or any of its related entities;
 - (D) If applicable, a description of the mission of the subcontractor and how being a subcontractor of a CCI entity supports the mission;
 - (E) A description of the experience and expertise of key individuals who would be working to implement eligible projects with CCI funds;
 - (F) A description of the subcontractor's prior experience implementing or supporting implementation of eligible projects and a description of prior experience serving communities in Oregon; and
 - (G) Information regarding any violation by the proposed subcontractor related to federal or state labor laws within the preceding five years;

(c) Information about how any subcontractor(s) may be selected during project implementation if there are none listed in the application or if the entity expects to select one or more additional subcontractors during project implementation;

(d) If known, a general description of either or both of the following:

(A) Anticipated eligible project(s) or project type(s) that support the purposes of CCIs described in OAR 340-271-0900(1) and that are eligible projects as defined in OAR 340-271-0900(2) that the entity plans to implement if approved as a CCI entity; and

(B) The communities in Oregon that are anticipated to benefit if the entity is approved as a CCI entity;

(e) Description of the administrative processes and financial controls the entity will use to ensure all CCI funds are held separately from the entity's other funds. This must detail how the entity will manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f);

(f) The anticipated annual total amount of CCI funds the entity would be able to receive and spend, including a description of why that annual amount is anticipated; and

(g) The following attestation, signed by the entity's contact person:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [Entity] seeks to become a community climate investment entity and, if approved, will comply with the applicable requirements in Oregon Administrative Rules chapter 340, division 271.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0920

DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities

(1) DEQ will review and may approve applications from entities proposing to be approved as CCI entities according to subsections (a) through (d).

(a) DEQ will review an application submitted according to OAR 340-271-0910 to ensure that it meets the requirements of that rule. DEQ will inform the entity either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the entity provides the additional information requested by DEQ.

(b) When evaluating complete applications submitted according to OAR 340-271-0910, DEQ will consult with the equity advisory committee described in OAR 340-271-0950 and may

consult with any other relevant experts selected by DEQ.

(c) DEQ will consider the following when evaluating a complete application:

(A) The content of the application;

(B) Whether the entity meets the eligibility criteria in OAR 340-271-0910(1);

(C) Whether each proposed subcontractor, if applicable, complies with the eligibility criteria in OAR 340-271-0910(1)(e);

(D) The overall ability of the entity and, if applicable, its subcontractor(s) to use CCI funds to complete eligible projects that advance the purposes set forth in OAR 340-271-0900(1) and that collectively reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI contributions to the entity;

(E) The overall ability of the entity and/or its subcontractor(s) to use CCI funds as described in paragraph (D) relative to the overall ability of other applicants and approved CCI entities; and

(F) Whether the applicant or any proposed subcontractors have violated any federal or state labor laws in the preceding five years.

(d) DEQ will notify the applicant in writing whether provisional approval as a CCI entity is granted or denied.

(2) If provisional approval as a CCI entity is granted, DEQ will then work with the CCI entity to complete a written agreement. The written agreement must be approved before an entity receives final approval as a CCI entity and is authorized to receive CCI funds. The written agreement will include, but is not limited to:

(a) Agreement to use CCI funds only for the uses specified in OAR 340-271-0900(2);

(b) The initial term of the agreement and approval, which may not exceed ten years;

(c) Requirements for monitoring and reporting of project outcomes sufficient to document emissions reductions;

(d) Provisions for, and limitations on, the payment of administrative expenses;

(e) Provisions for extensions, amendments, or renewal of the agreement;

(f) Other conditions that DEQ determines are necessary to include in the agreement in order to meet the requirements of this division, such as a limit on the amount of CCI funds that a CCI entity may accept

(3) If DEQ finds that any of the events in subsections (a) through (c) occur, DEQ may suspend or revoke approval of a CCI entity completely or in part.

- (a) The CCI entity fraudulently obtained DEQ approval;
- (b) The CCI entity is in violation of any applicable provisions of this division or any written agreement between the CCI entity and DEQ; or
- (c) DEQ determines that the CCI entity is not in compliance with one or more of the eligibility criteria for approval in OAR 340-271-0910(1).
- (4) DEQ will maintain a current list of approved CCI entities on DEQ's website.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0930

Requirements for Community Climate Investment Entities

(1) Acceptance of CCI funds.

(a) Once approved by DEQ, unless otherwise specified in the agreement between a CCI entity and DEQ, a CCI entity must accept CCI funds from any covered fuel supplier that seeks to contribute CCI funds. The CCI entity must provide a receipt to the covered fuel supplier upon receipt of CCI funds from the covered fuel supplier. The receipt must include:

- (A) The name of the covered fuel supplier;
- (B) The name of the CCI entity;
- (C) The US dollar amount of the CCI funds accepted;
- (D) The date the CCI entity accepted the CCI funds; and
- (E) The following attestation:

I verify that [CCI Entity] received the contribution from [Covered fuel supplier] as described on this receipt and I affirm that I am a representative of [CCI entity] authorized to sign this receipt.

(b) Unless otherwise specified in the agreement between the CCI entity and DEQ, a CCI entity must accept CCI funds transferred to it from another CCI entity according to section (8).

(2) Holding CCI funds.

(a) A CCI entity must hold all CCI funds in one or more accounts separate from any other funds. Additionally, prior to being spent in compliance with the provisions of this division and its agreement with DEQ, funds must be managed and invested in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). A CCI entity may not encumber CCI funds or pledge CCI funds as a security for other purposes than completing one or more projects

under a DEQ-approved work plan.

(b) A CCI entity must complete an independent financial audit of CCI funds for each year in which it holds CCI funds.

(3) Use of CCI funds. A CCI entity may only spend CCI funds for the uses specified in OAR 340-271-0900(2). The expenditures of CCI funds must conform to the CCI's work plan approved by DEQ under section (4) of this rule.

(4) Work Plan.

(a) A CCI entity must submit its proposed work plan to DEQ for review and approval. The period of the work plan will normally be a calendar year, unless otherwise specified in the agreement between DEQ and the CCI entity. A CCI entity must obtain DEQ approval of the work plan prior to committing or expending CCI funds for the period of the work plan. The first work plan must be submitted within 60 days of the date on which the CCI entity entered into a written agreement with DEQ described in OAR 340-271-0920(2). Each subsequent work plan must be submitted no later than 30 days prior to the end of the current work plan period.

(b) The work plan must include:

(A) A description of the project(s) or project type(s) the CCI entity expects to support with CCI funds during the period of the work plan, and how the project(s) or project type(s) support each of the purposes of CCIs described in OAR 340-271-0900(1)(b) through (e);

(B) A description of how the project(s) or project type(s) will benefit communities in Oregon, including description of the potential locations of communities or regions of Oregon in which projects may be implemented or a description of how locations may be selected;

(C) A description of how each project or project type would benefit environmental justice communities in Oregon;

(D) A description of the methodology that the CCI entity is using to estimate the reductions in anthropogenic greenhouse gas emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan. The methodology must be sufficient to allow DEQ to perform the necessary calculations in a program review according to OAR 340-271-8000;

(E) A description of the methodology that the CCI entity is using to estimate the reductions in other air contaminant emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan;

(F) The name and contact person's contact information of subcontractors that will be involved in any project activities during the period of the work plan; and

(G) The estimated total budget for the period of the work plan. CCI funds must be listed

separately from any other funds, as applicable. This must separately include the following:

(i) All costs related to project implementation, listed separately for groups of project(s) or project type(s), including but not limited to personnel costs and materials costs; and

(ii) Administrative costs related to the project implementation and meeting the requirements of this rule.

(c) A CCI entity may request DEQ approval of modifications to a DEQ-approved work plan by submitting modifications to the information described in subsection (b). The CCI entity must obtain DEQ approval of any modification to a work plan prior to beginning work according to a modified work plan.

(d) DEQ will review each submitted work plan to ensure that it meets the requirements of this section. DEQ will inform the CCI entity either that the submitted work plan is complete or that additional specific information is required to make the work plan complete. If the work plan is incomplete, DEQ will not consider the work plan further until the CCI entity provides the additional information requested by DEQ. DEQ will consider the following in its review:

(A) The overall ability of the CCI entity to conduct work according to the work plan;

(B) Whether following the work plan is reasonably likely to reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI fund contributions to the CCI entity;

(C) Whether the work plan is consistent with the purposes of CCIs described in OAR 340-271-0900; and

(D) Input from the equity advisory committee described in OAR 340-271-0950 and from any other relevant experts selected by DEQ.

(5) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year that describes its CCI-related activities and finances for the preceding calendar year, including:

(a) The following information related to CCI funds received, held, or spent during the year:

(A) Each financial statement for the account(s) where CCI funds were held and the results of the CCI entity's most recent independent financial audit;

(B) The date, amount of CCI funds accepted, and as applicable, the name of the covered fuel supplier for each separate contribution received;

(C) Total CCI fund interest accrual;

(D) Total CCI funds spent, including separate totals of:

(i) CCI funds spent on each project, including but not limited to personnel costs and materials costs; and

(ii) Administrative costs related to the project, including project development, and implementation and meeting the requirements of this rule;

(E) Total CCI funds the CCI entity holds that remain unspent as of the end of the year; and

(F) Total non-CCI funds spent on implementation of each project or project type, as applicable;

(b) The following information related to implementation progress of project(s) or project type(s) during the year:

(A) Documentation of work completed or progress made on each project or project type, including the number of projects completed of each project type, as applicable;

(B) A summary of project outcomes. This must include estimated annual greenhouse gas emissions reductions in metric tons of CO₂e and non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant that are anticipated to be achieved from any project(s) completed during the year. Emissions reductions must be estimated using the methodology included in the applicable work plan. Emissions reductions may be reported by individual project or may be grouped by project type, if the CCI entity can provide sufficient information to demonstrate that the emissions reductions of multiple projects of the same type are comparable; and

(C) A description of work that occurred compared to the most recently approved work plan or modified work plan. If projects were not implemented as planned, the CCI entity must describe the reason for delay and must describe any steps that may be taken to work to remedy the delay or prevent similar delays in subsequent years; and

(c) A copy of the CCI entity's most recent IRS form 990.

(6) Maintaining CCI entity eligibility.

(a) A CCI entity must notify DEQ in writing as soon as possible, and not later than 30 days after it no longer meets any of the eligibility criteria for approval in OAR 340-271-0910(1), or if it is in violation of any of the requirements of this rule.

(b) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes are made to the administrative processes or financial controls that keep CCI funds separate from other funds;

(c) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes related to key individuals or their assigned work associated with being a CCI entity.

(d) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days

after any finding of a violation related to federal or state labor laws by the CCI entity or by an approved subcontractor;

(e) Upon written request by DEQ, a CCI entity must provide to DEQ in a reasonably timely manner any and all information that DEQ reasonably requires for evaluating the CCI entity's continued compliance with the requirements of this division, including the criteria for approval as a CCI entity and eligible projects.

(7) Voluntary withdrawal from DEQ approval. An approved CCI entity may request to withdraw voluntarily its approval by providing a written notice to DEQ requesting such withdrawal.

(8) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require the entity to transfer any unspent CCI funds to another CCI entity and provide proof to DEQ that the transfer has been made.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0950

Equity Advisory Committee and Environmental Justice Community Engagement

(1) DEQ will appoint and convene an equity advisory committee to assist DEQ with:

(a) Review of:

(A) Applications to become a CCI entity;

(B) Requests for DEQ approval of work plans; and

(C) Other submittals by CCI entities that require DEQ review; and

(b) Outreach to environmental justice communities.

(2) Advisory committee member selection.

(a) DEQ may solicit applications from residents of the state of Oregon to be appointed to serve as members of the equity advisory committee and may select the committee from those applications.

(b) DEQ will prioritize convening an advisory committee that represents multiple areas of expertise, interest, or lived experience in the following areas:

(A) Environmental justice;

(B) Impacts of climate change on communities in Oregon;

(C) Impacts of air contamination on communities in Oregon; and

(D) Greenhouse gas emissions reductions and climate change.

(c) DEQ will prioritize convening an advisory committee that represents multiple regions across Oregon.

(d) DEQ may appoint each committee member to a term of up to three years.

(3) In addition to outreach conducted by CCI third party entities to environmental justice communities throughout Oregon, DEQ will conduct outreach to these communities to seek input on projects that may be of interest to those communities. The equity advisory committee will consider this input when assisting DEQ as described in section (1). DEQ will consider this input when making approval decisions regarding CCI entities, projects and project types, and work plans.

(4) DEQ will offer guidance and conduct outreach to support the equity advisory committee and environmental justice communities in Oregon in understanding the provisions related to CCIs.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0990

Recordkeeping Requirements for Community Climate Investment Entities

(1) A CCI entity must retain the following records, in paper or electronic format, for the duration of its approval as a CCI entity and for a period of at least seven years following the end of its approval:

(a) A copy of each application submitted to DEQ for approval as a CCI entity;

(b) A copy of any invoice or documentation of monetary payment related to CCI funds;

(c) A statement from a financial institution showing any payments related to CCI funds;

(d) A copy of any receipt provided to a covered fuel supplier that makes a CCI payment to the CCI entity;

(e) A copy of any report or written request for approval submitted to DEQ by the CCI entity;

(f) All other information and documentation related to CCI funds;

(g) All records related to any implemented projects; and

(h) All records and information supporting estimates of greenhouse gas emissions reductions and other air contaminant emissions reductions achieved from implemented projects or project types.

(2) CCI entities must make records required to be retained in this rule available to DEQ upon

request. DEQ will specify the date by which the CCI entity must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8000

Program Review

(1) DEQ will report to the EQC on community climate investments. DEQ will submit the first report to the EQC by August 30, 2024 and every two years thereafter. DEQ will share each report with current members of the equity advisory committee after submission to the EQC. Each community climate investment report will include:

(a) A review of community climate investments, including:

(A) CCI credits distributed to covered fuel suppliers;

(B) CCI credits used by covered fuel suppliers to demonstrate compliance;

(C) Estimates of annual greenhouse gas emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(D) Estimates of annual non-greenhouse gas air contaminant emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(E) Calculation of the average anthropogenic greenhouse gas emissions reductions achieved per CCI credit distributed based on (A) and (C) and whether reductions of approximately one MT CO₂e or more of anthropogenic greenhouse gas emissions for the average CCI credit distributed by DEQ was achieved; and

(F) Description of community benefits achieved; and

(b) DEQ's recommendations regarding any necessary or desirable changes to the CPP provisions relating to CCIs, including, without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 7 in OAR 340-271-9000 necessary to assure that the use of CCI funds is reducing anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ, as well as recommendations on how to best achieve the purposes of CCIs described in OAR 340-271-0900, if applicable.

(2) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report to the EQC five years after the date of adoption of this division and at least once every five years thereafter. Each program review report will include:

(a) A review of the Climate Protection Program, including:

(A) Summary of covered fuel suppliers' demonstrations of compliance for compliance periods that have occurred since program start, including:

- (i) Caps for each year and compliance period;
- (ii) Compliance obligations for each year and compliance period;
- (iii) Compliance instruments submitted for each compliance period; and
- (iv) CCI credits submitted for each compliance period;

(B) Summary of the distribution of compliance instruments, including the size of the compliance instrument reserve at the start and end of each program year that has occurred and compared to Table 3 in OAR 340-271-9000;

(C) Summary of activity relating to trading of compliance instruments for each program year that has occurred;

(D) Summary of covered stationary source requirement activities that have occurred since program start or since the most recently submitted report to the EQC, whichever is later, including:

- (i) The number of existing stationary sources that DEQ has notified in writing that must complete a BAER assessment;
- (ii) The number of BAER assessments received or anticipated to be received by DEQ;
- (iii) A brief summary of any BAER order issued and the required actions that must be taken by the owner or operator of a covered stationary source that has been issued a BAER order;
- (iv) A brief summary of the status of any covered stationary source activities regarding implementation of requirements in a BAER order; and
- (v) Review of any changes in annual covered emissions from current covered stationary sources to assess whether covered emissions are being reduced;

(E) Whether emission reductions from covered stationary sources align with the priorities described in OAR 340-271-0300. This will be assessed in program reviews beginning after 2029.

(F) A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and

(G) Description of any enforcement actions taken that involved civil penalties, if applicable; and

(b) DEQ's recommendations regarding any potential changes to the CPP including, for

example and without limitation, recommendations regarding potential changes to best achieve the goals described in OAR 340-271-0300 for covered stationary sources.

(3) If the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than 20 percent higher than the change in cost for the same fuel over the same period in each of Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made that would ameliorate a relative increase in costs in Oregon. If necessary, DEQ will consider recommending rule changes, such as changes to caps and distribution of additional compliance instruments, changes to the compliance instrument reserve, or changes to the allowable usage of CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8100

Additional Compliance Enforcement Authority

(1) Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by section (1) may be instituted without the necessity of prior DEQ notice, hearing and order.

(3) The provisions of this rule are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to 468.140 and OAR chapter 340, divisions 11 and 12.

Statutory authority: ORS 468.020, 468.100

Statute implemented: ORS 468.100

340-271-8110

Deferrals

DEQ may extend reporting or demonstration of compliance deadlines as DEQ deems necessary or appropriate and will issue written notice of any extensions.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8120

Severability

Each requirement of this division is severable, and if any requirement of this division is held invalid, the remainder of the requirements of this division will continue in full force and effect.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-9000

Tables

- (1) Table 1. Thresholds for applicability described in OAR 340-271-0110(3).
- (2) Table 2. Oregon Climate Protection Program caps.
- (3) Table 3. Compliance instrument reserve size.
- (4) Table 4. Compliance instrument distribution to covered fuel suppliers that are local distribution companies.
- (5) Table 5. Compliance instrument distribution evaluation periods.
- (6) Table 6. Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3).
- (7) Table 7. CCI credit contribution amount.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.



OAR 340-271-9000
Table 1
Thresholds for
applicability described in OAR 340-271-0110(3)


Applicability determination calendar year(s)	Threshold for applicability to compare to annual covered emissions	Calendar year a person becomes a covered fuel supplier
Any year from 2018 through 2022	200,000 MT CO ₂ e	2022
2023	200,000 MT CO ₂ e	2023
2024	200,000 MT CO ₂ e	2024
Any year from 2021 through 2025	100,000 MT CO ₂ e	2025
2026	100,000 MT CO ₂ e	2026
2027	100,000 MT CO ₂ e	2027
Any year from 2024 through 2028	50,000 MT CO ₂ e	2028
2029	50,000 MT CO ₂ e	2029
2030	50,000 MT CO ₂ e	2030
Any year from 2027 through 2031	25,000 MT CO ₂ e	2031
2032	25,000 MT CO ₂ e	2032
Each subsequent year	25,000 MT CO ₂ e	Each subsequent year




OAR 340-271-9000
Table 2
Oregon Climate Protection Program caps


Calendar year	Cap
2022	28,081,335
2023	27,001,283
2024	25,921,232
2025	25,763,209
2026	24,637,057
2027	23,510,904
2028	23,013,190
2029	21,842,149
2030	20,671,108
2031	19,910,424
2032	18,688,088
2033	17,465,752
2034	16,243,416
2035	15,021,080
2036	14,219,956
2037	13,418,831
2038	12,617,707
2039	11,816,583
2040	11,015,459
2041	10,214,334
2042	9,413,210
2043	8,612,086
2044	7,810,962
2045	7,009,837
2046	6,208,713


2047	5,407,589
2048	4,606,465
2049	3,805,340
2050 and each calendar year thereafter	3,004,216

 OAR 340-271-9000 Table 3 Compliance instrument reserve size	
Calendar year(s) of the cap	Reserve size
2022	400,000 compliance instruments
2023 through 2030	800,000 compliance instruments
2031 through 2040	500,000 compliance instruments
2041 and each calendar year thereafter	250,000 compliance instruments

 OAR 340-271-9000 Table 4 Compliance instrument distribution to covered fuel suppliers that are local distribution companies			
Calendar year	Compliance instruments to distribute to Avista Utilities	Compliance instruments to distribute to Cascade Natural Gas Corporation	Compliance instruments to distribute to Northwest Natural Gas Company
2022	703,373	743,707	5,759,972
2023	676,320	715,103	5,538,434
2024	649,267	686,499	5,316,897
2025	622,214	657,895	5,095,359
2026	595,161	629,291	4,873,822
2027	568,109	600,687	4,652,285
2028	541,056	572,083	4,430,747
2029	514,003	543,478	4,209,210
2030	486,950	514,874	3,987,673
2031	459,897	486,270	3,766,135
2032	432,845	457,666	3,544,598
2033	405,792	429,062	3,323,061
2034	378,739	400,458	3,101,523
2035	351,686	371,854	2,879,986
2036	332,930	352,021	2,726,387
2037	314,173	332,189	2,572,787
2038	295,416	312,357	2,419,188
2039	276,660	292,525	2,265,589
2040	257,903	272,693	2,111,990
2041	239,147	252,860	1,958,390
2042	220,390	233,028	1,804,791

2043	201,633	213,196	1,651,192
2044	182,877	193,364	1,497,593
2045	164,120	173,532	1,343,993
2046	145,364	153,699	1,190,394
2047	126,607	133,867	1,036,795
2048	107,850	114,035	883,196
2049	89,094	94,203	729,596
2050 and each calendar year thereafter	70,337	74,371	575,997

 OAR 340-271-9000 Table 5 Compliance instrument distribution evaluation periods		
Calendar years of emissions for evaluation period	Year in which evaluation occurs to determine distribution of compliance instruments	Calendar year of the cap
2018 through 2020	2021	2022
2019 through 2021	2022	2023
2020 through 2022	2023	2024
Each subsequent three year period	Each subsequent year	Each subsequent year

 OAR 340-271-9000 Table 6 Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3)	
Compliance period	Allowable percentage of total compliance obligation(s) for which compliance may be demonstrated with CCI credits
Compliance period 1 (2022 through 2024)	10%
Compliance period 2 (2025 through 2027)	15%
Compliance period 3 (2028 through 2030), and for each compliance period thereafter	20%



OAR 340-271-9000
Table 7
CCI credit contribution amount

Effective date	CCI credit contribution amount in 2021 dollars, to be adjusted according to OAR 340-271-0820(3)
March 1, 2023	\$107
March 1, 2024	\$108
March 1, 2025	\$109
March 1, 2026	\$110
March 1, 2027	\$111
March 1, 2028	\$112
March 1, 2029	\$113
March 1, 2030	\$114
March 1, 2031	\$115
March 1, 2032	\$116
March 1, 2033	\$117
March 1, 2034	\$118
March 1, 2035	\$119
March 1, 2036	\$120
March 1, 2037	\$121
March 1, 2038	\$122
March 1, 2039	\$123
March 1, 2040	\$124
March 1, 2041	\$125
March 1, 2042	\$126
March 1, 2043	\$127
March 1, 2044	\$128
March 1, 2045	\$129
March 1, 2046	\$130

March 1, 2047	\$131
March 1, 2048	\$132
March 1, 2049	\$133
March 1, 2050	\$134



State of Oregon Department of Environmental Quality

Draft Rules – Division 271

Edits Highlighted

Key to identifying changed text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

~~Double strikethrough/underline: Text deleted from one location - and moved to another location~~

Note: These are all new rules. Changes are shown relative to the Notice of Proposed Rulemaking.

Division 271

Oregon Climate Protection Program

340-271-0010

Purpose and Scope

(1) This division establishes rules and requirements for the Climate Protection Program for certain air contamination sources that emit greenhouse gases or that cause greenhouse gases to be emitted.

(2) Climate change caused by anthropogenic greenhouse gas emissions has detrimental effects on the overall public welfare of the State of Oregon. Reducing greenhouse gas emissions and mitigating climate change will improve the overall public welfare of Oregon. In particular, reducing greenhouse gas emissions will improve the welfare of environmental justice communities.

(a) Fuel combustion and industrial processes result in emissions of greenhouse gases, which are air contaminants that cause climate change;

(b) Reducing greenhouse gas emissions may also reduce emissions of other air contaminants, which may improve air quality for Oregon communities; and

(c) Environmental justice communities in Oregon are disproportionately burdened by air contamination, including through disproportionate risk of the impacts of climate change.

(3) The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. To support these purposes, this division:

- (a) Requires that covered entities reduce greenhouse gas emissions;
 - (b) Supports reduction of emissions of other air contaminants that are not greenhouse gases;
 - (c) Prioritizes reduction of greenhouse gases and other air contaminants in environmental justice communities;
 - (d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and
 - (e) Allows covered fuel suppliers to comply with the Climate Protection Program requirements in part through contributing community climate investment funds to support projects that reduce greenhouse gas emissions and prioritize benefits for environmental justice communities in Oregon.
- (4)- DEQ administers this division in all areas of the State of Oregon and subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement OAR ~~340-271-0150~~340-271-0150(3) of this division within its area of jurisdiction.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050 and 468A.135.
Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045, 468A.050 and 468A.135.

340-271-0020

Definitions

The definitions in OAR 340-200-0020, OAR 340-215-0020, and this rule apply to this division. If the same term is defined in this rule and either or both OAR 340-200-0020 and OAR 340-215-0020, the definition in this rule applies to this division. -If the same term is defined in OAR 340-200-0020 and OAR 340-215-0020, but not in this rule, then the definition in OAR 340-215-0020 applies to this division.

(1) “Air contamination source” has the meaning given the term in ORS 468A.005. Air contamination sources include, without limitation, stationary sources, fuel suppliers, in-state producers, and local distribution companies.

(2) “Best available emissions reduction ~~determination order~~” or “BAER ~~determination order~~” means a DEQ ~~determination of the order establishing~~ required actions the owner or operator of a covered stationary source must take to limit covered emissions from ~~at the~~ covered stationary source. The BAER ~~determination may include conditions, requirements, or a combination of order will identify the~~ conditions and requirements that must be included in the CPP permit addendum.

~~(3)~~(3) “Biomass-derived fuels” has the meaning given the term in OAR 340-215-0020. Biomass-derived fuels include, without limitation, biomethane, biodiesel, renewable diesel, renewable propane, woody biomass, and ethanol.

(4) “Cap” means the total number of compliance instruments generated by DEQ for each calendar year.

(45) “Climate Protection Program permit addendum” or “CPP permit addendum” means written authorization that incorporates the requirements of this division into a permit by amending an Air Contaminant Discharge Permit or a Title V Operating Permit, ~~or in the case of a source assigned to a General Air Contaminant Discharge Permit, via a General Air Contaminant Discharge Permit Attachment.~~

(56) “Climate Protection Program permit” or “CPP permit” means a permit issued to a covered fuel supplier according to this division.

(67) “Community climate investment credit” or “CCI credit” or “credit” means an instrument issued by DEQ to track a covered fuel supplier’s payment of community climate investment funds, and which may be used in lieu of a compliance instrument, as further provided and limited in this division.

(78) “Community climate investments,” “community climate investment funds” or “CCI funds” means money paid by a covered fuel supplier to a community climate investment entity to support implementation of ~~DEQ approved~~ community climate investment projects and any interest that accrues on the money while it is held by a CCI entity or subcontractor.

(89) “Community climate investment entity” or “CCI entity” means a nonprofit organization that has been approved by DEQ as a CCI entity and that has entered into a written agreement with DEQ consistent with OAR 340-271-0920 to implement projects supported by community climate investment funds.

(910) “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one MT CO₂e of greenhouse gases. Compliance instruments may not be divided into fractions.

(1011) “Compliance obligation” means the total quantity of covered emissions from a covered fuel supplier rounded to the nearest metric ton of CO₂e.

(112) “Compliance period” means a period of multiple consecutive calendar years, as described in OAR 340-271-0440.

(1213) “Covered emissions” means the greenhouse gas emissions described in any of subsections OAR 340-271-0110(3)(b), (4)(b) and (5)(b), for which covered entities may be subject to the requirements of this division.

(1314) “Covered entity” means an air contamination source subject to the requirements of this division. A covered entity may be either a covered fuel supplier, a covered stationary source, or both.

(1415) “Covered fuel supplier” means an air contamination source that is either:

(a) A fuel supplier or in-state producer as described in OAR 340-271-0110(3); or

(b) A local distribution company as described in OAR 340-271-0110(4).

~~(14) “Covered fuel supplier” means an air contamination source described in either or both OAR 340-271-0110(3) or (4).~~

~~(15)~~(16) “Covered stationary source” means an air contamination source described in OAR 340-271-0110(5).

~~(16)~~17 “Designated representative” means the person responsible for certifying, signing, and submitting any registration, report, or form required to be submitted according to this division, on behalf of a covered entity. For the owner or operator of a covered stationary source with an Oregon Title V Operating Permit, the designated representative is the responsible official and certification must be consistent with OAR 340-218-0040(5).

~~(17)~~18 “Environmental justice communities” means communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

~~(18)~~19 “Evaluation period” means a period of multiple consecutive calendar years, as described in Table 5 in OAR 340-271-9000, that DEQ uses to evaluate the number of compliance instruments to distribute to each covered ~~entity~~fuel supplier that is not a local distribution company.

~~(19)~~20 “New source” means a source that by December 31, 2021 did not commence construction ~~or~~and did not submit all necessary applications to DEQ according to OAR chapter 340 divisions 210 and 216.

~~(20)~~21 “Nominal electric generating capacity” has the meaning given in ORS 469.300.

~~(21)~~22 “Shut down” means that all ~~industrial~~ operations of a covered entity are permanently shut down, including but not limited to decommissioning and cancelling air permits. Permanent shutdown may include continued operations of space heaters and water heaters as necessary to support decommissioning activities.

~~(22)~~23 “Related entity” means any direct or indirect parent company, direct or indirect subsidiary, company that shares ownership of a direct or indirect subsidiary, or company under full or partial common ownership or control.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0030

Acronyms

(1) “BAER” means best available emissions reduction.

- (2) “CCI” means community climate investment.
- (3) “CFR” means Code of Federal Regulations.
- (4) “CPI-U West” means the US Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items.
- (5) “CPP” means Oregon Climate Protection Program established in this division.
- (6) “DEQ” means Oregon Department of Environmental Quality.
- (7) “EQC” means Environmental Quality Commission.
- (8) “EPA” means US Environmental Protection Agency.
- (9) “IRS” means US Internal Revenue Service.
- (10) “LRAPA” means Lane Regional Air Pollution Agency.
- (11) “Metric tons of CO₂e” or “MT CO₂e” means metric tons of carbon dioxide equivalent.
- (12) “US” means United States.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0090

Overview of Program Provisions for Covered Entities and CCI Entities

- (1) OAR 340-271-0100 describes general requirements for covered entities.
- (2) OAR 340-271-0110 describes which air contamination sources are covered entities subject to the requirements of the CPP.
- (3) OAR 340-271-0120, OAR 340-271-0130, and 340-271-0150 describe covered entity requirements including notifying DEQ of changes in ownership, [operational control](#), and related entities; cessation of applicability; and [requirements to obtain CPP permits and CPP permit addendums](#), respectively.
- (4) OAR ~~340-271-0310~~[340-271-0300](#) through OAR 340-271-0390 describe the provisions that apply to covered stationary sources.
- (5) OAR 340-271-0410 through OAR 340-271-0890 and OAR 340-271-9000 describe the provisions that apply to covered fuel suppliers.
- (6) OAR 340-271-0900 through OAR 340-271-0990 describe the provisions for how DEQ will approve CCI entities and how CCI entities will implement [approved/eligible](#) projects supported by CCI funds.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0100

Oregon Climate Protection Program Requirements

(1) A person who owns or operates a covered entity must comply with the rules in this division. Compliance with this division does not relieve a [person who owns or operates a covered entity](#) of the obligation to comply with any other provisions of OAR chapter 340, as applicable.

(2) ~~Permit~~[CPP permit](#) or [CPP permit addendum](#). A person [who owns or operates a covered entity](#) identified in OAR 340-271-0110 must apply for and hold a [CPP permit](#) or [CPP permit addendum](#) according to OAR 340-271-0150 that authorizes the person's covered emissions and subjects the person to the requirements of this division.

(3) Reporting. A person who owns or operates a covered entity must submit reports and attestations required in this division, as applicable.

(4) Recordkeeping. A person who owns or operates a covered entity must develop and retain all records required in this division, as applicable.

(5) A person who owns or operates a covered entity must ~~register and report utilizing registration use forms~~ and reporting tools approved and issued by DEQ for all certifications, attestations and submissions. [All submissions must be made electronically unless otherwise requested or approved by DEQ.](#)

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0110

Covered Entity and Covered Emissions Applicability

(1) Calculations of covered emissions, compliance obligations and distribution of compliance instruments will be based on emissions data and information in emissions data reports [submitted by a person described in this rule and](#) required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340, division 272. [For any person that does not submit sufficient information in compliance with OAR chapter 340 divisions 215 and 272, calculations will be informed by additional best data available to DEQ.](#) For any person that has not registered and reported according to division 215, such calculations will be based on the best data available to DEQ, following all reporting requirements and assumptions that would be applicable had the person reported according to that division.

(2) A covered entity is subject to the requirements of this division for its covered emissions described in this rule. A person remains a covered entity until cessation is met according to

(3) Applicability for fuel suppliers ~~or~~and in-state producers. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in any applicability determination calendar year that equal or exceed the threshold for applicability listed in Table 1 in OAR 340-271-9000. All persons that are related entities must aggregate their emissions together to determine applicability and each becomes a covered fuel supplier if applicability ~~is~~ met. When applicability is met, each person is a covered fuel supplier beginning with the calendar year a person becomes a covered fuel supplier, as provided in Table 1 in OAR 340-271-9000. Once a person is a covered fuel supplier, the person remains a covered fuel supplier until the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a fuel supplier or in-state producer that imports, sells, or distributes fuel for use in Oregon, and is one or more of the following:

(A) A dealer, as that term is defined in ORS 319.010 that is subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax in OAR chapter 735, division 170;

(B) A seller, as that term is defined in ORS 319.520, that is subject to the Oregon Use Fuel Tax in OAR chapter 735, division 176;

(C) A person that produces, imports, sells, or distributes gasoline or distillate fuel oil ~~during a year~~ for use in Oregon and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax in OAR chapter 735, divisions 170 and 176; or

(D) A person that either produces propane in Oregon or imports propane for use in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of propane and liquid fuels (including, for example and without limitation, gasoline and petroleum products) imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels ~~including, for example and without limitation, biodiesel, renewable diesel, renewable propane, and ethanol;~~

(ii) Emissions that are from the combustion of fuels used for aviation including, for example and without limitation, aviation gasoline, kerosene-type jet fuel, and alternative jet fuel; and

(iii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems.

(4) Applicability for local distribution companies. A person is a covered fuel supplier if the

person is described in subsection (a) and has annual covered emissions described in subsection (b) in 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a local distribution company that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels ~~including biomethane;~~

(ii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems;

(iii) Emissions that result from non-combustion-related processes that use natural gas, as determined by DEQ; and

(iv) Emissions from natural gas delivered to an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

(5) Applicability for stationary sources. A person is a covered stationary source if the person is described in subsection (a), unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is ~~one~~either or both of the following:

(A) The person owns or operates an existing source required to obtain either a Title V Operating Permit or an Air Contaminant Discharge Permit and that has annual covered emissions described in subsection (b) that equal or exceed 25,000 MT CO₂e in 2018 or in any subsequent calendar year; or

(B) The person owns or operates a new source, or proposes to own or operate a new source, required to obtain either or both a Title V Operating Permit or an Air Contaminant Discharge Permit and that is reasonably anticipated has a potential to have emit annual covered emissions described in subsection (b) that will equal or exceed 25,000 MT CO₂e in any calendar year.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons

of CO₂e that are from either or both processes or the combustion of solid or gaseous fuels, including emissions from combustion for both energy production and processes.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels ~~including, for example and without limitation, biomethane and woody biomass;~~

(ii) Biogenic CO₂ emissions from solid fuels ~~including, for example and without limitation, tires and municipal solid waste;~~

(iii) Emissions that are from the combustion of liquid fuels or propane;

(iv) Emissions from natural gas, compressed natural gas, or liquefied natural gas used on-site that was delivered by a local distribution company;

(v) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;

(vi) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills;

(vii) Emissions from an air contamination source that is owned or operated by an interstate natural gas pipeline that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission; and

(viii) Emissions from an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0120

Changes in Covered Entity Ownership and Changes to Related Entities

(1) Changes in ownership or operational control.

(a) If a covered entity undergoes a change in ownership or operational control, the new person that owns or operates the covered entity must notify DEQ in writing within 30 days of the ownership or operational control change. The person must submit a complete and accurate notification, including providing the following information:

(A) The name of the previous owner or operator;

(B) The name of the new owner or operator;

(C) The date of ownership or operator change;

(D) Name of the designated representative;

(E) Information about each person that was a related entity prior to the change in ownership or operational control, subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(F) Information about each person that is a related entity after the change in ownership or operational control, subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit.

(b) The covered entity continues to be a covered entity following a change in ownership or operational control, until it meets the cessation requirements in OAR 340-271-0130. Any other covered entity that was a related entity also continues to be a covered entity following the change in ownership or operational control, until it meets the cessation according to OAR 340-271-0130.

(c) Following a change in ownership or operational control, a covered fuel supplier that holds a compliance instrument or CCI credit according to OAR 340-271-0430 or OAR 340-271-0830 continues to hold the compliance instrument or CCI credit according to each rule, as applicable.

(2) Changes to related entities of covered fuel suppliers.

(a) If a person subject to any regulations in OAR chapter 340 becomes a new related entity to a covered fuel supplier due to a change in ownership or operational control, the designated representative of the covered fuel supplier must notify DEQ in writing within 30 days of the ownership or operational control change. The designated representative must submit a complete and accurate notification, including providing the following information:

(A) Information about the new related entity, including legal name, full mailing address, and whether the person is a covered fuel supplier and holds a CPP permit;

(B) The name of the previous owner or operator of the new related entity;

(C) The name of the new owner or operator of the new related entity;

(D) The date of ownership or operator change for the new related entity; and

(E) Information about all other related entities subject to any regulations in OAR chapter 340, including legal names, full mailing addresses, and whether each is a covered fuel supplier and holds a CPP permit.

(b) If the person that is the new related entity to a covered fuel supplier identified in paragraph (a)(A) is not already a covered fuel supplier, the person:

(A) Becomes a covered fuel supplier beginning with the date of ownership or operator change;

(B) Must apply to DEQ for a CPP permit according to OAR 340-271-0150(1)(a)(B); and

(C) If the person is a covered fuel supplier, the person will have compliance obligations beginning with covered emissions from the calendar year in which the ownership or operator change occurred.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0130

Cessation of Covered Entity Applicability

(1) Cessation for covered fuel suppliers.

(a) A person that is a covered fuel supplier as described in OAR 340-271-0110 ~~shall remain~~remains a covered fuel supplier until the person receives written notification from DEQ after either or both:

(A) The person's annual covered emissions are 0 (zero) MT CO₂e for six consecutive calendar years; or

(B) The person was designated a covered fuel supplier in OAR 340-271-0110(3) and its annual covered emissions are less than 25,000 MT CO₂e for six consecutive calendar years and the person applies to DEQ according to subsection (c).

(b) After a covered fuel supplier identified according to paragraph (a)(A) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(A), DEQ will notify the designated representative of the covered fuel supplier in writing that cessation is met.

(c) In order for cessation according to paragraph (a)(B) to take effect, a covered fuel supplier must apply to cease being a covered fuel supplier by submitting the following information to DEQ on a form approved by DEQ:

(A) Information about the covered fuel supplier, including:

(i) Name and full mailing address, and website; and

(ii) Designated representative's contact information including name, title or position, phone number, and email address;

(B) Information about each related entity subject to any regulations in OAR chapter 340 for each of the six consecutive calendar years, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit;

(C) Information about remaining requirements that must be met according to this division at the time the application is submitted to DEQ; and

(D) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered fuel supplier] meets the eligibility for cessation as a covered fuel supplier according to Oregon Administrative Rules chapter 240, division 271. I understand that ceasing to be a covered fuel supplier means that [covered fuel supplier] will also cease to hold any compliance instruments and CCI credits.

(d) After the covered fuel supplier applying for cessation according to paragraph (a)(B) and subsection (c) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(B), DEQ will notify the designated representative of the covered fuel supplier in writing that the application for cessation is approved and that cessation is met.

(e) A person that ceases to be a covered fuel supplier according to this section must ~~continue to~~ comply with any all remaining applicable recordkeeping requirements ~~that apply of this division~~ from when the last date on which the person was a covered fuel supplier.

(f) When a person ceases to be a covered fuel supplier:

(A) The cessation does not change the compliance obligation for any year for which the person has already demonstrated compliance;

(B) Any remaining compliance instruments held by the person will be retired, held in reserve, or distributed by DEQ according to OAR 340-271-0430(3); and

(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-271-0830(1)(b).

(2) Cessation for covered stationary sources.

(a) A person ~~ceases to be~~ that is a covered stationary source if as described in OAR 340-271-0110 remains a covered stationary source until either of the source's following occur:

(A) The person's operations are changed such that all greenhouse gas emitting processes and operations cease to operate or are shut down. In order for cessation to take effect, the person must submit a written notification to DEQ certifying the cessation of all greenhouse gas emitting processes and operations ~~;~~ or

(B) The person's covered emissions are less than 25,000 MT CO₂e for five consecutive calendar years and the person has fully complied with any applicable BAER order and any related reporting requirements and has submitted any remaining required BAER assessment and five-year BAER report. In order for cessation to take effect, DEQ will notify the covered stationary source that cessation is met.

(b) This section does not apply to seasonal operational cessations or other temporary cessation of operations.

(c) A person that ceases to be a covered stationary source according to this section must ~~continue to~~ comply with all remaining applicable recordkeeping requirements of this division from ~~when~~the last date on which the person was a covered stationary source.

(3) Any person that ceases to be a covered entity according to this rule must resume meeting the requirements of this division for any future year in which applicability is met.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0150

Covered Entity Permit Requirements

(1) A person described in either or both OAR 340-271-0110(3) or (4) must apply for a Climate Protection Program CPP permit as provided in this section.

(a) The person must apply for a Climate Protection Program CPP permit according to subsections (b) and (c) by the following deadlines:

(A) If DEQ notifies the person in writing that the person is a covered fuel supplier, then the person must apply to DEQ for a CPP permit within 30 days of the notification: or by another date DEQ specifies in the notification that is at least 30 days after the date of the notification;

(B) If DEQ does not provide a notification, according to paragraph (A), then the person must apply to DEQ for a CPP permit by whichever is later of January 31/February 14 of the calendar year a person becomes a covered fuel supplier or March 31 of the year after the first applicability determination calendar year that the person's emissions equal or exceed the threshold in Table 1 in OAR 340-271-9000; or

(BC) If there was a change in ownership or operations/operational control according to OAR 340-271-0120(2), then the person must apply to DEQ for a CPP permit within 45 days of the change in ownership or operations/operational control.

(b) A person that submits a Climate Protection Program CPP permit application to DEQ must submit a complete and accurate application. The application for a Climate Protection Program CPP permit must be submitted to DEQ using a form approved by DEQ and include:

(A) Information/Identifying information about the covered fuel supplier including name, full mailing address, and website, and designated representative's contact information including name, title or position, phone number, and email address;

(B) Information about each related entity subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and

holds a CPP permit; and

(C) The following attestation, signed by the designated representative of the person considered a covered fuel supplier;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(c) DEQ may issue a CPP permit to a covered fuel supplier that submits a complete and accurate application. The permit may contain all applicable provisions of this ~~rule~~division and such other conditions as DEQ determines are necessary to implement, monitor and ~~enforce~~ensure compliance with this ~~rule~~division.

(2) The owner or operator of a new source that is a covered stationary source may not emit any covered emissions prior to being issued a BAER ~~determination~~order and a permit according to subsection (3)(c) and OAR 340-271-0330(1).

(3) The owner or operator of a covered stationary source required to apply for a CPP permit addendum according to OAR 340-271-0330(1) must submit a complete and accurate application to DEQ or LRAPA, as applicable, that complies with and includes information identified in this section.

(a) The application must include the following:

(A) Identifying information, ~~about the covered stationary source,~~ including name and the name of the person that owns or operates the covered stationary source, full mailing address, the ~~source~~physical address of the covered stationary source, and a description of the nature of business being operated, the name, phone number and email address of the designated representative who is responsible for compliance with the permit, the permit number for an existing source, and the SIC or NAICS code of the covered stationary source;

(B) The name of a person authorized to receive requests from DEQ for additional data and information;

(C) The date DEQ notified the owner or operator of the covered stationary source of the BAER ~~determination made~~order established according to OAR 340-271-0320;

(D) A BAER implementation plan that includes the following:

(i) Identification of the actions that the owner or operator of the covered stationary source will take to comply with the BAER ~~determination~~order; and

(ii) The schedule for implementing the ~~BAER determination~~requirements in the BAER order, consistent with any deadlines provided by DEQ in the BAER ~~determination~~order, if

applicable, and including an estimate of when all ~~BAER determination~~ requirements from the BAER order will be completed;

(E) Any other information requested by DEQ; and

(F) The following attestation, signed by the designated representative of the covered stationary source;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(b) DEQ or LRAPA, as applicable, may issue a CPP permit addendum to the owner or operator of a covered stationary source that submits a complete and accurate permit modification application. ~~Issuance of a CPP permit addendum requires public notice in consistent with the requirements of OAR chapter 340 division 209, divisions 216 and 218, as applicable. The CPP permit addendum will be issued as a Category I permit action according to OAR chapter 340, division 209.~~ A CPP permit addendum will amend the covered stationary source's Air Contaminant Discharge Permit or Title V Operating Permit until the requirements in the addendum can be incorporated into the ~~source's~~ operating permit. The CPP permit addendum may contain all applicable provisions of this ~~rule~~division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ~~enforce~~ensure compliance with the permit and this ~~rule~~division.

(c) If DEQ or LRAPA approves an application for an Air Contaminant Discharge Permit or Title V Operating Permit submitted by the owner or operator of a new source, then DEQ or LRAPA, as applicable, will incorporate the CPP conditions into the new operating permit and will not issue a separate CPP permit addendum. Such CPP conditions may contain all applicable provisions of this ~~rule~~division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ~~enforce~~ensure compliance with the permit and this ~~rule~~division.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.135.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.135.

340-271-0300

CPP Goals for Covered Stationary Sources

CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:

(1) Reduce total covered emissions from covered stationary sources and;

(2) Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017

through 2019 emissions.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0310

Best Available Emissions Reduction Assessments for Covered Stationary Sources

(1) Requirement to conduct a BAER assessment.

(a) When notified in writing by DEQ, the owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(A) must ~~conduct a~~submit a complete and accurate BAER assessment according to this rule. ~~The~~The owner or operator of the covered stationary source must submit a complete BAER assessment to DEQ not later than ~~one year~~nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in its notice or DEQ approves an extension according to section (6).

(b) The owner or operator of a new or proposed covered stationary source described in OAR 340-271-0110(5)(a)(B) must submit a complete and accurate BAER assessment completed according to this rule with its permit application submitted according to OAR chapter 340, division 216, or its notice of construction application submitted according to OAR chapter 340, division 210.

(2) BAER assessment requirements. BAER assessments submitted to DEQ must include ~~all~~components identified in this section~~the following:~~

(a) A description of the covered stationary source's production processes and a flow chart of each process;

(b) Identification of all fuels, processes, equipment, and operations that contribute to the covered stationary source's covered emissions, including:

(A) Estimates of annual average covered emissions identified in OAR 340-271-0110(5)(b). For existing covered stationary sources, estimates must be of current annual average covered emissions. For new sources, estimates must be of anticipated annual average covered emissions. Emissions must be identified in MT CO₂e, following methodologies identified in OAR chapter 340, division 215. This must also include and distinguish quantities and covered emissions of each fuel used to control air contaminants that are not greenhouse gases; and

(B) Estimates of current annual average type and quantity of all fuels used by the covered stationary source, and anticipated annual average fuel usage for new sources;

(c) Identification and description of all available fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions described in OAR 340-271-0110(5)(b). Strategies considered must include but are not limited to the strategies used by other sources in this state or in other jurisdictions that

produce goods of comparable type, quantity, and quality; and

(d) An assessment of each of the following for each strategy identified in subsection (c):

(A) An estimate of annual average covered emissions reductions achieved if the strategy were implemented compared to the emissions estimated in paragraph (b)(A);

(B) Environmental and health impacts, both positive and negative, if the strategy were implemented, including any impacts on air contaminants that are not greenhouse gases and impacts to nearby communities;

(C) Energy impacts if the strategy were implemented, including whether and how the strategy would change energy consumption at the covered stationary source, including impacts related to any fuel use that results in anthropogenic greenhouse gas emissions. Any energy-related costs must be included in the economic impacts assessment in paragraph (D), not the energy impacts assessment;

(D) Economic impacts if the strategy were implemented, including operating costs and the costs of changing existing processes or equipment or adding to existing processes and equipment. Any energy-related costs must be included in the economic impacts assessment, not the energy impacts assessment in paragraph (C). The economic impacts assessment must include both costs and cost savings (benefits). ~~The economic impacts assessment must include an estimate of the strategy's costs in terms of US dollars per MT CO₂e of covered emissions reduced;~~

(E) An estimate of the time needed to fully implement the strategy at the covered stationary source; and

(F) A list of the information, resources, and documents used to support development of the BAER assessment, including, if available, links to webpages that provide public access to supporting documents.

(3) Upon receipt of a BAER assessment described in section (2), DEQ will review the submittal and if DEQ determines that any additional information, corrections, or updates are required then DEQ may provide the owner or operator of the covered stationary source with a written request to provide such information by a certain date or DEQ may ~~proceed to make its issue the BAER determination order~~ based on the information it has available. If DEQ requests ~~that the owner or operator of the covered stationary~~ source ~~to~~ revise its BAER assessment according to this section, the ~~source~~owner or operator must provide such information no later than the deadline provided by DEQ.

(4) Five year ~~review~~BAER reports.

(a) ~~Not later than~~Every five years following the date that DEQ issued a BAER ~~determination order, the owner or operator of~~ a covered stationary source must submit to DEQ a five-~~year~~ ~~review~~BAER report that includes an ~~updated analysis update~~ of the information described in subsections (2)(a) through (c).

(b) If ~~a source identifies~~ one or more new strategies are identified in ~~the~~ five-~~year~~ ~~review~~ BAER report required in subsection (a) that ~~it has~~ not previously been evaluated in a BAER assessment, DEQ may notify the owner or operator of the covered stationary source and require that it conduct a complete BAER assessment according to section (2) and submit it to DEQ. Such complete BAER assessment must also include:

(A) Evaluation of any new strategies identified and any previously identified strategies using any new information available at the time the assessment is being conducted; and

(B) Current status and analysis of the ~~source's~~ implementation of requirements in any prior ~~DEQ-BAER determination order(s)~~.

(5) When notified in writing by DEQ, the owner or operator of a covered stationary source identified in section (1) may be required to conduct and submit an updated complete BAER assessment conducted according to this rule, in accordance with the following:

(a) DEQ may not require ~~at~~ the owner or operator of a covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment. However, if DEQ determines the owner or operator of a covered stationary source submitted information that it knew or should have known was false, inaccurate, or incomplete to DEQ, then DEQ may require ~~at~~ the owner or operator of the covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment;

(b) The updated BAER assessment must include ~~consideration~~ assessment of new strategies and previously identified strategies and any new information available at the time the assessment is being conducted;

(c) The owner or operator of the covered stationary source must include current status and analysis of the ~~source's~~ implementation of requirements in any prior ~~DEQ-BAER determination order~~; and

(d) The owner or operator of the covered stationary source must submit the updated BAER assessment to DEQ not later than ~~one year~~ nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in the notice or DEQ approves an extension according to section (6).

(6) ~~A~~ The owner or operator of a covered stationary source required to conduct a BAER assessment as described in sections (1) or (5) may request an extension of time to complete the BAER assessment by providing DEQ with a written request no fewer than 30 days prior to the submittal deadline. DEQ may grant an extension based on the following criteria:

(a) The owner or operator of the covered stationary source has demonstrated progress in completing the submittal; and

(b) A delay is necessary, for good cause shown by the owner or operator of the covered stationary source, related to obtaining more accurate or new data, performing additional analyses, or addressing changes in operations or other key parameters, any of which are

likely to have a substantive impact on the outcomes of the BAER assessment.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0320

DEQ Best Available Emissions Reduction Determination Order

(1) DEQ may ~~make issue~~ a BAER ~~determination order~~ for each owner or operator of a covered stationary source that must submit a BAER assessment as provided in OAR 340-271-0310. A BAER ~~determination order~~ will establish the actions that the owner or operator of a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken.

(2) In ~~making establishing the requirements in~~ a BAER ~~determination order~~ for a covered stationary source, DEQ may consider any information it deems relevant ~~to its determination~~, and must consider the following:

(a) Information submitted in a BAER assessment;

(b) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques that maximize covered emissions reductions;

(c) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions used by sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality;

(d) A reasonable schedule and amount of time necessary to implement a strategy under consideration by DEQ to reduce covered emissions;

(e) Environmental, public health, and energy impacts of a strategy under consideration by DEQ to reduce covered emissions, including but not limited to air quality impacts for nearby communities and impacts related to switching to cleaner energy resources, zero-emissions energy resources, or renewable fuels;

(f) Economic impacts of a strategy under consideration by DEQ to reduce covered emissions including, but not limited to, costs so great that a new source could not be built or an existing source could not be operated, and cost-effectiveness of different strategies that would achieve similar covered emissions reductions;

(g) Processes and operations currently in use by ~~the~~ and at the covered stationary source and the remaining useful life of the covered stationary source;

(h) Whether a strategy under consideration by DEQ to reduce covered emissions is achievable, technically feasible, commercially available, and cost-effective;

(i) Whether a strategy under consideration by DEQ to reduce covered emissions has an

impact on the type or quality of good(s) produced by and at the covered stationary source, if applicable; and

(j) Input from the public and community organizations from nearby the ~~source~~.

~~(3) For covered stationary source~~source.

(3) For the owner or operator of a covered stationary source required to register and report according to OAR chapter 340, division 215, DEQ will consider emissions data reports to assess whether covered emissions reductions are being achieved by when establishing the ~~source when making requirements in~~ a BAER determination order or for determining when to notify the owner or operator of a covered stationary source to conduct and submit an updated complete BAER assessment as described in OAR 340-271-0310(5).

(4) DEQ may verify information submitted in a BAER assessment.

(5) DEQ may consult with industry experts; and third-party organizations; ~~and communities in Oregon~~ before making issuing a BAER determination order.

(6) DEQ will notify the owner or operator of a covered stationary source of DEQ's a BAER determination order in writing. A BAER determination order is effective 30 days from the date of the notification unless, within that time, DEQ receives a written request for a hearing from the owner or operator of the covered stationary source according to section (7).

(7) The owner or operator of a covered stationary source may file with DEQ a written request for a contested case hearing to challenge a BAER determination order issued according to section (6). The request must be filed in writing within 30 days of the date that DEQ issued the BAER determination order and must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 11.

(8) DEQ will provide a public status update if DEQ has not yet issued a BAER order after 18 months of the date on which DEQ notified the owner or operator of a covered stationary source that it must conduct a BAER assessment.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0330

Compliance with a BAER determination Order

(1) The owner or operator of a covered stationary source for which DEQ has made issued a BAER determination order according to OAR 340-271-0320 must:

(a) Comply with the ~~conditions, requirements, or both, of~~ in the BAER determination order; and

(b) ~~Electronically submit~~Submit to DEQ or LRAPA, as applicable, a complete application for a CPP permit addendum according to OAR 340-271-0150(3) not later than 30 days after the date that the BAER ~~determination~~order is final and effective.

(2) Reporting requirements.

(a) The owner or operator of a covered stationary source that has been issued a CPP permit addendum or operating permit that includes provisions related to a BAER ~~determination~~order must submit an annual progress report to DEQ describing the ~~source's~~source's progress in implementing the ~~BAER determination~~requirements in the BAER order. The annual progress reports are due to DEQ on or before February 15 of each year following the date that the notice of ~~DEQ~~the BAER ~~determination~~order is final and effective. The annual progress report must include:

(A) A description of the ~~source's~~source's progress achieved in implementing the requirements in any BAER ~~determination~~order;

(B) A schedule indicating dates for future increments of progress;

(C) A description of any increases or decreases in covered emissions that have occurred at the ~~covered stationary~~covered stationary source since the submission date of the most recently conducted complete BAER assessment; and

(D) An estimate of when all implementation of requirements of the source BAER order will be complete-~~all BAER determination requirements~~.

(b) The owner or operator of a covered stationary source must submit a BAER ~~determination~~order completion report to DEQ no later than 60 days after ~~the source completes~~implementation of all required actions described requirements in the BAER determination order are complete, except for items related to continuous and ongoing requirements, ~~after all other requirements are completed~~. The report must include:

(A) The final increments of progress achieved in fully implementing the requirements in the BAER ~~determination~~order and the date the final increments of progress were achieved;

(B) A summary of the actions taken to fully implement the requirements in the BAER ~~determination~~order; and

(C) An estimate of the resulting covered emissions reductions that will be achieved now that the requirements in the BAER ~~determination~~order are being implemented.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0390

Recordkeeping Requirements Related to BAER

(1) Recordkeeping requirements related to BAER assessments and five-~~year~~ reviewBAER reports.

(a) The owner or operator of a covered stationary source that submits any information to DEQ related to a complete BAER assessment or five year reviewBAER report conducted according to OAR 340-271-0310 must retain the following records, in paper or electronic format, for a period of at least ten years from the date the information is submitted to DEQ:

(A) A copy of the assessment or report submitted to DEQ;

(B) Any contract(s) with any independent third-~~parties~~party(ies) in relation to developing the assessment or report; and

(C) All other information and documentation used to support and inform development of the assessment or report.

(b) The owner or operator of the covered stationary source must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

(2) Recordkeeping requirements related to compliance with a BAER determinationorder.

(a) The owner or operator of a covered stationary source ~~that receives~~issued a BAER determinationorder must retain the following records, in paper or electronic format, for a period of at least ten years from the applicable date specified below:

(A) All records and information related to a BAER determinationorder including but not limited to a copy of the most recently submitted complete BAER assessment and a copy of DEQ's written BAER determinationorder from the effective date of the BAER determinationorder;

(B) A copy of the permit modification application for the CPP permit addendum-~~application~~ or the applicable permit application from the date it is submitted to DEQ;

(C) A copy of each progress report from the date it is submitted to DEQ; and

(D) All other information and documentation related to actions taken ~~by the source~~ to comply with ~~the DEQ~~requirements in a BAER determinationorder from the effective date of the BAER determinationorder.

(b) The owner or operator of a covered stationary source ~~that receives~~issued a BAER determinationorder must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025,

340-271-0410

Generation of Compliance Instruments

(1) Each year, DEQ will generate the number of compliance instruments equal to the cap for a calendar year identified in Table 2 in OAR 340-271-9000.

(2) A compliance instrument is a regulatory instrument and does not constitute personal property, a security or any other form of property.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0420

Distribution of Compliance Instruments to Covered Fuel Suppliers

(1) DEQ will distribute compliance instruments according to this rule. DEQ will distribute compliance instruments from a cap according to sections (2) through (4) no later than March 31 of the calendar year of that cap.

(2) Annual distribution of compliance instruments to covered fuel suppliers that are local distribution companies. DEQ will annually distribute to each local distribution company, or to its successor(s) due to a change in ownership or operation, the number of compliance instruments from the calendar year's cap stated in Table 4 in OAR 340-271-9000.

(3) DEQ will establish a compliance instrument reserve for covered fuel suppliers that are new to the program and are not local distribution companies. DEQ will hold, according to subsection (4)(a), a subset of compliance instruments in the reserve from the caps identified in Table 2 in OAR 340-271-9000. Once a compliance instrument is placed in the reserve, it remains in the reserve until DEQ determines, at its discretion, to undertake one of the following actions:

(a) DEQ distributes the compliance instrument according to section (5) to a covered fuel supplier that is not a local distribution company;

(b) DEQ retires the compliance instrument because the compliance instrument reserve exceeds the size described in Table 3 OAR 340-271-9000, provided that after such retirements the size of the compliance instrument reserve will equal or exceed the reserve size described in Table 3; or

(c) DEQ distributes the compliance instrument to a covered fuel supplier that is not a local distribution company because the size of the compliance instrument reserve exceeds the reserve size described in Table 3 in OAR 340-271-9000**340-271-9000**. DEQ will only distribute compliance instruments from the reserve according to this subsection if there are at least 10,000 compliance instruments to distribute and if the remaining size of the reserve after this distribution will equal or exceed the reserve size described in Table 3 in OAR 340-

271-9000. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company according to section (4)(b), except “total compliance instruments to distribute” means the total number of compliance instruments DEQ is distributing from the reserve according to this subsection.

(4) Annual distribution of compliance instruments to covered fuel suppliers that are not local distribution companies. DEQ will annually distribute compliance instruments from the applicable calendar year’s cap to covered fuel suppliers that are not local distribution companies as follows:

(a) ~~If at the time of the annual distribution~~ the size of the compliance instrument reserve is less than the reserve size described in Table 3 in OAR 340-271-9000 ~~then from for the annual distribution calendar year, then~~ DEQ will calculate the difference and hold in the compliance instrument reserve, ~~from that year’s annual distribution quantity of compliance instruments.~~ Otherwise, the number of compliance instruments ~~necessary to attain the reserve size described in Table 3. If at that time the size of the compliance instrument reserve is greater than or equal to the reserve size described in Table 3, DEQ will not hold any additional compliance instruments in the reserve from the annual distribution will not be changed.~~

(b) Except for compliance instruments identified in Table 4 in OAR 340-271-9000 for distribution according to section (2) and the compliance instruments held in the reserve according to section (3) and subsection (4)(a), DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company as described in this subsection, based on available information from the evaluation period described in Table 5 in OAR 340-271-9000. If a covered fuel supplier ~~does or its related entities do~~ not have available information for one or more of the years of the evaluation period, DEQ may exclude the covered fuel supplier and its emissions ~~will be excluded~~ from this calculation ~~and. If the covered fuel supplier is excluded, then the~~ distribution for the covered fuel supplier will be addressed using the methodology described in section (5).

(A) DEQ will use the following formula to calculate the number of compliance instruments to distribute to each covered fuel supplier:

*Number of Compliance Instruments = Total compliance instruments to distribute *
([Covered fuel supplier covered emissions + covered fuel supplier biofuel emissions] / Total emissions)*

(B) As used in the formula in paragraph (A):

(i) “Total compliance instruments to distribute” means the cap for the calendar year, according to Table 2 in OAR 340-271-9000, minus the number of compliance instruments identified in Table 4 in OAR 340-271-9000; and minus the number of compliance instruments placed into the compliance instrument reserve;

(ii) “Covered fuel supplier covered emissions” means the sum of a covered fuel supplier’s covered emissions during the evaluation period;

(iii) “Covered fuel supplier biofuel emissions” means emissions described in OAR 340-271-

0110(3)(b)(B)(i) that result from the complete combustion or oxidation of the annual quantity of biomass-derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state during the evaluation period; and

(iv) “Total emissions” means the sum of “covered fuel supplier covered emissions” and “covered fuel supplier biofuel emissions” during the evaluation period for all covered fuel suppliers ~~that are not local~~whose compliance instrument distribution companies is calculated according to this section.

(C) DEQ will distribute a number of compliance instruments to each covered fuel supplier using the formula in paragraph (A) and rounded down to the nearest whole number.

(D) Any remaining compliance instruments not distributed due to rounding will be held in the reserve.

(5) Distribution from compliance instrument reserve for new covered fuel suppliers that are not local distribution companies.

(a) A covered fuel supplier is eligible for a distribution from the compliance instrument reserve if it is not a local distribution company and if:

(A) The covered fuel supplier was excluded from the distribution in section (4) due to a lack of sufficient available information; or

(B) The person becomes a covered fuel supplier after DEQ has distributed the compliance instruments for that year according to section (4).

(b) A covered fuel supplier identified according to subsection (a) may request a distribution of compliance instruments from the reserve by submitting an application to DEQ, on a form approved by DEQ, that includes the information described in paragraphs (A) through (D). The covered fuel supplier must submit a separate application for each year for which it is seeking distribution of compliance instruments from the reserve.

(A) Information about the covered fuel supplier, including:

(i) Name and full mailing address; and

(ii) Designated representative’s contact information including name, title or position, phone number, and email address;

(B) The calendar year of covered emissions for which compliance instruments are requested;

(C) The reason for the request, including description of eligibility according to subsection (a); and

(D) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this application on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered fuel supplier] is a covered fuel supplier in the year indicated in this application and requests compliance instruments from the reserve according to the information included in this application.

(c) DEQ will review an application submitted according to subsection (b) to ensure that it meets the requirements of this section. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(d) If DEQ approves an application, DEQ may distribute one or more compliance instruments to the covered fuel supplier from the reserve. -In determining the number of compliance instruments to distribute from the reserve to the covered fuel supplier, DEQ may consider:

(A) The number of compliance instruments the covered fuel supplier might have received according to section (4) if DEQ had sufficient available information to include the covered fuel supplier in that calculation;

(B) The number of compliance instruments in the reserve at that time;

(C) A maximum distribution amount that will not exceed the covered fuel supplier's covered emissions in that year; and

(D) A maximum distribution amount that will not exceed 300,000 compliance instruments per covered fuel supplier per year.

(6) Upon distribution of compliance instruments according to sections (2), (4), and (5), DEQ will notify the designated representative of each covered fuel supplier in writing of the availability of compliance instruments.

(7) DEQ will track distributed compliance instruments.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0430

Holding Compliance Instruments

When DEQ distributes a compliance instrument to a covered fuel supplier according to OAR 340-271-0420 or when a covered fuel supplier acquires a compliance instrument according to OAR 340-271-0500, the covered fuel supplier may continue to hold the compliance instrument until any of the following apply:

(1) The covered fuel supplier uses the compliance instrument toward ~~demonstrating its~~ demonstration of compliance with a compliance obligation according to OAR 340-271-0450;

(2) The covered fuel supplier transfers the compliance instrument to another covered fuel supplier according to OAR 340-271-0500; or

(3) The ~~person~~covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When this occurs, DEQ may, at its discretion:

(a) Retire the compliance instrument; or

(b) If the ~~person~~covered fuel supplier is not a local distribution company:

(A) Hold the compliance instrument in the compliance instrument reserve described in OAR 340-271-0420(3); or

(B) Distribute the compliance instrument to a covered fuel supplier that is not a local distribution company. DEQ will only distribute the compliance instrument if there are at least 10,000 compliance instruments to distribute. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier according to OAR 340-271-0420(4)(b), except “total compliance instruments to distribute” means the total number of compliance instruments DEQ is distributing according to this paragraph.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0440

Compliance Periods

(1) Each compliance period is three consecutive calendar years.

(2) The first compliance period begins with calendar year 2022, and includes calendar years 2023 and 2024.

(3) A new compliance period begins with the calendar year following the last calendar year of the preceding compliance period.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0450

Demonstration of Compliance

~~(1) DEQ will determine a covered fuel supplier’s total compliance obligation for the compliance period as the sum of the covered fuel supplier’s annual compliance obligation(s) for each year of a compliance period. DEQ will base its determinations on emissions~~

calculated according to OAR 340-271-0110(1). DEQ will notify the covered fuel supplier of its determination.

~~(2) A covered fuel supplier must demonstrate compliance according to this rule by November 15²⁸ of the year following the end of each compliance period. Such demonstration must be made concurrently for each compliance obligation for each calendar year within the compliance period.~~

~~(2) DEQ will determine the annual compliance obligation for each covered fuel supplier for each year of a compliance period. DEQ may base its determinations on emissions data and information, or 25 days after DEQ's notification described in emissions data reports required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340, division 272, section (1), whichever is later.~~

(3) To demonstrate compliance ~~with each annual compliance obligation~~ for a compliance period, a covered fuel supplier must submit the following to DEQ:

(a) For each metric ton of CO₂e ~~for~~of the total compliance ~~obligations for a compliance period, submit~~obligation, either a compliance instrument or a CCI credit ~~according, subject to~~ the following limitations:

(A) ~~The~~A covered fuel supplier ~~must~~may only submit compliance instruments that DEQ distributed from the ~~cap~~caps for the calendar years of the applicable compliance period ~~for which the covered fuel supplier is demonstrating compliance~~ or from caps for earlier cap years~~compliance periods~~; and

(B) The ~~percent~~quantity of CCI credits used to demonstrate compliance as a percentage of the total compliance obligations for which the covered fuel supplier submits CCI credits ~~must~~obligation for the applicable compliance period may not exceed the allowable percentage ~~for that compliance period according to~~specified in Table 6 in OAR 340-271-9000.

(b) A demonstration of compliance form, approved by DEQ that includes:

(A) Name and full mailing address of the covered fuel supplier;

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(C) Identification of the compliance period and calendar year(s) for which the covered fuel supplier is demonstrating compliance;

(D) The total compliance obligations in metric tons of CO₂e for the compliance period and listed separately for each calendar year in the compliance period;

(E) The total number of compliance instruments the covered fuel supplier is submitting to DEQ to demonstrate compliance, and separately the total number submitted from each ~~cap year from which DEQ distributed the compliance instruments;~~calendar year's cap;

(F) The total number of CCI credits the covered fuel supplier is submitting to DEQ to demonstrate compliance; and

(G) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this report on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. It is the intent of [covered fuel supplier] to use the quantity of compliance instruments and credits listed on this form and submitted to DEQ for the demonstration of compliance. I certify that [covered fuel supplier] has not exceeded the allowable use of CCI credits. If any portion of these compliance obligations remain unmet after this submission, I understand that [covered fuel supplier] must still demonstrate compliance with the remaining portion and may be subject to enforcement action.

(4) Each metric ton of CO₂e of a compliance obligation for which a covered fuel supplier does not demonstrate compliance according to this rule is a separate violation of this division.

(5) If a change in ownership of a covered fuel supplier occurs, the person that owns or operates the covered fuel supplier as of December 31 in the final year of a compliance period is responsible for ~~demonstrating~~demonstration of compliance according to this rule for each annual compliance obligation during the compliance period. Compliance obligations may not be split or subdivided based on ownership changes during the compliance period or during any year within the compliance period.

~~(6) DEQ will track all covered fuel suppliers' compliance obligations and demonstration of compliance submissions.~~

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0490

Recordkeeping Requirements Related to Demonstration of Compliance

(1) A person must retain the following records necessary for determining compliance obligations, in paper or electronic format, for a period of at least seven years beginning September 30 of the year following a year in which covered emissions occurred:

(a) Records according to the recordkeeping requirements of OAR chapter 340, divisions 215 and 272, as applicable;

(b) Copies of reports and forms submitted to DEQ related to determination of compliance obligations according to this division and OAR chapter 340, divisions 215 and 272, including but not limited to:

(A) Applicable emissions data reports submitted according to OAR chapter 340, division 215; and

(B) Applicable verification statements submitted according to OAR chapter 340, division 272; and

(c) All other information and documentation used to calculate and report emissions and used to determine emissions and compliance obligations according to this division.

(2) A person must retain the following records necessary for supporting demonstration of compliance, according to OAR 340-271-0450, in paper or electronic format for a period of at least seven years following the deadline for ~~demonstrating~~demonstration of compliance in OAR 340-271-0450:

(a) Copies of reports and forms submitted to DEQ related to demonstration of compliance, including but not limited to demonstration of compliance forms; and

(b) All other information and documentation used to support demonstration of compliance.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0500

Trading of Compliance Instruments

(1) A covered fuel supplier may trade one or more compliance instruments only according to this rule. A covered fuel supplier may transfer one or more compliance instruments to another covered fuel supplier up to the amount that it has available and has not used to demonstrate compliance. A covered fuel supplier may acquire one or more compliance instruments from another covered fuel supplier.

(2) A covered fuel supplier may not engage in a trade of a compliance instrument involving, related to, in service of, or associated with any of the following:

(a) Fraud, or an attempt to defraud or deceive using any device, scheme or artifice;

(b) Use of any unconscionable tactic in connection with the transfer, by any person;

(c) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the compliance instrument being sold. A fact is material if it is reasonably likely to influence a decision by another person or by DEQ;

(d) Any activity intended to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition in the market for compliance instruments;

(e) A conspiracy in restraint of trade or commerce; or

(f) An attempt to monopolize holding of compliance instruments, or to combine, collude, or conspire with any other person or persons to monopolize.

~~(3) When DEQ receives a compliance instrument trade form for one or more compliance instruments as described in OAR 340-271-0510, DEQ will inform the applicant either that the submitted form is complete or that additional specific information is required to make the form complete. Upon receipt of a complete form described in OAR 340-271-0510 signed by both covered fuel suppliers involved in a trade, DEQ will track traded compliance instruments. DEQ will notify the designated representative of the covered fuel supplier acquiring compliance instrument(s) in writing of availability of these compliance instruments. DEQ will notify the designated representative of the covered fuel supplier transferring compliance instrument(s) in writing that the covered fuel supplier no longer holds the compliance instruments. If DEQ determines that the form is incomplete, DEQ will not track the requested trade unless and until the applicant provides the additional information requested by DEQ to make the form complete, and such instruments will not be available to the covered fuel supplier acquiring the instruments.~~

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0510

Notification to DEQ of Compliance Instrument Trades Trade Notifications and Process

(1) ~~When covered~~Covered fuel suppliers ~~intend to~~that trade one or more compliance instruments, must notify DEQ of the trade. The designated representatives of both the covered fuel supplier transferring the compliance instrument and the covered fuel supplier acquiring the compliance instrument must sign and submit a compliance instrument trade form that meets the requirements of this section, using a form approved by DEQ, ~~and:~~

(a) The covered fuel supplier transferring one or more compliance instruments must sign first; and

(b) The covered fuel supplier acquiring the compliance instrument(s) must sign the same form and submit it to DEQ no later than five business days~~one week~~ after the transferring covered fuel supplier signs the form.

~~(2c)~~ All of the following must be included on a compliance instrument trade form:

~~(aA)~~ The agreed upon date of the trade.

~~(bB)~~ The total number of compliance instruments traded, and separately the total number traded from each calendar~~cap year from which DEQ distributed the compliance instruments~~

year's cap.

(~~eC~~) The total price per compliance instrument (in US dollars), excluding any fees. If a specific dollar value is not paid for the compliance instrument, an estimate ~~may~~must be provided.

~~(d)(D) As applicable, other information about the trade that DEQ determines is necessary to support DEQ's monitoring of trades and that DEQ includes on the form;~~

(~~E~~) The following information about the covered fuel supplier transferring the compliance instrument(s):

(~~A~~i) Name and full mailing address of the covered fuel supplier.

(~~B~~ii) Designated representative's contact information including name, title or position, phone number, and email address.

(~~E~~iii) The following attestation, signed by the designated representative:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this form is true, accurate, and complete. [Covered fuel supplier] is transferring these compliance instruments to [covered fuel supplier that is acquiring] for the price described in this form.

(~~eF~~) The following information about the covered fuel supplier acquiring the compliance instrument(s):

(~~A~~i) Name and full mailing address of the covered fuel supplier.

(~~B~~i) Designated representative's contact information including name, title or position, phone number, and email address.

(~~E~~iii) The following attestation, signed by the designated representative:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this form is true, accurate, and complete. [Covered fuel supplier] is acquiring compliance instruments from [covered fuel supplier that is transferring] for the price described in this form.

(2) When DEQ receives a compliance instrument trade form for one or more compliance instruments as described in section (1), DEQ will inform the applicant either that the submitted form is complete or that additional specific information is required to make the form complete. Upon receipt of a complete form signed by both covered fuel suppliers involved in a trade, DEQ will track traded compliance instruments. DEQ will notify the designated representative of the covered fuel supplier acquiring compliance instrument(s) in writing of availability of these compliance instruments. DEQ will notify the designated representative of the covered fuel supplier transferring compliance instrument(s) in writing that the covered fuel supplier no longer holds the compliance instruments. If DEQ determines

that the form is incomplete, DEQ will not track the requested trade unless and until the applicant provides the additional information requested by DEQ to make the form complete, and such instruments will not be available to the covered fuel supplier acquiring the instruments.

(3) A covered fuel supplier acquiring one or more compliance instrument(s) in a trade may not use the compliance instrument(s) in other trades or toward demonstration of compliance with any compliance obligation until the trade has been reported to DEQ and DEQ has tracked the traded compliance instrument(s). Trades may only be reported to DEQ after DEQ has made the compliance instrument trade form available. DEQ will notify covered fuel suppliers when the compliance instrument trade form is available.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0590

Recordkeeping Requirements Related to Trading

(1) A person who transfers one or more compliance instruments in a trade according to OAR 340-271-0510 must retain the following records related to each trade, in paper or electronic format for a period of at least seven years following the submission date of a complete compliance instrument trade form:

- (a) A copy of each compliance instrument trade form submitted to DEQ;
- (b) A copy of any invoice or documentation of monetary payment received related to the trade;
- (c) A statement from a financial institution showing receipt of any payment for the compliance instrument;
- (d) Documentation of any service or other qualitative compensation received related to the trade; and
- (e) A copy of all other data, reports, or other information related to the trade.

(2) A person who acquires one or more compliance instruments in a trade according to OAR 340-271-0510 must retain the following records related to each trade, in paper or electronic format for a period of at least seven years following the submission date of a complete compliance instrument trade form:

- (a) A copy of each compliance instrument trade form submitted to DEQ;
- (b) A copy of any invoice or documentation of monetary payment related to the trade;
- (c) A statement from a financial institution showing any payment for the compliance instrument;

(d) Documentation of any service or other qualitative compensation provided related to the trade; and

(e) A copy of all other data, reports, or other information related to the trade.

(3) Covered fuel suppliers must make the records retained according to this rule available to DEQ upon request. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0810

Covered Fuel Supplier Application for Community Climate Investment Credits

(1) A covered fuel supplier is eligible to receive one or more CCI credits if it contributes CCI funds ~~to one or more CCI entity(ies)~~ according to this rule.

(a) The covered fuel supplier may receive CCI credits only ~~contribute CCI funds for contributions~~ to a CCI entity approved by DEQ. ~~If there are no CCI entities approved by DEQ, a covered fuel supplier may not contribute CCI funds.~~

~~(b) If one or more CCI entity(ies) that~~ has been approved by DEQ, ~~contributions of CCI funds may occur on or after March 1, 2023.~~ according to OAR 340-271-0920(1) and has entered into a written agreement with DEQ to accept and administer CCI funds according to OAR 340-271-0920(2).

(b) A covered fuel supplier is not eligible to receive a CCI credit for any contribution made to a CCI entity prior to March 1, 2023.

(c) ~~The~~ If more than one CCI entity is approved to accept funds according to subsection (a) the covered fuel supplier must contribute an equal amount of CCI funds to each CCI entity that is approved at the time of the contribution, except they may receive funds consistent with its agreement with DEQ according to OAR 340-271-0920(2). ~~The~~ contribution amount to each CCI entity may vary by up to one US dollar.

(2) A covered fuel supplier must apply to receive CCI credits by submitting an application to DEQ, on a form approved by DEQ that includes the information described in section (3). A covered fuel supplier may not submit an application to request CCI credits on behalf of another person.

(3) A covered fuel supplier that submits an application to DEQ to request CCI credits must submit a complete and accurate application. The application must include:

(a) Information about the covered fuel supplier, including:

(A) Name and full mailing address; and

(B) Designated representative's contact information including name, title or position, phone number, and email address;

(b) The name of each CCI entity that received CCI funds from the covered fuel supplier;

(c) A copy of the receipt(s) described in OAR 340-271-0930(1)(~~ba~~) received from each CCI entity;

(d) The total CCI funds (in US dollars) contributed to each CCI entity, excluding any fees; and

(e) The following attestation, signed by the designated representative of the covered fuel supplier:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [Covered fuel supplier] contributed the community climate investment funds noted in this application to each community climate investment entity listed for the purposes of supporting eligible projects as described in OAR 340-271-0900.

~~(34) (a) A covered fuel supplier that submits an application according to seeking to this rule may receive CCI credits from in order to use them to demonstrate compliance for a particular compliance period must submit its application to DEQ no later than November 14 of the year it will demonstrate compliance according to OAR 340-271-0820.340-271-0450, or 11 days after DEQ's notice described in OAR 340-271-0450(1), whichever is later.~~

~~(a) The calculation (b) DEQ's determination of the number quantity of CCI credits generated to generate and distributed by DEQ distribute is based on the total CCI funds amount of the covered fuel supplier included in the supplier's contribution to CCI entities, as documented in its application and the CCI credit contribution amount described in Table 87 in OAR 340-271-9000 that was in effect on the date the contribution was made, adjusted for inflation according to OAR 340-271-0820(3).~~

~~(b) If there was not at least one approved CCI entity for an entire compliance period, the covered fuel supplier may not receive CCI credits for that compliance period except according to OAR 340-271-0820(3)(a)(D) and (E) if DEQ approves at least one CCI entity in that time.~~

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0820

Generation and Distribution of Community Climate Investment Credits

(1) DEQ will review an application submitted according to OAR 340-271-0810 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the

application complete. If DEQ determines that the application is incomplete or does not meet the requirements of OAR 340-271-0810, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(2) DEQ will approve an application for CCI credits submitted by a covered fuel supplier if DEQ determines that the application is accurate and complete according to the requirements of OAR 340-271-0810, and DEQ determines that the CCI funds have been provided to an approved CCI entity that is in good standing according to OAR 340-271-0910 through OAR 340-271-0990.

~~(3)~~ (3) Approval of an application for CCI credits.

(a) Upon approval of an application for CCI credits, DEQ will:

~~(a) Generate~~ notify the covered fuel supplier in writing that DEQ has approved the application and will generate and distribute to the covered fuel supplier ~~one or more~~ the quantity of CCI credits ~~as follows:~~ approved according to subsection (b).

~~(A) Except as limited by paragraphs (B) through (E), for every allowable~~ (b) The amount of CCI credits that DEQ will generate and distribute to the covered fuel supplier is one CCI credit for every verified contribution of the CCI credit contribution amount that a covered fuel supplier provides to a CCI entity, ~~DEQ will generate and distribute one CCI credit~~ rounded down to the nearest whole number. The CCI credit contribution amount ~~is~~ is the applicable amount in Table 7 in OAR 340-271-9000 for the date ~~at~~ the contribution is ~~was made is described in Table 7 in OAR 340-271-9000, and will be, with the CCI credit contribution amount~~ adjusted for inflation and rounded to the nearest dollar using the inflation rate since January 2021, as provided by the United States Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items. DEQ will post the current, inflation adjusted CCI credit contribution amount on its website- effective March 1 of each year. The formula for the adjustment is as follows:

$$CCI\ Credit\ Contribution\ Amount = CCI\ Credit\ Contribution\ Amount\ in\ Table\ 7\ in\ OAR\ 340-271-9000 * (CPI-U\ West\ for\ January\ of\ the\ calendar\ year\ for\ the\ price\ in\ Table\ 7\ in\ OAR\ -340-271-9000\ that\ is\ currently\ in\ effect / CPI-U\ West\ for\ January\ 2021)$$

~~(B) DEQ will calculate the maximum number of CCI credits it will distribute to a covered fuel supplier within a compliance period as follows:~~

$$Maximum\ number\ of\ CCI\ credits = Percentage\ for\ compliance\ period * average\ annual\ compliance\ instruments\ distributed * number\ of\ years.$$

~~(C) As used in the formula in paragraph (B):~~

~~(i) "Percentage for compliance period" means the percent described in Table 8 in OAR 340-271-9000 based on the compliance period in which the application is submitted;~~

~~(ii) “Average annual compliance instrument distributed” means the average annual number of compliance instruments DEQ has distributed to the covered fuel supplier during the compliance period in which the application is submitted; and~~

~~(iii) “Number of years” means the count of the number of calendar years in the compliance period in which the application is submitted.~~

~~(D) If a covered fuel supplier submits an application for CCI credits within the first three months of a compliance period and the covered fuel supplier has not already received the maximum number of CCI credits for the preceding compliance period, then DEQ may calculate the maximum number of CCI credits according to paragraph (B) with the following used in the formula:~~

~~(i) “Percentage for compliance period” means the percent described in Table 8 in OAR 340-271-9000 based on the compliance period preceding the compliance period in which the application is submitted;~~

~~(ii) “Average annual compliance instruments distributed” means the average annual number of compliance instruments DEQ distributed to the covered fuel supplier during the compliance period preceding the compliance period in which the application is submitted; and~~

~~(iii) “Number of years” means the count of the number of calendar years in the compliance period preceding the compliance period in which the application is submitted.~~

~~(E) If a covered fuel supplier submits an application for CCI credits after the first three months of a compliance period, then any CCI credits that were previously distributed according to paragraph (D) will not be included in calculations of the maximum number of CCI credits according to paragraph (B) for the compliance period in which the application is submitted; and~~

~~(b) Notify the covered fuel supplier in writing that DEQ has approved the application and that the CCI credits are now available to the covered fuel supplier to use toward demonstrating compliance.~~

(4) A CCI credit is a regulatory instrument and does not constitute personal property, a security or any other form of property.

(5) DEQ will track distributed CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0830

Holding Community Climate Investment Credits

(1) When DEQ distributes a CCI credit to a covered fuel supplier according to OAR 340-

271-0820, the covered fuel supplier may continue to hold the CCI credit until either any of the following apply:

(a) The covered fuel supplier uses the CCI credit toward demonstrating its demonstration of compliance ~~with a compliance obligation~~ according to OAR 340-271-0450;

(b) Two demonstration of compliance deadlines described in OAR 340-271-0450(2) have passed since the date DEQ provided written notice of its approval of the CCI credit to the covered fuel supplier according to OAR 340-271-0820 and the covered fuel supplier has not used the CCI credit in its demonstration(s) of compliance. In such a case, DEQ will cancel the CCI credit. A cancelled CCI credit may not be used toward demonstration of compliance;
or

~~(b)~~ (c) The person covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When ~~the person a covered fuel supplier~~ ceases to be a covered fuel supplier, DEQ will cancel ~~all CCI credits held by the covered fuel supplier~~ the CCI credit at the time of such cessation. A cancelled CCI credit may not be used ~~to demonstrate toward any~~ demonstration of compliance.

(2) Only a covered fuel supplier that receives a CCI credit from DEQ may hold the CCI credit. The covered fuel supplier may not trade the CCI credit.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0890

Recordkeeping Requirements Related to Community Climate Investment Funds

(1) A covered fuel supplier that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period of time that begins with the date it provides the CCI funds and lasts seven years after submitting all resulting CCI credits to demonstrate compliance or until the person ceases to be a covered fuel supplier:

(a) A copy of any invoice or documentation of monetary payment related to CCI funds;

(b) A statement from a financial institution showing any payments related to CCI funds;

(c) A copy of any receipt received from a CCI entity; and

(d) All other information and documentation related to the CCI funds provided to a CCI entity.

(2) A covered fuel supplier must retain the following records, in paper or electronic format, for a period that begins the date it applies for a CCI credit and lasts seven year after using the CCI credit to demonstrate compliance or until the person ceases to be a covered fuel supplier:

(a) A copy of each application submitted to DEQ to request CCI credits; and

(b) All other information and documentation related to CCI credit(s) received from DEQ.

(3) A covered fuel supplier must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered fuel supplier must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 and 468A.050.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040, 468A.045 and 468A.050.

340-271-0900

Purpose/Purposes of Community Climate Investments and Eligible Uses of CCI Funds

(1) The purposes of community climate investments are to:

(1a) Provide covered entities with an optional means of meeting part of their compliance obligation for one or more compliance periods;

(b) Reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ;

(2c) Reduce emissions of other air contaminants that are not greenhouse gases, particularly in ~~and/or~~ near environmental justice communities in Oregon;

(3d) Promote public health, environmental, and economic benefits for environmental justice communities ~~in~~ throughout Oregon to mitigate impacts from climate change, air contamination, energy costs, or any combination of these; and

(4e) Accelerate the transition of residential, commercial, industrial and transportation-related uses of fossil fuels ~~to lower carbon~~ in or near environmental justice communities in Oregon to zero or to other lower greenhouse gas emissions sources of energy in order to protect people, communities and businesses from increases in the prices of fossil fuels.

(2) A CCI entity may use CCI funds only for:

(a) Implementing eligible projects in Oregon, which are actions that reduce anthropogenic greenhouse gas emissions that would otherwise occur in Oregon. Eligible projects include, without limitation, actions that reduce emissions in Oregon resulting from:

(A) Transportation of people, freight, or both;

(B) An existing or new residential use or structure;

(C) An existing or new industrial process or structure; and

(D) An existing or new commercial use or structure.

(b) The costs of administering CCI funds and eligible projects, including costs of reporting and other requirements included in OAR 340-271-0930 and costs of capacity-building for

implementation of eligible projects.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

~~Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.~~

~~Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.~~

340-271-0910

Application ~~for~~ DEQ ~~for~~ Approval as a Community Climate Investment Entity

(1) To be eligible for DEQ approval as a community climate investment entity, a personan entity must demonstrate that it:

(a) ~~Be an organization~~Is authorized to do business in Oregon, and that it is exempt from federal taxation according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

~~(b) Complete annual independent financial audits;~~

(b) Has the capacity to administer and spend CCI funds to carry out eligible projects as specified in OAR 340-271-0900(2);

(c) ~~Have~~Has or will have staff capable of conducting work associated with being a CCI entity according to this division; ~~and~~

(d) ~~Have~~Has or will have staff or subcontractors capable of implementing approvedeligible projects, ~~as applicable, throughout Oregon; and~~

(e) Is not a covered entity or a related entity of a covered entity.

(2) An eligible ~~person~~entity described in section (1) may apply to be approved as a CCI entity to implement ~~one or more~~ eligible projects ~~or project types independently, directly or by agreement~~ with one or more subcontractors, or both.

~~(a) Subcontractors are not CCI entities, and do not need to meet the eligibility requirements of subsectionsection (1)(c). However, a) through (e).~~

~~(b) A covered CCI entity or any of its related entities may not beuse CCI funds to pay a subcontractor and may not receive CCI funds that is a covered entity or a related entity of a covered entity.~~

(3) An ~~applicant~~entity that seeks approval as a CCI entity must submit an application to DEQ, on a form approved by DEQ that includes the following:

(a) Information about ~~applicant~~the entity, including:

(A) Name, full mailing address, and website address;

~~(A) Name, full mailing address, and website address;~~

(B) Contact person's ~~contact~~ information including name, title or position, phone number, and email address;

(C) Information to describe how the applicant entity meets the eligibility criteria in section (1);

~~(D)~~ (D) A copy of the entity's current articles of incorporation and bylaws, and a description of the mission of the applicant entity and how being a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals, if known, who would be working to implement eligible projects with CCI funds or assigned work associated with the requirements of a CCI entity described in OAR 340-271-0930;

(F) A description of ~~prior~~ experience implementing or supporting implementation of eligible projects or project types similar to those, particularly in environmental justice communities in Oregon. This may include the experience of the key individuals described in subsection (d) and a description of prior experience serving the communities that will benefit from the projects or project types described in subsection (d); paragraph (E) whether or not that prior experience occurred while working with the entity;

(G) Information regarding any violation by the entity related to federal or state labor laws within the preceding five years;

(H) The ~~applicant's independent financial audits and~~ entity's IRS Form 990 for each of the three most recent years, if available; and

(I) Proof that the IRS has certified the applicant entity as qualifying as an exempt organization according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Information about any each known or planned subcontractors, as available, including:

(A) Name, full mailing address, and website address;

(B) Contact person's contact information including name, title or position, phone number, and email address;

(C) Confirmation that the ~~known or planned~~ subcontractor is not a covered entity or any of its related entities;

~~(D)~~ (D) If applicable, a description of the mission of the subcontractor and how being a subcontractor of a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals who would be assigned

~~work associated with~~ working to implement eligible projects with ~~the requirements of a CCI entity described in OAR 340-271-0930;~~ CCI funds;

~~(EF)~~ A description of the subcontractor's prior experience implementing or supporting implementation of project(s) or project type(s) similar to those described in subsection (d) eligible projects and a description of prior experience serving the communities that will benefit from the project(s) or project type(s) described in subsection (d); in Oregon; and

~~(FG)~~ Information regarding any violation by the proposed subcontractor related to federal or state labor laws within the preceding five years;

(c) Information about how any subcontractor(s) may be selected during project implementation if there are none listed in the application or if the applicant entity expects to select one or more additional subcontractors during project implementation;

(d) ~~Information on one~~ If known, a general description of either or more both of the following:

(A) Anticipated eligible project(s) or project type(s) that support the purposes of CCIs described in OAR 340-271-0900(1) and that are eligible projects or project types as defined in OAR 340-271-0900(2) that the applicant will entity plans to implement if approved as supported by a CCI funds, including: entity; and

~~(A) Description of each proposed project or proposed project type;~~

~~(B) Description of how each proposed project or proposed project type will meet the criteria of OAR 340-271-0950(1) and how they are consistent with OAR 340-271-0950(2);~~

~~(C) Identification of the~~ The communities in Oregon that would be anticipated to benefit from each project or project type, including description of if the potential locations of communities in which projects may be implemented or a description of how locations may be selected;

~~(D) Description of how each project or project type would benefit environmental justice communities in Oregon;~~

~~(E) Description, including calculation methodology, of how the applicant will estimate the greenhouse gas emissions reductions in metric tons of CO₂e achieved by each implemented project or project type; and~~

~~(F) Description, including calculation methodology, of how the applicant will estimate any non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant achieved by each implemented project or project type;~~ entity is approved as a CCI entity;

(e) Description of the administrative processes and financial controls the applicant entity will use to ensure all community climate investment funds received from any covered fuel supplier CCI funds are held separately from the applicant's other funds;

entity's other funds. This must detail how the entity will manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f) A proposal of the);

(f) The anticipated annual total amount of CCI funds the applicantentity would be able to receive and spend on the proposed project(s) or project type(s), including a description of why that annual amount is proposedanticipated; and

(g) The following attestation, signed by the applicant'sentity's contact person:

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief the information in this application is true, accurate, and complete. [ApplicantEntity] seeks to become a community climate investment entity and, if approved, will comply with the applicable requirements in Oregon Administrative Rules chapter 340, division 271.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

~~Statutory/Other Authority:~~ ORS 468.020, 468A.025 and 468A.040.

~~Statutes/Other Implemented:~~ ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0920

DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities

(1) DEQ will review and may approve applications from applicantsentities proposing to be approved as CCI entities according to subsections (a) through (fd).

(a) DEQ will review an application submitted according to OAR 340-271-0910 to ensure that it meets the requirements of that rule. DEQ will inform the applicantentity either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicantentity provides the additional information requested by DEQ.

(b) When evaluating complete applications submitted according to OAR 340-271-0910, DEQ will consult with the equity advisory committee described in OAR 340-271-0950 and may consult with any other relevant experts,~~as~~ selected by DEQ.

(c) DEQ will consider the following when evaluating a complete application:

(A) The content of the application;

(B) Whether the applicantentity meets the eligibility criteria in OAR 340-271-0910(1);

~~(B) The overall ability of the applicant to conduct work associated with being a CCI entity according to this division and successfully implement project(s) or project type(s) described in the application;~~

~~(C) The strength of the application under review compared to applications submitted by (C) Whether each proposed subcontractor, if applicable, complies with the eligibility criteria in OAR 340-271-0910 (1)(e);~~

~~(D) The overall ability of the entity and, if applicable, its subcontractor(s) to use CCI funds to complete eligible projects that advance the purposes set forth in OAR 340-271-0900(1) and that collectively reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI contributions to the entity;~~

~~(E) The overall ability of the entity and/or its subcontractor(s) to use CCI funds as described in paragraph (D) relative to the overall ability of other applicants and submitted by previously approved CCI entities; and~~

~~(F) Whether the applicant or any proposed subcontractors have violated any federal or state labor laws in the preceding five years;~~

~~(E) Whether the proposed project(s) or proposed project type(s) described in the application meet the criteria of OAR 340-271-0950(1), and the extent to which they are consistent with OAR 340-271-0950(2); and~~

~~(F) The degree to which the proposed project(s) or proposed project type(s) are likely to benefit communities that do not already benefit from a previously approved community climate investment entity's project(s) or project type(s).~~

~~(d) DEQ may approve applicants as CCI entities that apply, with preference for applicants that propose projects that are consistent with OAR 340-271-0950(2). DEQ may choose not to approve an applicant as a CCI entity if DEQ determines that the proposed projects or project types do not achieve the criteria of OAR 340-271-0950(1).~~

~~(e) DEQ will notify the applicant in writing whether provisional approval as a CCI entity is granted or denied.~~

~~(2) If provisional approval as a CCI entity is granted, DEQ will then work with the CCI entity to complete a written agreement that will specify the following:~~

~~(A) The subcontractors to the CCI. The written agreement must be approved before an entity from the application that are approved receives final approval as a CCI entity and is authorized to receive CCI funds in relation to project implementation work;~~

~~(B) The individual project(s) or project type(s) from the application that are approved to be supported by CCI funds. DEQ may decide to approve fewer than all of the projects or project types described in the application. DEQ may approve written requests from a CCI entity for changes to the approved project(s) or project type(s);~~

~~(C) The calculation methodologies from the application that are approved to estimate emissions reductions achieved from project implementation. DEQ may approve changes to the proposed calculation methodologies.~~

~~(f) In addition to the provisions in subsection (e), the~~ The written agreement ~~with the CCI entity~~ will include, but is not limited to:

~~(A)(a) Agreement to use CCI funds only for the uses specified in OAR 340-271-0900(2);~~

~~(b)~~ The initial term of the agreement and approval, which ~~shall~~may not exceed ten years;

~~(B)c)~~ Requirements for monitoring and reporting of project outcomes sufficient to document emissions reductions;

~~(C)d)~~ Provisions for, and limitations on, the payment of ~~necessary~~ administrative expenses;

~~(D)e)~~ Provisions for ~~extension~~extensions, amendments, or renewal of the agreement ~~and approval; and;~~

~~(E)f)~~ Other conditions that DEQ determines are necessary to include in the agreement in order to meet the ~~purposes of OAR 340-271-0900~~requirements of this division, such as a limit on the amount of CCI funds that a CCI entity may accept

~~(23)~~ If DEQ finds that any of the events in subsections (a) through (c) occur, DEQ may suspend or revoke ~~the CCI entity's approval to be of~~ a CCI entity completely or in part.

(a) The CCI entity fraudulently obtained DEQ approval;

(b) The CCI entity is in violation of any applicable provisions of this division or any written agreement between the CCI entity and DEQ; or

(c) DEQ determines that the CCI entity is not in compliance with one or more of the eligibility criteria for approval in OAR 340-271-0910(1).

~~(34)~~ DEQ will maintain a current list of approved CCI entities on DEQ's website.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0930

Requirements for Community Climate Investment Entities

(1) Acceptance of ~~community climate investment~~CCI funds.

(a) ~~Once approved by DEQ, unless otherwise specified in the agreement between a CCI entity and DEQ, a~~ CCI entity must accept CCI funds from ~~any~~any covered fuel supplier ~~that seeks to contribute CCI funds~~. The CCI entity must provide a receipt to the covered fuel supplier upon receipt of CCI funds from the covered fuel supplier. The receipt must include:

- (A) The name of the covered fuel supplier;
- (B) The name of the CCI entity;
- (C) The US dollar amount of the CCI funds accepted; ~~and~~
- (D) The date the CCI entity accepted the CCI funds; and
- (E) The following attestation:

I verify that [CCI Entity] received the contribution from [Covered fuel supplier] as described on this receipt and I affirm that I am a representative of [CCI entity] authorized to sign this receipt.

- (b) ~~A~~Unless otherwise specified in the agreement between the CCI entity and DEQ, a CCI entity must accept CCI funds transferred to it from another CCI entity according to section (98).

(2) Holding CCI funds.

(a) A CCI entity must hold all CCI funds in ~~an account~~ one or more accounts separate from any other funds. Additionally, prior to being spent in compliance with the provisions of this division and its agreement with DEQ, funds must be managed and invested in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). A CCI entity may not encumber CCI funds or pledge CCI funds as a security for other purposes than completing one or more projects under a DEQ-approved work plan.

~~(b) (3) Use of CCI funds.~~ A CCI entity must complete an independent financial audit of CCI funds for each year in which it holds CCI funds.

(3) Use of CCI funds. A CCI entity may only spend CCI funds according to a DEQ approved work plan submitted by for the CCI entity according to uses specified in OAR 340-271-0900(2). The expenditures of CCI funds must conform to the CCI's work plan approved by DEQ under section (4), and may not spend CCI funds on any other work. of this rule.

(4) ~~Annual work plan.~~ Work Plan.

(a) A CCI entity must submit its proposed work plan to DEQ ~~an annual work plan. The for review and approval. The period of the work plan will normally be a calendar year, unless otherwise specified in the agreement between DEQ and the CCI entity. A CCI entity must obtain DEQ approval of the work plan prior to beginning work according to that committing or expending CCI funds for the period of the~~ work plan. The first work plan must be submitted within ~~30~~60 days of the date on which the CCI entity entered into a written agreement with DEQ described in OAR 340-271-0920(1)(f2). Each subsequent work plan must be submitted by ~~December 1 of the year~~ no later than 30 days prior to the ~~yearend~~ of activities described in the work plan.

(b) The ~~current~~ work plan described in subsection (a) period.

(b) The work plan must include:

(A) A description of ~~each known DEQ-approved~~the project(s) or project type(s) the CCI entity expects to support with anticipated activities that will occur in that year including but not limited to plans for initiation, implementation, and completion CCI funds during the period of the work plan, and how the anticipated date of project completion, whether it is anticipated for that calendar year or a future calendar year;(s) or project type(s) support each of the purposes of CCIs described in OAR 340-271-0900(1)(b) through (e);

~~(B)~~(B) A description of how the project(s) or project type(s) will benefit communities in Oregon, including description of the potential locations of communities or regions of Oregon in which projects may be implemented or a description of how locations may be selected;

(C) A description of how each project or project type would benefit environmental justice communities in Oregon;

(D) A description of the methodology that the CCI entity is using to estimate the reductions in anthropogenic greenhouse gas emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan. The methodology must be sufficient to allow DEQ to perform the necessary calculations in a program review according to OAR 340-271-8000;

(E) A description of the methodology that the CCI entity is using to estimate the reductions in other air contaminant emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan;

(F) The name and contact person's contact information of ~~any~~subcontractors that will be involved in any project activities ~~for that year;~~during the period of the work plan; and

~~(G)~~(G) The estimated total budget for the ~~year for each project or for an example project within each project type.~~period of the work plan. CCI funds must be listed separately from any other funds, as applicable. This must separately include the following:

(i) All costs related to project implementation, listed separately for groups of project(s) or project type(s), including but not limited to personnel costs and materials costs; and

(ii) Administrative costs related to the project implementation and meeting the requirements of this rule; ~~and.~~

~~(D) An estimate of anticipated total spending of CCI funds for that year.~~

(c) A CCI entity may request DEQ approval of ~~any changes~~modifications to a DEQ-approved work plan ~~described in subsection (a)~~by providingsubmitting modifications to the information described in subsection (b). The CCI entity must obtain DEQ approval of any modification to a work plan prior to beginning work according to a modified work plan.

(d) DEQ will review each submitted work plan to ensure that it meets the requirements of

this section. DEQ will inform the CCI entity either that the submitted work plan is complete or that additional specific information is required to make the work plan complete. If the work plan is incomplete, DEQ will not consider the work plan further until the CCI entity provides the additional information requested by DEQ. DEQ will consider the following in its review:

(A) The overall ability of the CCI entity to conduct work according to the work plan;

(B) Whether following the work plan is reasonably likely to reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI fund contributions to the CCI entity;

(C) Whether the work plan is consistent with the purposes of CCIs described in OAR 340-271-0900; and

(D) Input from the equity advisory committee described in OAR 340-271-0950 and from any other relevant experts selected by DEQ.

(5) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year that ~~includes:~~

~~(a) The following information describes its CCI-related activities and finances for the previous preceding calendar year, including:~~

~~(Aa) The total following information related to CCI funds contributed by covered fuel suppliers to received, held, or spent during the year:~~

~~(A) Each financial statement for the account(s) where CCI entity funds were held and the results of the CCI entity's most recent independent financial audit;~~

~~(B) The date, amount of CCI funds accepted, and as applicable, the name of the covered fuel supplier for each separate contribution received;~~

~~(C) A copy of each receipt provided by the CCI entity to a covered fuel supplier;~~

~~(D) One or more financial statements that show each contribution was deposited into the CCI entity's account designated solely for CCI funds;~~

~~(E) A list of each disbursement of CCI funds;~~

~~(F) One or more financial statements that show each disbursement;~~

~~(G)(C) Total CCI fund interest accrual;~~

~~(D) Total CCI funds spent during the previous calendar year, including separate totals of:~~

~~(i) CCI funds spent on each project. This must include materials costs and must not include, including but not limited to personnel costs and materials costs; and~~

~~(ii) Personnel costs for each project type;~~

~~(iii) Administrative costs related to the project, including project development, and implementation of each project or project type; and~~

~~(iv) Administrative costs related to and meeting the requirements of this rule;~~

~~(H) The known amount of (E) Total CCI funds the CCI entity holds that remain unspent as of the end of the year; and~~

~~(F) Total non-CCI funds spent on implementation of each project or project type, as applicable;~~

~~(b) The following information related to implementation progress of project(s) or project type(s) during the year:~~

~~(A) Documentation of work completed or progress made on each project or project type, including the number of projects completed of each project type, as applicable;~~

~~(B) A summary of project outcomes. This must include estimated annual greenhouse gas emissions reductions achieved from any implemented project(s) in metric tons of CO₂e and estimated annual non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant that will be anticipated to be achieved by each from any project described in paragraph (I) that was(s) completed during the previous calendar year. Emissions reductions must be estimated using the calculation methodologies most recently approved by DEQ methodology included in the applicable work plan. Emissions reductions may be reported by individual project or may be grouped by project type, if the CCI entity can provide sufficient information to demonstrate that the emissions reductions of multiple projects of the same type are comparable; and~~

~~(M) The results of the CCI entity's most recent independent financial audit.~~

~~(b) The total CCI funds the CCI entity holds that remain unspent as of the end of the year for which the annual report is submitted to DEQ;~~

~~(c) A description of work that occurred during the previous calendar year compared to the most recently approved work plan or any subsequently approved modified work plan changes. This must include documentation of work completed or progress made during the previous calendar year on each project or project type described in the approved work plan or work plan update(s). If progress is occurring behind the schedule described in the approved work plan or approved work plan update(s), projects were not implemented as planned, the CCI entity must describe the reason for delay and must describe any steps that may be taken to work to remedy the delay or prevent similar delays in subsequent years; and~~

~~(d) A copy of the CCI entity's most recent IRS form 990.~~

~~(6) Requesting DEQ approval of changes to projects or operations.~~

~~(a) A CCI entity must request in writing and obtain DEQ approval of any new subcontractor that has not yet been approved prior to distributing any CCI funds to the subcontractor. The request for approval must include information about the subcontractor for which the CCI entity is seeking approval, as described in OAR 340-271-0910(3)(b). DEQ may review and make approval determinations according to the review process and considerations in OAR 340-271-0920.~~

~~(b) A CCI entity must request in writing and obtain DEQ approval of any new project type that has not yet been approved prior to spending any CCI funds on the project type. The request for approval must include all of the information required in OAR 340-271-0910(3)(E) and (F), as applicable. DEQ may review and make approval determinations according to the review process and considerations in OAR 340-271-0920.~~

~~(c) A CCI entity must request in writing and obtain DEQ approval of changes to emissions reduction calculation methodologies prior to using the methodology to estimate greenhouse gas emissions reductions or non-greenhouse gas air contaminant emissions reductions achieved from project implementation. The request for approval must include all of the information required in OAR 340-271-0910(3)(d)(E), (F), or both. DEQ may review and make approval determinations according to the review process and considerations in OAR 340-271-0920.~~

~~(7)(6)~~ Maintaining CCI entity eligibility.

(a) A CCI entity must notify DEQ in writing as soon as possible, and not later than 30 days after it no longer meets any of the eligibility criteria for approval in OAR 340-271-0910(1), or if it is in violation of any of the requirements of this rule.

(b) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes are made to the administrative processes or financial controls that keep CCI funds separate from other funds;

(c) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any changes related to key individuals or their assigned work associated with being a CCI entity.

(d) A CCI entity must notify DEQ in writing as soon as possible and not later than 30 days after any finding of a violation related to federal or state labor laws by the CCI entity or by an approved subcontractor;

(e) Upon written request by DEQ, a CCI entity must provide to DEQ in a reasonably timely manner any and all information that DEQ reasonably requires for evaluating the CCI entity's continued compliance with the requirements of this division, including the criteria for approval as a CCI entity and eligible projects.

~~(8)~~ Voluntary withdrawal from DEQ approval. An approved CCI entity may request to withdraw voluntarily its approval by providing a written notice to DEQ requesting such withdrawal.

(98) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require ~~an~~the entity to transfer any unspent CCI funds to another CCI entity and provide proof to DEQ that the transfer has been made.

~~Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.~~

~~Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.~~

~~340-271-0950~~

~~Community Climate Investment Projects~~

~~(1) DEQ may approve a CCI entity's proposed project(s) or proposed project type(s) if DEQ determines that:~~

~~(a) The project(s) will be located in Oregon; and~~

~~(b) The completion of the project(s) is reasonably likely to reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit distributed by DEQ based CCI contributions to the CCI entity.~~

~~(2) DEQ may prioritize approval of project(s) or project type(s) that will best achieve the purposes of community climate investments described in OAR 340-271-0900.~~

~~Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.~~

~~Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.~~

~~340-271-09600950~~

~~Equity Advisory Committee and Environmental Justice Community Engagement~~

~~(1) Equity advisory committee. DEQ will appoint and convene an equity advisory committee to assist DEQ with ~~review of~~:~~

~~(a) Review of:~~

~~(A) Applications to become a CCI entity;~~

~~(B) Requests for DEQ approval as a CCI entity; of work plans; and~~

~~(b) Work plans and reports submitted (C) Other submittals by CCI entities that require DEQ review; and~~

~~(c) Review of requests by CCI entities to modify projects or work plans.~~

~~(b) Outreach to environmental justice communities.~~

~~(2) Advisory committee member selection.~~

~~(a) DEQ may solicit applications from residents of the state of Oregon to be appointed to~~

serve as members of the equity advisory committee and may select the committee from those applications.

(b) DEQ will prioritize convening an advisory committee that represents multiple areas of expertise, interest, or lived experience in the following areas:

(A) Environmental justice;

(B) Impacts of climate change on communities in Oregon;

(C) Impacts of air contamination on communities in Oregon; and

(D) Greenhouse gas emissions reductions and climate change.

(c) DEQ will prioritize convening an advisory committee that represents multiple regions across Oregon.

(d) DEQ may appoint each committee member to a term of up to three years.

(3) In addition to outreach conducted by CCI third party entities to environmental justice communities throughout Oregon, DEQ will conduct outreach to these communities to seek input on projects that may be of interest to those communities. The equity advisory committee will consider this input when assisting DEQ as described in section (1). DEQ will consider this input when making approval decisions regarding CCI entities, projects and project types, and work plans.

(4) DEQ will offer guidance and conduct outreach to support the equity advisory committee and environmental justice communities in Oregon in understanding the provisions related to CCIs.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-0990

Recordkeeping Requirements for Community Climate Investment Entities

(1) A CCI entity must retain the following records, in paper or electronic format, for the duration of its approval as a CCI entity and for a period of at least seven years following the end of its approval:

(a) A copy of each application submitted to DEQ for approval as a CCI entity;

(b) A copy of any invoice or documentation of monetary payment related to CCI funds;

(c) A statement from a financial institution showing any payments related to CCI funds;

- (d) A copy of any receipt provided to a covered fuel supplier that makes a CCI payment to the CCI entity;
- (e) A copy of any report or written request for approval submitted to DEQ by the CCI entity;
- (f) All other information and documentation related to CCI funds;
- (g) All records related to any implemented projects; and
- (h) All records and information supporting estimates of greenhouse gas emissions reductions and other air contaminant emissions reductions achieved from implemented projects or project types.

(2) CCI entities must make records required to be retained in this rule available to DEQ upon request. DEQ will specify the date by which the CCI entity must fulfill a records request from DEQ.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-81008000 **Program Review**

(1) DEQ will report to the EQC on community climate investments. DEQ will submit the first report to the EQC by August 30, 2024 and every two years thereafter. DEQ will share each report with current members of the equity advisory committee after submission to the EQC. Each community climate investment report will include:

(a) A review of community climate investments, including:

(A) CCI credits distributed to covered fuel suppliers;

(B) CCI credits used by covered fuel suppliers to demonstrate compliance;

(C) Estimates of annual greenhouse gas emissions reductions that willare anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(D) Estimates of annual non-greenhouse gas air contaminant emissions reductions that willare anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(E) Calculation of the average anthropogenic greenhouse gas emissions reductions achieved per CCI credit distributed based on (A) and (C) and whether reductions of approximately one MT CO₂e or more of anthropogenic greenhouse gas emissions for the average CCI credit distributed by DEQ was achieved; and

(F) Description of community benefits achieved; and

(b) DEQ's recommendations regarding any ~~potential~~necessary or desirable changes to the CPP provisions relating to CCIs, including, ~~for example and~~ without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 7 in OAR 340-271-9000 ~~and~~necessary to assure that the use of CCI funds is reducing anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ, as well as recommendations on how to best achieve the purposes of CCIs described in OAR 340-271-0900, if applicable.

(2) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report to the EQC five years after the date of adoption of this division and at least once every five years thereafter. Each program review report will include:

(a) A review of the Climate Protection Program, including:

(A) Summary of covered fuel suppliers' demonstrations of compliance for compliance periods that have occurred since program start, including:

(i) Caps for each year and compliance period;

(ii) Compliance obligations for each year and compliance period;

(iii) Compliance instruments submitted for each compliance period; and

(iv) CCI credits submitted for each compliance period;

(B) Summary of the distribution of compliance instruments, including the size of the compliance instrument reserve at the start and end of each program year that has occurred and compared to Table 3 in OAR 340-271-9000;

(C) Summary of activity relating to trading of compliance instruments for each program year that has occurred;

(D) Summary of covered stationary source requirement activities that have occurred since program start or since the most recently submitted report to the EQC, whichever is later, including:

(i) The number of existing stationary sources that DEQ has notified in writing that must complete a BAER assessment;

(ii) The number of BAER assessments received or anticipated to be received by DEQ;

(iii) A brief summary of any ~~DEQ-BAER determinations made~~order issued and the required actions that must be taken by the owner or operator of a covered stationary source that has received been issued a ~~DEQ-BAER determination~~order;

(iv) A brief summary of the status of any covered stationary source activities regarding

~~BAER determination~~ implementation of requirements in a BAER order; and

(v) Review of any changes in annual covered emissions from current covered stationary sources; to assess whether covered emissions are being reduced;

~~(E)~~ Whether emission reductions from covered stationary sources align with the priorities described in OAR 340-271-0300. This will be assessed in program reviews beginning after 2029.

~~(F)~~ A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and

~~(FG)~~ Description of any enforcement actions taken that involved civil penalties, if applicable; and

(b) DEQ's recommendations regarding any potential changes to the CPP- including, for example and without limitation, recommendations regarding potential changes to best achieve the goals described in OAR 340-271-0300 for covered stationary sources.

(3) If the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than 20 percent higher than the change in cost for the same fuel over the same period in each of Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made that would ameliorate a relative increase in costs in Oregon. If necessary, DEQ will consider recommending rule changes, such as changes to caps and distribution of additional compliance instruments, changes to the compliance instrument reserve, or changes to the allowable usage of CCI credits.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8100

Additional Compliance Enforcement Authority

(1) Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by section (1) may be instituted without the necessity of prior DEQ notice, hearing and order.

(3) The provisions of this rule are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to 468.140 and OAR chapter 340, divisions 11 and 12.

Statutory authority: ORS 468.020, 468.100

Statute implemented: ORS 468.100

340-271-8110

Deferrals

DEQ may extend reporting or demonstration of compliance deadlines as DEQ deems necessary or appropriate and will issue written notice of any extensions.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-8120

Severability

Each provisionrequirement of this division is severable, and ~~in the event that if~~ any provisionrequirement of this division is found to be held invalid, the remainder of the requirements of this division will continue in full force and effect.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

340-271-9000

Tables

(1) Table 1. Thresholds for applicability described in OAR 340-271-0110(3).

(2) Table 2. Oregon Climate Protection Program caps.

(3) Table 3. Compliance instrument reserve size.

(4) Table 4. Compliance instrument distribution to covered fuel suppliers that are local distribution companies.

(5) Table 5. Compliance instrument distribution evaluation periods.

(6) Table 6. Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3).

(7) Table 7. CCI credit contribution amount.

Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.

Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.

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 OAR 340-271-9000 Table 1 Thresholds for applicability described in OAR 340-271-0110(3)		
Applicability determination calendar year(s)	Threshold for applicability to compare to annual covered emissions	Calendar year a person becomes a covered fuel supplier
Any year from 2018 through 2022	200,000 MT CO ₂ e	2022
2023	200,000 MT CO ₂ e	2023
2024	200,000 MT CO ₂ e	2024
Any year from 2021 through 2025	100,000 MT CO ₂ e	2025
2026	100,000 MT CO ₂ e	2026
2027	100,000 MT CO ₂ e	2027
Any year from 2024 through 2028	50,000 MT CO ₂ e	2028
2029	50,000 MT CO ₂ e	2029
2030	50,000 MT CO ₂ e	2030
Any year from 2027 through 2031	25,000 MT CO ₂ e	2031
2032	25,000 MT CO ₂ e	2032
Each subsequent year	25,000 MT CO ₂ e	Each subsequent year

~~(2) Table 2. Oregon Climate Protection Program caps.~~





OAR 340-271-9000
Table 2
Oregon Climate Protection Program caps

Calendar year	Cap
2022	28,213,834 <u>081,335</u>
2023	27,237,202 <u>001,283</u>
2024	26,260,569 <u>25,921,232</u>
2025	26,162,986 <u>25,763,209</u>
2026	25,152,398 <u>24,637,057</u>
2027	24,141,811 <u>23,510,904</u>
2028	23,851,600 <u>013,190</u>
2029	22,809,540 <u>21,842,149</u>
2030	21,767,480 <u>20,671,108</u>
2031	21,135,777 <u>19,910,424</u>
2032	20,073,084 <u>18,688,088</u>
2033	19,010,391 <u>17,465,752</u>
2034	17,947,699 <u>16,243,416</u>
2035	16,885,006 <u>15,021,080</u>
2036	16,162,321 <u>14,219,956</u>
2037	15,439,635 <u>13,418,831</u>
2038	14,716,950 <u>12,617,707</u>
2039	13,994,264 <u>11,816,583</u>
2040	13,271,579 <u>11,015,459</u>
2041	12,548,893 <u>10,214,334</u>
2042	11,826,208 <u>9,413,210</u>
2043	11,103,522 <u>8,612,086</u>
2044	10,380,837 <u>7,810,962</u>
2045	9,658,151 <u>7,009,837</u>
2046	8,935,466 <u>6,208,713</u>


2047	8,212,780 <u>5,407,589</u>
2048	7,490,095 <u>4,606,465</u>
2049	6,767,409 <u>3,805,340</u>
2050 and each calendar year thereafter	6,044,724 <u>3,004,216</u>

~~(3) Table 3. Compliance instrument reserve size.~~


 OAR 340-271-9000 Table 3 Compliance instrument reserve size	
Calendar year(s) <u>of the cap</u>	Reserve size
2022	400,000 compliance instruments
2023 through 2030	800,000 compliance instruments
2031 through 2040	500,000 compliance instruments
2041 and each calendar year thereafter	250,000 compliance instruments

 OAR 340-271-9000 Table 4 <u>Compliance instrument distribution to covered fuel suppliers</u> <u>that are local distribution companies</u>			
<u>Calendar year</u>	<u>Compliance instruments to distribute to Avista Utilities</u>	<u>Compliance instruments to distribute to Cascade Natural Gas Corporation</u>	<u>Compliance instruments to distribute to Northwest Natural Gas Company</u>
<u>2022</u>	<u>703,373</u>	<u>743,707</u>	<u>5,759,972</u>
<u>2023</u>	<u>676,320</u>	<u>715,103</u>	<u>5,538,434</u>
<u>2024</u>	<u>649,267</u>	<u>686,499</u>	<u>5,316,897</u>
<u>2025</u>	<u>622,214</u>	<u>657,895</u>	<u>5,095,359</u>
<u>2026</u>	<u>595,161</u>	<u>629,291</u>	<u>4,873,822</u>
<u>2027</u>	<u>568,109</u>	<u>600,687</u>	<u>4,652,285</u>
<u>2028</u>	<u>541,056</u>	<u>572,083</u>	<u>4,430,747</u>
<u>2029</u>	<u>514,003</u>	<u>543,478</u>	<u>4,209,210</u>
<u>2030</u>	<u>486,950</u>	<u>514,874</u>	<u>3,987,673</u>
<u>2031</u>	<u>459,897</u>	<u>486,270</u>	<u>3,766,135</u>
<u>2032</u>	<u>432,845</u>	<u>457,666</u>	<u>3,544,598</u>
<u>2033</u>	<u>405,792</u>	<u>429,062</u>	<u>3,323,061</u>
<u>2034</u>	<u>378,739</u>	<u>400,458</u>	<u>3,101,523</u>
<u>2035</u>	<u>351,686</u>	<u>371,854</u>	<u>2,879,986</u>
<u>2036</u>	<u>332,930</u>	<u>352,021</u>	<u>2,726,387</u>
<u>2037</u>	<u>314,173</u>	<u>332,189</u>	<u>2,572,787</u>
<u>2038</u>	<u>295,416</u>	<u>312,357</u>	<u>2,419,188</u>
<u>2039</u>	<u>276,660</u>	<u>292,525</u>	<u>2,265,589</u>
<u>2040</u>	<u>257,903</u>	<u>272,693</u>	<u>2,111,990</u>
<u>2041</u>	<u>239,147</u>	<u>252,860</u>	<u>1,958,390</u>
<u>2042</u>	<u>220,390</u>	<u>233,028</u>	<u>1,804,791</u>

<u>2043</u>	<u>201,633</u>	<u>213,196</u>	<u>1,651,192</u>
<u>2044</u>	<u>182,877</u>	<u>193,364</u>	<u>1,497,593</u>
<u>2045</u>	<u>164,120</u>	<u>173,532</u>	<u>1,343,993</u>
<u>2046</u>	<u>145,364</u>	<u>153,699</u>	<u>1,190,394</u>
<u>2047</u>	<u>126,607</u>	<u>133,867</u>	<u>1,036,795</u>
<u>2048</u>	<u>107,850</u>	<u>114,035</u>	<u>883,196</u>
<u>2049</u>	<u>89,094</u>	<u>94,203</u>	<u>729,596</u>
<u>2050 and each calendar year thereafter</u>	<u>70,337</u>	<u>74,371</u>	<u>575,997</u>


 <p style="text-align: center;">OAR 340-271-9000 Table 5 Compliance instrument distribution evaluation periods</p>		
<u>Calendar years of emissions for evaluation period</u>	<u>Year in which evaluation occurs to determine distribution of compliance instruments</u>	<u>Calendar year of the cap</u>

~~(4) Table 4. Compliance instrument distribution to covered fuel suppliers that are local distribution companies.~~

 <p style="text-align: center;">OAR 340-271-9000 Table 4 Compliance instrument distribution to covered fuel suppliers that are local distribution companies</p>			
Cap year	Compliance instruments to distribute to Avista Utilities	Compliance instruments to distribute to Cascade Natural Gas	Compliance instruments to distribute to Northwest Natural Gas
2022	703,373	763,126	5,931,657
2023	679,025	736,710	5,726,331
2024	654,678	710,294	5,521,004
2025	630,330	683,878	5,315,678
2026	605,983	657,462	5,110,351
2027	581,635	631,046	4,905,024
2028	557,287	604,631	4,699,698
2029	532,940	578,215	4,494,371
2030	508,592	551,799	4,289,045
2031	484,245	525,383	4,083,718
2032	459,897	498,967	3,878,391
2033	435,550	472,551	3,673,065


2034	411,202	446,135	—3,467,738
2035	386,855	419,719	—3,262,412
2036	370,443	401,913	—3,124,006
2037	354,031	384,107	—2,985,601
2038	337,619	366,300	—2,847,196
2039	321,207	348,494	—2,708,790
2040	304,795	330,688	—2,570,385
2041	288,383	312,882	—2,431,980
2042	271,971	295,075	—2,293,574
2043	255,559	277,269	—2,155,169
2044	239,147	259,463	—2,016,764
2045	222,735	241,657	—1,878,358
2046	206,323	223,850	—1,739,953
2047	189,911	206,044	—1,601,547
2048	173,499	188,238	—1,463,142
2049	157,087	170,431	—1,324,737
2050 and each calendar year thereafter	140,675	152,625	—1,186,331

~~(5) Table 5. Compliance instrument distribution evaluation periods.~~

 <p style="text-align: center;">OAR 340-271-9000 Table 5 Compliance instrument distribution evaluation periods</p>		
Calendar years of emissions for evaluation period	Year in which evaluation occurs to determine distribution of compliance instruments	Cap year
2018 through 2020	2021	2022
2019 through 2021	2022	2023


2020 through 2022	2023	2024
Each subsequent three year period	Each subsequent year	Each subsequent year

|



OAR 340-271-9000
Table 6
Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3)


~~(6) Table 6. Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3).~~



~~OAR 340-271-9000~~
~~Table 6~~
~~Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3)~~


Compliance period	Allowable percentage of total compliance obligation(s) for which compliance may be demonstrated with CCI credits
Compliance period 1 (2022 through 2024)	10%
Compliance period 2 (2025 through 2027)	15%
Compliance period 3 (2028 through 2030), and for each compliance period thereafter	20%

~~(7) Table 7. CCI credit contribution amount.~~

 ORAR 340-271-9000 Table 7 CCI credit contribution amount	
Effective date	CCI credit contribution amount in 2021 dollars, to be adjusted according to ORAR 340-271-0820(3)
March 1, 2023	\$ 81.00 <u>\$107</u>
March 1, 2024	\$ 82.00 <u>\$108</u>
March 1, 2025	\$ 83.00 <u>\$109</u>
March 1, 2026	\$ 85.00 <u>\$110</u>
March 1, 2027	\$ 86.00 <u>\$111</u>
March 1, 2028	\$ 87.00 <u>\$112</u>
March 1, 2029	\$ 89.00 <u>\$113</u>
March 1, 2030	\$ 90.00 <u>\$114</u>
March 1, 2031	\$ 91.00 <u>\$115</u>
March 1, 2032	\$ 93.00 <u>\$116</u>
March 1, 2033	\$ 94.00 <u>\$117</u>
March 1, 2034	\$ 95.00 <u>\$118</u>
March 1, 2035	\$ 97.00 <u>\$119</u>
March 1, 2036	\$ 98.00 <u>\$120</u>
March 1, 2037	\$ 100.00 <u>\$121</u>
March 1, 2038	\$ 101.00 <u>\$122</u>
March 1, 2039	\$ 102.00 <u>\$123</u>
March 1, 2040	\$ 104.00 <u>\$124</u>
March 1, 2041	\$ 105.00 <u>\$125</u>
March 1, 2042	\$ 106.00 <u>\$126</u>
March 1, 2043	\$ 108.00 <u>\$127</u>
March 1, 2044	\$ 109.00 <u>\$128</u>

March 1, 2045	\$ 110.00 <u>\$129</u>
March 1, 2046	\$ 112.00 <u>\$130</u>
March 1, 2047	\$ 113.00 <u>\$131</u>
March 1, 2048	\$ 114.00 <u>\$132</u>
March 1, 2049	\$ 116.00 <u>\$133</u>
March 1, 2050	\$ 117.00 <u>\$134</u>

~~(8) Table 8. Percentages for DEQ generation and distribution of community climate investment credits as described in OAR 340-271-0820(3).~~

 <p>OAR 340-271-9000 Table 8 Percentages for DEQ generation and distribution of community climate investment credits as described in OAR 340-271-0820(3)</p>	
Compliance period	Percent used by DEQ for generation and distribution of CCI credits
Compliance period 1 for distribution of CCI credits from 2022 through 2024	12%
Compliance period 2 for distribution of CCI credits from 2025 through 2027	18%
Compliance period 3 for distribution of CCI credits from 2028 through 2030, and for each compliance period thereafter	25%

~~Statutory/Other Authority: ORS 468.020, 468A.025 and 468A.040.~~

~~Statutes/Other Implemented: ORS 468.020, 468.035, 468A.010, 468A.015, 468A.025, 468A.040 and 468A.045.~~



State of Oregon Department of Environmental Quality

Draft Rules – Division 12

Edits Highlighted

Key to identifying changed text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

Division 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0054

Air Quality Classification of Violations

(1) Class I:

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Constructing a new source, as defined in OAR 340-245-0020, without first obtaining a required Air Contaminant Discharge Permit that includes permit conditions required under OAR 340-245-0005 through 340-245-8050 or without complying with Cleaner Air Oregon rules under OAR 340-245-0005 through 340-245-8050;

(c) Failing to conduct a source risk assessment, as required under OAR 340-245-0050;

(d) Modifying a source in such a way as to require a permit modification under OAR 340-245-0005 through 340-245-8050, that would increase risk above permitted levels under OAR 340-245-0005 through 340-245-8050 without first obtaining such approval from DEQ;

(e) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(f) Operating an existing source, as defined in OAR 340-245-0020, after a submittal deadline under OAR 340-245-0030 without having submitted a complete application for a Toxic Air Contaminant Permit Addendum required under OAR 340-245-0005 through 340-245-8050;

(g) Exceeding a Plant Site Emission Limit (PSEL);

(h) Exceeding a risk limit, including a Source Risk Limit, applicable to a source under OAR 340-245-0100;

- (i) Failing to install control equipment or meet emission limits, operating limits, work practice requirements, or performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
- (j) Exceeding a hazardous air pollutant emission limitation;
- (k) Failing to comply with an Emergency Action Plan;
- (l) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established under New Source Review/Prevention of Significant Deterioration (NSR/PSD);
- (m) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;
- (n) Exceeding an emission limit or violating an operational limit, process limit, or work practice requirement that was established to limit risk or emissions to avoid exceeding an applicable Risk Action Level or other requirement under OAR 340-245-0005 through 340-245-8050;
- (o) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;
- (p) Failing to perform testing or monitoring, required by a permit, permit attachment, rule or order, that results in failure to show compliance with a Plant Site Emission Limit or with an emission limitation or a performance standard established under New Source Review/Prevention of Significant Deterioration, National Emission Standards for Hazardous Air Pollutants, New Source Performance Standards, Reasonably Available Control Technology, Best Available Control Technology, Maximum Achievable Control Technology, Typically Achievable Control Technology, Lowest Achievable Emission Rate, Toxics Best Available Control Technology, Toxics Lowest Achievable Emission Rate, or adopted under section 111(d) of the Federal Clean Air Act;
- (q) Causing emissions that are a hazard to public safety;
- (r) Violating a work practice requirement for asbestos abatement projects;
- (s) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;
- (t) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

- (u) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
- (v) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (w) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);
- (x) Failing to install certified vapor recovery equipment;
- (y) Delivering for sale a noncompliant vehicle by a vehicle manufacturer in violation of Oregon Low Emission and Zero Emission Vehicle rules set forth in OAR 340 division 257;
- (z) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;
- (aa) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements or to meet credit retirement and/or deficit requirements under OAR 340 division 257;
- (bb) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257;
- (cc) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;
- (dd) Failing to comply with any of the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of OAR 340-253-8010;
- (ee) Committing any action related to a credit transfer that is prohibited in OAR 340-253-1005(8);
- (ff) Inaccurate reporting that causes illegitimate credits to be generated in the Oregon Clean Fuels Program, OAR chapter 340, division 253, or that understates a regulated party's true compliance obligation denominated in deficits under such program;
- (gg) Making misstatements about material information or knowingly or recklessly providing false information when submitting an application for a carbon intensity score under OAR 340-253-0450;
- (hh) Failing to timely submit a complete and accurate annual compliance report under OAR 340-253-0100(8);
- (ii) Failing to timely submit a complete and accurate emissions data report under OAR 340-215-0044 and OAR 340-215-0046;

- (jj) Submitting a verification statement to DEQ prepared by a person not approved by DEQ under OAR 340-272-0220 to perform verification services;
- (kk) Failing to timely submit a verification statement that meets the verification requirements under OAR 340-272-0100 and OAR 340-272-0495;
- (ll) Failing to submit a revised application or report to DEQ according to OAR 340-272-0435;
- (mm) Failing to complete re-verification according to OAR 340-272-0350(2);
- (nn) Failing to timely submit a Methane Generation Rate Report or Instantaneous Surface Monitoring Report according to OAR 340-239-0105;
- (oo) Failing to timely submit a Design Plan or Amended Design Plan in accordance with OAR 340-239-0110(1);
- (pp) Failing to timely install and operate a landfill gas collection and control system according to OAR 340-239-0110(1);
- (qq) Failing to operate a landfill gas collection and control system or conduct performance testing of a landfill gas control device according to the requirements in OAR 340-239-0110(2);
- (rr) Failing to conduct landfill wellhead sampling under OAR 340-239-0110(3);
- (ss) Failing to comply with a landfill compliance standard in OAR 340-239-0200;
- (tt) Failing to conduct monitoring or remonitoring in accordance with OAR 340-239-0600 that results in a failure to demonstrate compliance with a landfill compliance standard in OAR 340-239-0200 or the 200 ppmv threshold in OAR 340-239-0105(5)(b) or OAR 340-239-0400(2)(c);
- (uu) Failure to take corrective actions in accordance with OAR 340-239-0600(1); ~~or~~
- (vv) Failing to comply with a landfill gas collection and control system permanent shutdown and removal requirement in OAR 340-239-0400(1);~~;~~
- (ww) Delivering for sale a new noncompliant on highway heavy duty engine, truck or trailer in violation of rules set forth under OAR 340 division 261;~~;~~
- (xx) Failing to notify DEQ of changes in ownership or operational control or changes to related entities under OAR 340-271-0120;
- (yy) Owning or operating a covered entity, identified in OAR 340-271-0110, after a submittal deadline under OAR 340-271-0150(1)(a) or OAR 340-271-0330(1)(b) without having submitted a complete application for a Climate Protection Program permit or Climate Protection Program permit addendum required under OAR 340-271-0150;

(zz) Emitting covered emissions from a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020, without having been issued a BAER order under OAR 340-271-0320 and a permit issued under OAR 340-271-0150(3)(c);

(aaa) Failing to submit a BAER assessment or an updated BAER assessment according to OAR 340-271-0310;

(bbb) Failing to comply with a BAER order issued under OAR 340-271-0320.

(ccc) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions;

(ddd) Failing to demonstrate compliance according to OAR 340-271-0450;:

(eee) Failing to comply with the requirements for trading of compliance instruments under OAR 340-271-0500 or 340-271-0510; or

(fff) Submitting false or inaccurate information on any application or submittal required under OAR Chapter 340 division 271.

(2) Class II:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP), ACDP attachment, or registration without first obtaining such permit or registration, unless otherwise classified;

(b) Violating the terms or conditions of a permit, permit attachment or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit or permit attachment modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit a complete ACDP annual report or permit attachment annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule, permit or permit attachment, unless otherwise classified;

(h) Failing to timely submit a complete permit application, ACDP attachment application, or permit renewal application;

- (i) Failing to submit a timely and complete toxic air contaminant emissions inventory as required under OAR 340-245-0005 through 340-245-8050;
- (j) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;
- (k) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).
- (l) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;
- (m) Failing to provide timely, accurate or complete notification of an asbestos abatement project;
- (n) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;
- (o) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620;
- (p) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257;
- (q) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is a producer or importer of blendstocks, as defined in OAR 340-253-0040;
- (r) Failing to register as an aggregator or submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c);
- (s) Failing to keep records under OAR 340-253-0600 when the records relate to obtaining a carbon intensity under OAR 340-253-0450;
- (t) Failing to keep records related to obtaining a carbon intensity under OAR 340-253-0450;
- (u) Failing to timely submit a complete and accurate quarterly report under OAR 340-253-0100(7);
- (v) Violating any requirement under OAR Chapter 340 division 272, unless otherwise classified;
✘
- (w) Violating any requirement under OAR 340, division 239, unless otherwise classified;
✘
- (x) Failing to comply with the reporting notification or warranty requirements for new engines, trucks, and trailers set forth in OAR Chapter 340, division 261;
✘

(y) Violating any requirement under the Climate Protection Program, OAR Chapter 340, division 271, unless otherwise classified; or

(z) Violating any condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150, unless otherwise classified.

(3) Class III:

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project;

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;

(g) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is an importer of finished fuels, as defined in OAR 340-253-0040; or

(h) Failing to keep records under OAR 340-253-0600, except as provided in subsection (2)(s).

[Note: Tables and Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.045

Statutes/Other Implemented: ORS 468.020 & 468A.025

History:

DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021

DEQ 16-2021, amend filed 10/04/2021, effective 10/04/2021

DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020

DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019

DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14
DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11
DEQ 6-2006, f. & cert. ef. 6-29-06
DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05
DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 22-1996, f. & cert. ef. 10-22-96
DEQ 21-1994, f. & cert. ef. 10-14-94
DEQ 13-1994, f. & cert. ef. 5-19-94
DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 20-1993(Temp), f. & cert. ef. 11-4-93
DEQ 19-1993, f. & cert. ef. 11-4-93
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 2-1992, f. & cert. ef. 1-30-92
DEQ 31-1990, f. & cert. ef. 8-15-90
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89
DEQ 22-1988, f. & cert. ef. 9-14-88
DEQ 22-1984, f. & ef. 11-8-84
DEQ 5-1980, f. & ef. 1-28-80
DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows:

(a) Opacity limit violations:

(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or

(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.

(c) Exceeding an emission limit established under New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.

(d) Exceeding an emission limit established under federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.

(e) Exceeding a cancer or noncancer risk limit that is equivalent to a Risk Action Level or a Source Risk Limit if the limit is a Risk Action Level established under OAR 340-245-0005 through 340-245-8050: Major, otherwise apply OAR 340-012-0130.

(f) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection will be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020.

(A) Major:

(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.

(B) Moderate:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or

(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.

(C) Minor:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.

(g) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(h) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(i) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(j) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(k) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major — Exceeding the limit by more than 10 percent; or

(B) Moderate — Exceeding the limit by 10 percent or less.

(l) Oregon Clean Fuels Program violations:

(A) Exceeding the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of 340-253-8010 by not retiring sufficient credits to satisfy a regulated party's compliance obligation:

(i) Major — more than 15 percent of their total deficit obligation remains unsatisfied;

(ii) Moderate — more than 10 percent but less than 15 percent of their total deficit obligation remains unsatisfied; or

(iii) Minor — less than 10 percent of their total deficit obligation remains unsatisfied.

(B) Failing to register under OAR 340-253-0100(1) and (4): Moderate — producers and importers of blendstocks;

(C) Failing to submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c): Minor;

(D) Failing to keep records as set forth in OAR 340-253-0600, when the records relate to obtaining a carbon intensity under OAR 340-253-04500600: Minor;

(E) Failing to submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340 division 253: Moderate;

(F) Failing to timely submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340, division 253: Minor.

(m) Failing to timely submit a complete and accurate emissions data report under the Oregon Greenhouse Gas Reporting Program, OAR chapter 340, division 215, where the untimely, incomplete or inaccurate reporting impacts applicability or any compliance obligation under the Climate Protection Program, OAR chapter 340, division 271: Major. ~~Oregon Greenhouse Gas Reporting Program violations:~~

~~(A) Failing to submit a complete and accurate emissions data report under OAR chapter 340, division 215: Moderate;~~

~~(B) Failing to timely submit a complete and accurate emissions data report under OAR chapter 340, division 215: Minor.(n) Oregon Climate Protection Program violations:~~

~~(A) Failing to demonstrate compliance according to OAR 340-271-0450: Major.~~

~~(B) Failing to comply with a BAER order issued under OAR 340-271-0320: Major~~

~~(C) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions: Major.~~

~~(D) Failing to obtain a BAER order under OAR 340-271-0320 or a permit issued under OAR 340-271-0150(3)(c), for a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020: Major.~~

(2) Magnitudes for selected Water Quality violations will be determined as follows:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than CA_{acute} , where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CA_{acute} is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: $(BOD5)/D$ is more than 10, where BOD5 is the concentration of the five-day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: $D = ((QR/4) + QI) / QI$, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;

(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;

(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;

(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or

(v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:

(A) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(B) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(C) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or

(D) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected Solid Waste violations will be determined as follows:

(a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:

(A) Major — The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor — The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:

(a) Failure to make a hazardous waste determination;

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment, storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.

(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:

(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[NOTE: Tables & Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.065 & 468A.045

Statutes/Other Implemented: ORS 468.090 - 468.140 & 468A.060

History:

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DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A city with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(V) Any violation of the Landfill Gas Emissions rules under OAR Chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR Chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.

(X) Any violation of the Climate Protection Program rules under OAR Chapter 340, division 271.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

- (iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.
- (iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.
- (v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.
- (F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.
- (G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.
- (H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.
- (I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:
 - (i) A person that has or should have a waste tire permit; or
 - (ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.
- (J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.
- (K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.
- (L) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as a credit generator, an aggregator, or a registered fuel producer unless the violation is otherwise classified in this rule.
- (M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

(N) Any violation of the Landfill Gas Emissions rules under OAR Chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 by a person registered as an importer of finished fuels unless the violation is otherwise classified in this rule.

(R) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

- (A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.
 - (B) Any violation of visible emissions standards by operation of a vehicle.
 - (C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.
 - (D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.
 - (E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.
 - (F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.
 - (G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.
 - (H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.
 - (I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.
 - (J) Any violation of a statute, rule or order relating to the opportunity to recycle.
 - (K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.
 - (L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.
 - (M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.
- (b) The base penalty values for the \$1,000 penalty matrix are as follows:
- (A) Class I:
 - (i) Major — \$1,000;
 - (ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Statutory/Other Authority: ORS 468.020 & 468.090 - 468.140

Statutes/Other Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

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DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 9-1996, f. & cert. ef. 7-10-96

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 33-1990, f. & cert. ef. 8-15-90

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89



State of Oregon Department of Environmental Quality

Draft Rules – Division 12

Edits Incorporated

Division 12 ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0054

Air Quality Classification of Violations

(1) Class I:

- (a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
- (b) Constructing a new source, as defined in OAR 340-245-0020, without first obtaining a required Air Contaminant Discharge Permit that includes permit conditions required under OAR 340-245-0005 through 340-245-8050 or without complying with Cleaner Air Oregon rules under OAR 340-245-0005 through 340-245-8050;
- (c) Failing to conduct a source risk assessment, as required under OAR 340-245-0050;
- (d) Modifying a source in such a way as to require a permit modification under OAR 340-245-0005 through 340-245-8050, that would increase risk above permitted levels under OAR 340-245-0005 through 340-245-8050 without first obtaining such approval from DEQ;
- (e) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;
- (f) Operating an existing source, as defined in OAR 340-245-0020, after a submittal deadline under OAR 340-245-0030 without having submitted a complete application for a Toxic Air Contaminant Permit Addendum required under OAR 340-245-0005 through 340-245-8050;
- (g) Exceeding a Plant Site Emission Limit (PSEL);
- (h) Exceeding a risk limit, including a Source Risk Limit, applicable to a source under OAR 340-245-0100;
- (i) Failing to install control equipment or meet emission limits, operating limits, work practice requirements, or performance standards as required by New Source Performance Standards

under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(j) Exceeding a hazardous air pollutant emission limitation;

(k) Failing to comply with an Emergency Action Plan;

(l) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established under New Source Review/Prevention of Significant Deterioration (NSR/PSD);

(m) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(n) Exceeding an emission limit or violating an operational limit, process limit, or work practice requirement that was established to limit risk or emissions to avoid exceeding an applicable Risk Action Level or other requirement under OAR 340-245-0005 through 340-245-8050;

(o) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(p) Failing to perform testing or monitoring, required by a permit, permit attachment, rule or order, that results in failure to show compliance with a Plant Site Emission Limit or with an emission limitation or a performance standard established under New Source Review/Prevention of Significant Deterioration, National Emission Standards for Hazardous Air Pollutants, New Source Performance Standards, Reasonably Available Control Technology, Best Available Control Technology, Maximum Achievable Control Technology, Typically Achievable Control Technology, Lowest Achievable Emission Rate, Toxics Best Available Control Technology, Toxics Lowest Achievable Emission Rate, or adopted under section 111(d) of the Federal Clean Air Act;

(q) Causing emissions that are a hazard to public safety;

(r) Violating a work practice requirement for asbestos abatement projects;

(s) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;

(t) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

(u) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;

- (v) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (w) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);
- (x) Failing to install certified vapor recovery equipment;
- (y) Delivering for sale a noncompliant vehicle by a vehicle manufacturer in violation of Oregon Low Emission and Zero Emission Vehicle rules set forth in OAR 340 division 257;
- (z) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;
- (aa) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements or to meet credit retirement and/or deficit requirements under OAR 340 division 257;
- (bb) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257;
- (cc) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;
- (dd) Failing to comply with any of the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of OAR 340-253-8010;
- (ee) Committing any action related to a credit transfer that is prohibited in OAR 340-253-1005(8);
- (ff) Inaccurate reporting that causes illegitimate credits to be generated in the Oregon Clean Fuels Program, OAR chapter 340, division 253, or that understates a regulated party's true compliance obligation denominated in deficits under such program;
- (gg) Making misstatements about material information or knowingly or recklessly providing false information when submitting an application for a carbon intensity score under OAR 340-253-0450;
- (hh) Failing to timely submit a complete and accurate annual compliance report under OAR 340-253-0100(8);
- (ii) Failing to timely submit a complete and accurate emissions data report under OAR 340-215-0044 and OAR 340-215-0046;
- (jj) Submitting a verification statement to DEQ prepared by a person not approved by DEQ under OAR 340-272-0220 to perform verification services;

- (kk) Failing to timely submit a verification statement that meets the verification requirements under OAR 340-272-0100 and OAR 340-272-0495;
- (ll) Failing to submit a revised application or report to DEQ according to OAR 340-272-0435;
- (mm) Failing to complete re-verification according to OAR 340-272-0350(2);
- (nn) Failing to timely submit a Methane Generation Rate Report or Instantaneous Surface Monitoring Report according to OAR 340-239-0105;
- (oo) Failing to timely submit a Design Plan or Amended Design Plan in accordance with OAR 340-239-0110(1);
- (pp) Failing to timely install and operate a landfill gas collection and control system according to OAR 340-239-0110(1);
- (qq) Failing to operate a landfill gas collection and control system or conduct performance testing of a landfill gas control device according to the requirements in OAR 340-239-0110(2);
- (rr) Failing to conduct landfill wellhead sampling under OAR 340-239-0110(3);
- (ss) Failing to comply with a landfill compliance standard in OAR 340-239-0200;
- (tt) Failing to conduct monitoring or remonitoring in accordance with OAR 340-239-0600 that results in a failure to demonstrate compliance with a landfill compliance standard in OAR 340-239-0200 or the 200 ppmv threshold in OAR 340-239-0105(5)(b) or OAR 340-239-0400(2)(c);
- (uu) Failure to take corrective actions in accordance with OAR 340-239-0600(1);
- (vv) Failing to comply with a landfill gas collection and control system permanent shutdown and removal requirement in OAR 340-239-0400(1);
- (ww) Delivering for sale a new noncompliant on highway heavy duty engine, truck or trailer in violation of rules set forth under OAR 340 division 261;
- (xx) Failing to notify DEQ of changes in ownership or operational control or changes to related entities under OAR 340-271-0120;
- (yy) Owning or operating a covered entity, identified in OAR 340-271-0110, after a submittal deadline under OAR 340-271-0150(1)(a) or OAR 340-271-0330(1)(b) without having submitted a complete application for a Climate Protection Program permit or Climate Protection Program permit addendum required under OAR 340-271-0150;

(zz) Emitting covered emissions from a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020, without having been issued a BAER order under OAR 340-271-0320 and a permit issued under OAR 340-271-0150(3)(c);

(aaa) Failing to submit a BAER assessment or an updated BAER assessment according to OAR 340-271-0310;

(bbb) Failing to comply with a BAER order issued under OAR 340-271-0320.

(ccc) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions;

(ddd) Failing to demonstrate compliance according to OAR 340-271-0450;

(eee) Failing to comply with the requirements for trading of compliance instruments under OAR 340-271-0500 or 340-271-0510; or

(fff) Submitting false or inaccurate information on any application or submittal required under OAR Chapter 340 division 271.

(2) Class II:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP), ACDP attachment, or registration without first obtaining such permit or registration, unless otherwise classified;

(b) Violating the terms or conditions of a permit, permit attachment or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit or permit attachment modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit a complete ACDP annual report or permit attachment annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule, permit or permit attachment, unless otherwise classified;

(h) Failing to timely submit a complete permit application, ACDP attachment application, or permit renewal application;

- (i) Failing to submit a timely and complete toxic air contaminant emissions inventory as required under OAR 340-245-0005 through 340-245-8050;
- (j) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;
- (k) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).
- (l) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;
- (m) Failing to provide timely, accurate or complete notification of an asbestos abatement project;
- (n) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;
- (o) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620;
- (p) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257;
- (q) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is a producer or importer of blendstocks, as defined in OAR 340-253-0040;
- (r) Failing to register as an aggregator or submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c);
- (s) Failing to keep records under OAR 340-253-0600 when the records relate to obtaining a carbon intensity under OAR 340-253-0450;
- (t) Failing to keep records related to obtaining a carbon intensity under OAR 340-253-0450;
- (u) Failing to timely submit a complete and accurate quarterly report under OAR 340-253-0100(7);
- (v) Violating any requirement under OAR Chapter 340 division 272, unless otherwise classified;
- (w) Violating any requirement under OAR 340, division 239, unless otherwise classified;
- (x) Failing to comply with the reporting notification or warranty requirements for new engines, trucks, and trailers set forth in OAR Chapter 340, division 261;

(y) Violating any requirement under the Climate Protection Program, OAR Chapter 340, division 271, unless otherwise classified; or

(z) Violating any condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150, unless otherwise classified.

(3) **Class III:**

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project;

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;

(g) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is an importer of finished fuels, as defined in OAR 340-253-0040; or

(h) Failing to keep records under OAR 340-253-0600, except as provided in subsection (2)(s).

[Note: Tables and Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.020, 468A.025 & 468A.045

Statutes/Other Implemented: ORS 468.020 & 468A.025

History:

[DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021](#)

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[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14
DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11
DEQ 6-2006, f. & cert. ef. 6-29-06
DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
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DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 22-1996, f. & cert. ef. 10-22-96
DEQ 21-1994, f. & cert. ef. 10-14-94
DEQ 13-1994, f. & cert. ef. 5-19-94
DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 20-1993(Temp), f. & cert. ef. 11-4-93
DEQ 19-1993, f. & cert. ef. 11-4-93
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 2-1992, f. & cert. ef. 1-30-92
DEQ 31-1990, f. & cert. ef. 8-15-90
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89
DEQ 22-1988, f. & cert. ef. 9-14-88
DEQ 22-1984, f. & ef. 11-8-84
DEQ 5-1980, f. & ef. 1-28-80
DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows:

(a) Opacity limit violations:

(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or

(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.

(c) Exceeding an emission limit established under New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.

(d) Exceeding an emission limit established under federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.

(e) Exceeding a cancer or noncancer risk limit that is equivalent to a Risk Action Level or a Source Risk Limit if the limit is a Risk Action Level established under OAR 340-245-0005 through 340-245-8050: Major, otherwise apply OAR 340-012-0130.

(f) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection will be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020.

(A) Major:

(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.

(B) Moderate:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or

(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.

(C) Minor:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.

(g) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(h) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(i) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(j) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(k) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major — Exceeding the limit by more than 10 percent; or

(B) Moderate — Exceeding the limit by 10 percent or less.

(l) Oregon Clean Fuels Program violations:

(A) Exceeding the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of 340-253-8010 by not retiring sufficient credits to satisfy a regulated party's compliance obligation:

(i) Major — more than 15 percent of their total deficit obligation remains unsatisfied;

(ii) Moderate — more than 10 percent but less than 15 percent of their total deficit obligation remains unsatisfied; or

(iii) Minor — less than 10 percent of their total deficit obligation remains unsatisfied.

(B) Failing to register under OAR 340-253-0100(1) and (4): Moderate — producers and importers of blendstocks;

(C) Failing to submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c): Minor;

(D) Failing to keep records as set forth in OAR 340-253-0600, when the records relate to obtaining a carbon intensity under OAR 340-253-04500600: Minor;

(E) Failing to submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340 division 253: Moderate;

(F) Failing to timely submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340, division 253: Minor.

(m) Failing to timely submit a complete and accurate emissions data report under the Oregon Greenhouse Gas Reporting Program, OAR chapter 340, division 215, where the untimely, incomplete or inaccurate reporting impacts applicability or any compliance obligation under the Climate Protection Program, OAR chapter 340, division 271: Major.

(n) Oregon Climate Protection Program violations:

(A) Failing to demonstrate compliance according to OAR 340-271-0450: Major.

(B) Failing to comply with a BAER order issued under OAR 340-271-0320: Major

(C) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions: Major.

(D) Failing to obtain a BAER order under OAR 340-271-0320 or a permit issued under OAR 340-271-0150(3)(c), for a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020: Major.

(2) Magnitudes for selected Water Quality violations will be determined as follows:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than CA_{acute} , where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CA_{acute} is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: $(BOD5)/D$ is more than 10, where BOD5 is the concentration of the five-day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: $D = ((QR/4) + QI) / QI$, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

- (i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;
 - (ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;
 - (iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;
 - (iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or
 - (v) Increased turbidity by 20 NTU or less over background.
- (c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:
- (A) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;
 - (B) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;
 - (C) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or
 - (D) Resulted in a documented fish or wildlife kill.
- (3) Magnitudes for selected Solid Waste violations will be determined as follows:
- (a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:
 - (A) Major — The volume of material disposed of exceeds 400 cubic yards;
 - (B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or
 - (C) Minor — The volume of materials disposed of is less than 40 cubic yards.
 - (D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.
 - (b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:

(a) Failure to make a hazardous waste determination;

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment, storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.

(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:

(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[NOTE: Tables & Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.065 & 468A.045

Statutes/Other Implemented: ORS 468.090 - 468.140 & 468A.060

History:

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 6-2006, f. & cert. ef. 6-29-06

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

- (i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.
- (ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.
- (iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.
- (iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.
- (v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.
- (F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.
- (G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.
- (H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.
- (I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.
- (J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.
- (K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.
- (L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.
- (M) Any violation of a hazardous waste statute, rule, permit or related order by:
 - (i) A person that is a large quantity generator or hazardous waste transporter.
 - (ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A city with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(V) Any violation of the Landfill Gas Emissions rules under OAR Chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR Chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.

(X) Any violation of the Climate Protection Program rules under OAR Chapter 340, division 271.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as a credit generator, an aggregator, or a registered fuel producer unless the violation is otherwise classified in this rule.

(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

(N) Any violation of the Landfill Gas Emissions rules under OAR Chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 by a person registered as an importer of finished fuels unless the violation is otherwise classified in this rule.

(R) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1,000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Statutory/Other Authority: ORS 468.020 & 468.090 - 468.140

Statutes/Other Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

History:

[DEQ 20-2021, amend filed 11/18/2021, effective 01/01/2022](#)

[DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021](#)

[DEQ 16-2021, amend filed 10/04/2021, effective 10/04/2021](#)

[DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

[DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

DEQ 6-2006, f. & cert. ef. 6-29-06

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 9-1996, f. & cert. ef. 7-10-96

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 33-1990, f. & cert. ef. 8-15-90

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89



State of Oregon Department of Environmental Quality

Climate Protection Program – Guide to Proposed Rules

Greenhouse Gas Emissions Program 2021 Rulemaking – December 2021

About the Climate Protection Program

The Oregon Department of Environmental Quality is conducting a rulemaking to establish a new Climate Protection Program to reduce greenhouse gas emissions and address the effects of climate change. The objective of the Greenhouse Gas Emissions Program 2021 Rulemaking is to:

- Establish a new program to set limits on greenhouse gas emissions from significant sources in Oregon;
- Define regulatory applicability and program requirements;
- Prioritize equity by promoting benefits and alleviating burdens for environmental justice communities disproportionately burdened by the effects of climate change and air contamination; and
- Achieve co-benefits from reduced emissions of other air contaminants, particularly for environmental justice communities.

Developing proposed rules

DEQ began the rulemaking in January 2021 to develop the Climate Protection Program through a process that adheres to the public process requirements established in the Oregon Administrative Procedures Act, including convening a rulemaking advisory committee and holding a public comment period. DEQ is proposing these program rules for the Environmental Quality Commission's consideration. The EQC is a decision-making body that adopts proposed rules into Oregon administrative law.

A guide to the proposed rules

The below table provides a plain language explanation of the proposed Climate Protection Program rules in Oregon Administrative Rules, chapter 340, division 271, as proposed in the EQC staff report. This explanation is provided for information purposes only, and should not be relied upon or cited as a statement of the legal effect of the rules, if adopted by the EQC.

DEQ rules cannot be appropriately enforced unless they are classified within OAR chapter 340, division 12. Therefore, this rulemaking also proposes to amend division 12 to describe the Climate Protection Program violations and enforcement criteria (a guide to these proposed rules is not included in the table below). DEQ will assess civil penalties for such violations according to OAR chapter 340, division 12, DEQ may assess a single base penalty and aggregate multiple occurrences of a violation under the "O" factor in the division 12 penalty assessment formula. DEQ may also assess multiple base penalties for groups of violations.

RULE NUMBER	RULE TITLE	EXPLANATION
340-271-0010	Purpose and Scope	The purposes of the Climate Protection Program are to reduce greenhouse gas emissions that cause climate change from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination.
340-271-0020	Definition	Defines terms relating to this division of rules.
340-271-0030	Acronyms	Defines acronyms relating to this division of rules.
340-271-0090	Overview of Program Provisions for Covered Entities and CCI Entities	Provides an outline of the program-related rules of this division.
340-271-0100	Oregon Climate Protection Program Requirements	Describes general requirements for covered entities, including how to comply with the division, obtain a permit from DEQ, report, retain records, and use DEQ-provided forms and tools.
340-271-0110	Covered Entity and Covered Emissions Applicability	<p>The rules apply to certain entities listed below, collectively referred to in the rules as covered entities:</p> <ul style="list-style-type: none"> • Covered fuel suppliers include: <ul style="list-style-type: none"> ○ Suppliers of liquid fuels and propane ○ Covered emissions described as anthropogenic greenhouse gas emissions from combustion of liquid fuels and propane if those covered emissions meet or exceed a threshold in Table 1: <ul style="list-style-type: none"> ▪ Covered beginning with 2022 emissions (first compliance period) if emissions meet or exceed 200,000 metric tons of carbon dioxide equivalent (MT CO₂e) in 2018 or any subsequent year. ▪ Covered beginning with 2025 emissions (second compliance period) if emissions meet or exceed 100,000 MT CO₂e in 2021 or any subsequent year. ▪ Covered beginning with 2028 emissions (third compliance period) if emissions meet or exceed 50,000 MT CO₂e in 2024 or any subsequent year.

		<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ▪ Covered beginning with 2031 emissions (fourth compliance period and thereafter) if emissions meet or exceed 25,000 MT CO₂e in 2027 or any subsequent year. ○ Local distribution companies, known as natural gas utilities ○ Covered emissions described as anthropogenic greenhouse gas emissions from combustion of natural gas, excluding natural gas used at large electricity generating facilities. • Covered stationary sources include: <ul style="list-style-type: none"> ○ Stationary sources for covered emissions described as anthropogenic greenhouse gas emissions from industrial processes and fuel combustion not otherwise regulated from a covered fuel supplier and that meet or exceed 25,000 MT CO₂e. <ul style="list-style-type: none"> ▪ Does not include emissions from landfills, electric power plants, and natural gas compressor stations on and owned by interstate pipelines. ○ New stationary sources with the potential to emit covered emissions at or above 25,000 MT CO₂e.
340-271-0120	Changes in Covered Entity Ownership and Changes to Related Entities	<p>Covered entities must notify DEQ of changes in ownership or operational control. Covered entities remain covered under the program and covered fuel suppliers continue to hold any compliance instruments or CCI credits.</p> <p>Covered fuel suppliers must notify DEQ of any new related entities due to changes in ownership or operational control. New related entities become covered fuel suppliers and must apply for a CPP permit.</p>
340-271-0130	Cessation of Covered Entity Applicability	<p>Describes the conditions under which a covered fuel supplier is no longer subject to the requirements of this division:</p> <ul style="list-style-type: none"> • When covered emissions are 0 MT CO₂e for six consecutive years, or • When covered emissions for a supplier of liquid fuels and/or propane are below 25,000 MT CO₂e for six consecutive years, the covered fuel supplier can submit an application to DEQ to request cessation of requirements. <p>Describes the conditions under which a covered stationary source is no longer subject to the requirements of this division:</p> <ul style="list-style-type: none"> • The source no longer emits greenhouse gases, or

		<ul style="list-style-type: none"> When covered emissions are below 25,000 MT CO₂e for five consecutive years and any remaining CPP or BAER order requirements are met.
340-271-0150	Covered Entity Permit Requirements	<p>Covered entities must obtain permits.</p> <p>A covered fuel supplier must apply for a CPP permit within 30 days of DEQ notifying the covered fuel supplier to obtain the permit (DEQ may also set a later date in the notification). If DEQ does not provide a notification, then the covered fuel supplier must apply for the permit by February 14 of the first year the entity becomes covered or by March 31 of the first year after its emissions cross the applicable threshold, whichever is later. A new related entity that becomes covered due to a change in ownership or operational control must apply within 45 days of the date of the change.</p> <p>A covered stationary source must obtain a CPP permit addendum after receiving a Best Available Emissions Reduction (BAER) order from DEQ. For new sources, the CPP conditions will be incorporated in its operating permit if it receives one.</p>
340-271-0300	CPP Goals for Covered Stationary Sources	<p>CPP goals for covered stationary sources are to:</p> <ul style="list-style-type: none"> Reduce total covered emissions from covered stationary sources, and Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.
340-271-0310	Best Available Emissions Reduction Assessments for Covered Stationary Sources	<p>Covered stationary sources will be required to conduct best available emissions reduction (BAER) assessments and implement any applicable requirements in BAER orders.</p> <p>Covered stationary sources that are not new sources must complete a BAER assessment within nine months of receiving a notification from DEQ. Covered stationary sources that are new sources must submit a BAER assessment at the time of applying for permits.</p> <p>A BAER assessment includes:</p> <ul style="list-style-type: none"> Identification of sources of covered emissions. Identification of strategies that could reduce covered emissions. Estimation of covered emissions reductions that could be achieved by implementing each strategy.

		<ul style="list-style-type: none"> • Impacts of implementing each strategy, including positive and negative economic, energy, environmental and health impacts, such as impacts on other air contaminants. • Estimate of time required to implement each strategy. • Identification of information, resources, and documents used to inform the BAER assessment. <p>Covered stationary sources must submit a five-year review report to identify all strategies to reduce covered emissions available at that time. DEQ may require a new BAER assessment to be conducted if new covered emission reduction strategies are identified as part of the five-year review process.</p> <p>DEQ may separately require an updated BAER assessment from a covered stationary source no more than once every five years. If DEQ determines the source submitted information to DEQ that it knew or should have known was false, inaccurate, or incomplete, DEQ may require the source to conduct an updated BAER assessment within five years.</p>
340-271-0320	DEQ Best Available Emissions Reduction Order	<p>DEQ may make a BAER order for each source required to submit a BAER assessment. A BAER order establishes the required actions that a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken.</p> <p>The BAER order will be informed by the BAER assessment and any other information DEQ finds to be informative. DEQ will consider:</p> <ul style="list-style-type: none"> • Strategies that maximize covered emissions reductions and strategies that are achievable, technically feasible, commercially available, and cost-effective. • Positive and negative environmental and public health impacts of each strategy under consideration by DEQ, such as impacts on other air contaminants. • Economic impacts of each strategy under consideration by DEQ, including costs so great that a new source could not be built or an existing source could not be operated. • Impacts of the strategy on the type or quality of good(s) produced, if applicable.

		<ul style="list-style-type: none"> • Amount of time needed to implement each strategy under consideration and the remaining useful life of the source. • Input from the public and community organizations from nearby the covered stationary source. <p>DEQ may consult with industry experts and third parties before issuing a BAER order. DEQ will notify a covered stationary source of a BAER order in writing and the order is effective 30 days following the date of the notification, unless the source requests a contested case hearing to challenge the BAER order.</p> <p>DEQ must provide a public status update if DEQ does not issue a BAER order for a covered stationary source within 18 months of the date of DEQ's notification to the source of the requirement to submit a BAER assessment.</p>
340-271-0330	Compliance with a BAER Order	Within 30 days of the BAER order effective date, the covered stationary source must submit an application for a CPP permit addendum and submit an implementation plan. The covered stationary source must report annually to DEQ by July 31 on progress toward implementing the requirements of the BAER order.
340-271-0390	Recordkeeping requirements related to BAER	A covered stationary source must retain records for 10 years related to BAER.
340-271-0410	Generation of Compliance Instruments	<p>Covered fuels suppliers will be required to demonstrate compliance with greenhouse gas emissions limits through the use of compliance instruments and community climate investments (CCI) credits.</p> <p>DEQ generates compliance instruments. Each one authorizes a covered fuel supplier to emit one metric ton of carbon dioxide equivalent of greenhouse gas emissions. DEQ will generate compliance instruments in amounts equal to annual emissions caps in Table 2.</p>
340-271-0420	Distribution of Compliance Instruments to Covered Fuel Suppliers	<p>DEQ will distribute compliance instruments to covered fuel suppliers by March 31 of each year as follows:</p> <p>Covered fuel suppliers that are natural gas utilities will receive an annual distribution of compliance instruments described in Table 4.</p>

		<p>A covered fuel supplier that supplies liquid fuels and/or propane will receive an annual distribution of compliance instruments that is proportional to its share of historic covered emissions out of all these types of covered fuel suppliers' total historic covered emissions.</p> <p>DEQ will calculate each entity's proportion using a three-year evaluation period and schedule described in Table 5.</p> <ul style="list-style-type: none"> • Annual proportional calculation of compliance instrument distribution is based on each liquid fuels and propane covered fuel supplier's covered emissions and biofuel emissions as a proportion of the total covered emissions and biofuel emissions from all these types of covered fuel suppliers. • DEQ will establish a reserve of compliance instruments for liquid fuels and propane covered fuel suppliers that do not have sufficient data to calculate a proportion, or that become covered after DEQ has distributed compliance instruments for that year. <ul style="list-style-type: none"> ○ Each year, DEQ will add compliance instruments to the reserve to attain a reserve size described in Table 3. The compliance instruments in the reserve roll over from year to year such that compliance instruments are only added, as needed, to attain the size described in Table 3. ○ Liquid fuels and propane covered fuel suppliers that are unable to receive a proportional distribution may apply for a distribution from the reserve. The distribution will not exceed 300,000 compliance instruments per covered fuel supplier per year and will not exceed the covered fuel supplier's covered emissions for the year for which compliance instruments requested. ○ The reserve decreases in size over time. When the decrease occurs, DEQ may retire compliance instruments or may distribute them proportionally to liquid fuels and propane covered fuel suppliers. <p>DEQ will track distributed compliance instruments.</p>
340-271-0430	Holding Compliance Instruments	Describes banking of compliance instruments. A covered fuel supplier holds compliance instruments indefinitely until:

		<ul style="list-style-type: none"> • They are used to demonstrate compliance; • They are traded to another covered for supplier; or • The entity ceases to be a covered fuel supplier. In this case, DEQ may retire the compliance instruments or, if the entity is a supplier of liquid fuels and/or propane, DEQ may hold the compliance instruments in the reserve or distribute them proportionally to other remaining liquid fuels and propane covered fuel suppliers.
340-271-0440	Compliance Periods	A compliance period is three years. This first compliance period begins with 2022 and includes calendar years 2023 and 2024.
340-271-0450	Demonstration of Compliance	<p>DEQ will determine compliance obligations informed by covered emissions required to be reported to the Greenhouse Gas Reporting Program (Oregon Administrative Rules chapter 340, divisions 215). Demonstration of compliance is only required after a three-year compliance period.</p> <p>Covered fuel supplier demonstration of compliance include the following:</p> <ul style="list-style-type: none"> • Compliance demonstration is required for each three-year compliance period by November 28 of the year following the last year of the compliance period, or 25 days after DEQ has notified the covered fuel supplier of its obligations, whichever is later. • Compliance demonstration is for the total covered emissions within the compliance period. • Demonstration of compliance for these emissions is met by submittal to DEQ, for each MT CO₂e, one compliance instrument or one community climate investment credit (CCI credit). <ul style="list-style-type: none"> ○ The number of CCI credits that can be used for compliance is limited to 10 percent of the total compliance obligation during the first compliance period, 15 percent of the total compliance obligation during the second compliance period, and 20 percent of the total compliance obligation for each compliance period thereafter. ○ Compliance instruments must have been distributed from the calendar years within the compliance period or from earlier years. <p>If there is a change in ownership, the new owner is responsible for submitting the demonstration of compliance.</p>

		Each metric ton of CO ₂ e of a compliance obligation for which a covered fuel supplier does not demonstrate compliance according to this rule is a separate violation of this division.
340-271-0490	Recordkeeping Requirements Related to Demonstration of Compliance	A covered fuel supplier must retain records for seven years related to determining compliance obligations or demonstrating compliance.
340-271-0500	Trading of Compliance Instruments	Covered fuel suppliers may trade compliance instruments that have not already been used. Fraudulent and anti-competitive behavior are prohibited. DEQ will track traded compliance instruments.
340-271-0510	Compliance Instrument Trade Notifications and Process	All trades must be reported to DEQ on a form approved and issued by DEQ, including number of compliance instruments traded and price.
340-271-0590	Recordkeeping Requirements Related to Trading	A covered fuel supplier involved in a trade must retain relevant records for seven years.
340-271-0810	Covered Fuel Supplier Application for Community Climate Investment Credits	<p>Covered fuel suppliers must apply to DEQ to receive CCI credits after contributing funds to a CCI entity approved by DEQ with a written agreement with DEQ. If there are multiple CCI entities, the covered fuel supplier must contribute equal funds to all CCI entities approved at that time. The covered fuel supplier must attach a receipt with details of the contributions to the application to DEQ.</p> <p>DEQ's generation and distribution of CCI credits to a covered fuel supplier will be based on the CCI credit contribution amount in Table 7 that is in effect on the date the contribution was made.</p>
340-271-0820	Generation and Distribution of Community Climate Investment Credits	<p>DEQ will review and approve complete and accurate applications.</p> <p>DEQ will distribute CCI credits to covered fuel suppliers as one CCI credit for each payment of the CCI credit contribution amount. The CCI credit contribution amount is listed in Table 7 in 2021 dollars. DEQ will adjust the contribution amount annually for inflation.</p> <p>DEQ will track distributed CCI credits.</p>
340-271-0830	Holding Community Climate Investment Credits	<p>Describes banking of CCI credits. A covered fuel supplier holds CCI credits until:</p> <ul style="list-style-type: none"> • They are used to demonstrate compliance;

		<ul style="list-style-type: none"> • Two demonstration of compliance deadlines have passed; or • The fuel supplier ceases to be a covered fuel supplier. <p>CCI credits cannot be traded.</p>
340-271-0890	Recordkeeping Requirements Related to Community Climate Investment Funds	Covered fuel suppliers must retain records after making a payment of CCI funds until seven years after using any resulting CCI credit.
340-270-0900	Purposes of Community Climate Investments and Eligible Uses of CCI Funds	<p>The purposes of community climate investments are to:</p> <ul style="list-style-type: none"> • Provide covered entities with an optional means of meeting part of their compliance obligation for one or more compliance periods. • Reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit. • Reduce emissions of other air contaminants that are not greenhouse gases, particularly in and near environmental justice communities in Oregon. • Promote public health, environmental, and economic benefits for environmental justice communities throughout Oregon to mitigate impacts from climate change, air contamination, and energy costs. • Accelerate the transition of uses of fossil fuels in or near environmental justice communities in Oregon to zero or other lower greenhouse gas emissions sources of energy in order to protect people, communities, and businesses from increases in the prices of fossil fuels. <p>CCI funds may only be spent for the cost of implementing projects that reduce anthropogenic greenhouse gas emissions in Oregon and for related costs, such as reporting to DEQ and capacity building. Example projects could reduce emissions from:</p> <ul style="list-style-type: none"> • The transportation of people, freight, or both. • An existing or new residential use or structure. • An existing or new industrial process or structure. • An existing or new commercial use or structure.
340-271-0910	Application to DEQ for Approval as a Community Climate Investment Entity	501(c)(3) nonprofit organizations that meet eligibility criteria may apply for DEQ approval as a CCI entity. Entities must demonstrate that they will have staff capable of conducting work associated with being a CCI entity and will have staff or

		<p>subcontractors capable of implementing approved CCI projects. Covered entities may not be CCI entities. Subcontractors do not need to be 501(c)(3) nonprofit organizations but cannot be covered entities or their related entities.</p> <p>The application must include:</p> <ul style="list-style-type: none"> • Information about the organization, its eligibility, mission, and key personnel; • Information about any known project subcontractors; • Information about any violations of federal or state labor laws by the entity or any subcontractors; • Relevant prior experience of the entity and its subcontractors; • If known, a description of <ul style="list-style-type: none"> ○ Anticipated projects(s) or project type(s) that might be implemented; ○ Anticipated communities that might benefit; • A description of the administrative processes and financial controls the entity will use to ensure all CCI funds are held separately from the entity's other funds. This must detail how the entity will manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f); • Anticipated total CCI funds the entity would be able to accept and spend annually.
340-271-0920	DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities	<p>DEQ will review applications in consultation with the equity advisory committee described in Rule 0950 and may consult with other relevant experts.</p> <p>DEQ will prioritize approval of CCI entity applications from applicants that meet eligibility criteria and are best able to conduct work associated with being a CCI entity. This will include evaluation of the overall ability of the applicant to complete eligible projects that advance the purposes of CCIs and that collectively reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO₂e per CCI credit distributed by DEQ based on CCI contributions to the entity. DEQ will then work with the CCI entity to complete a written agreement. The written agreement must be approved before an entity receives final approval as a CCI entity and is authorized to receive CCI funds. DEQ will maintain a current list of approved CCI entities on DEQ's website. The initial term of the agreement and approval will not exceed ten years.</p>

		DEQ may revoke or suspend approval if DEQ determines there is fraud, a violation of this division or any written agreement between DEQ and the CCI entity, or if the CCI entity no longer meets eligibility criteria.
340-271-0930	Requirements for Community Climate Investment Entities	<p>Unless otherwise specified in the agreement between a CCI entity and DEQ, CCI entities must accept funds from covered fuel suppliers and provide a receipt. CCI entities must keep all CCI fund separate from the entities' other funds and may only spend CCI funds according to a DEQ-approved work plan. Prior to being spent in compliance with the provisions of this division and its agreement with DEQ, funds must be managed and invested in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). The CCI entity must complete an independent financial audit annually.</p> <p>CCI entities must submit work plans for DEQ approval and obtain DEQ approval prior to beginning work. The work plans must describe the project(s) or project type(s) that will be implemented, budget for those projects, and calculation methodologies that will be used to estimate emissions reductions. The description of the project(s) or project type(s) must identify how they support the purposes of CCIs. CCI entities must also submit annual reports to DEQ that include details on the work conducted and projects completed during the previous year, including anticipated emissions reductions.</p> <p>DEQ can revoke approval of a CCI entity, as necessary and as described in this rule. If a CCI entity is no longer approved, DEQ may require that any remaining CCI funds be rolled over to another CCI entity.</p>
340-271-0950	Equity Advisory Committee and Environmental Justice Community Engagement	<p>DEQ will appoint an equity advisory committee with members that can serve a term of up to three years. DEQ's priorities for appointing the committee are:</p> <ul style="list-style-type: none"> • Selecting members with expertise, interest, or lived experience related to environmental justice, impacts of climate change on communities in Oregon, impacts of air contamination on communities in Oregon, and greenhouse gas emissions reductions and climate change. • Representation of multiple regions across Oregon. <p>The committee will advise DEQ with review of applications, work plans, and other submittals that require DEQ review. DEQ and the equity advisory committee will</p>

		<p>conduct outreach to environmental justice communities throughout Oregon to seek input on projects that may be of interest to those communities.</p> <p>DEQ will offer guidance to the equity advisory committee and environmental justice communities on provisions related to CCIs.</p>
340-271-0990	Recordkeeping Requirements for Community Climate Investment Entities	CCI entities must retain records while approved and for seven years following approval.
340-271-8000	Program Review	<p>DEQ will conduct a program review on community climate investments and report to the EQC every two years. This will include a summary of CCI-related activities, including whether reductions of one MT CO₂e or more of anthropogenic greenhouse gas emissions was achieved for the average CCI credit distributed by DEQ. The report will also include DEQ recommendations for the EQC, such as changes to the CCI credit contribution amount or recommendations on how to best achieve the purposes of CCIs. DEQ will also share this CCI report with the equity advisory committee.</p> <p>DEQ will conduct a broader program review on the Climate Protection Program and report to the EQC every five years. This review will include summaries of activities relating to both covered fuel suppliers and covered stationary sources. For program reviews beginning after 2029, DEQ will review whether emission reductions from covered stationary sources align with the priorities in OAR 340-271-0300.</p> <p>Additionally, if the average annual statewide retail cost of certain fuels in Oregon increases year-over-year by an amount that is more than 20 percent higher than the change in cost for the same fuel over the same period in each of Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made.</p>
340-271-8100	Additional Compliance Enforcement Authority	Describes additional enforcement authority for the DEQ Director to act on violations of the CPP division of rules.
340-271-8110	Deferrals	DEQ may extend deadlines.
340-271-8120	Severability	Describes how each provision of this division is severable and that any remaining provisions will continue in full force and effect.
340-271-9000	Tables	Table 1: Thresholds for applicability described in OAR 340-271-0110(3).

		Table 2: Oregon Climate Protection Program caps. Table 3: Compliance instrument reserve size. Table 4: Compliance instrument distribution to covered fuel suppliers that are local distribution companies. Table 5: Compliance instrument distribution evaluation periods. Table 6: Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3). Table 7: CCI credit contribution amount.
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Alternative formats

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

ATTACHMENT C: Responses to Comments

DEQ accepted public comment on the proposed rulemaking from August 5, 2021, until 4 p.m. on October 25, 2021. DEQ received 7,620 comments by the close of the public comment period, including 93 comments received at two public hearings to receive oral comments. There were 28 oral comments at the first hearing hosted by DEQ and 65 oral comments at the second hearing hosted by the EQC. The 7,620 comments includes single comments that were signed by multiple organizations, some comments that may have been submitted twice, but on different days, one comment that included multiple individual comments on behalf of an organization's membership and one comment that was presented on behalf of a natural gas utility's customers. DEQ received many comments that were outside the scope of the rulemaking. Although DEQ will not summarize and respond to all comments outside the scope of the rulemaking, DEQ is including several examples in the comment responses below.

DEQ created 13 comment subjects and 156 comment categories to respond to comments, included in Table C-1, below. Oral and written comments are posted on the [DEQ rulemaking website](#). Comments are sorted alphabetically by comment subject. Comment subjects include:

- Caps;
- CCIs;
- Definitions;
- Enforcement;
- Equity;
- Fiscal Impact Statement;
- Fiscal/Modeling Study;
- General;
- Outside Scope of Rulemaking;
- Program Design Elements,
- Program Scope;
- Rulemaking; and
- Stationary Sources/BAER.

Comment Subject	Comment ID	Description of Comment Category	Response
Caps	1	<p>Commenter(s) provided input on enforceable, declining emissions limits, or caps. Examples include:</p> <ul style="list-style-type: none"> • Support for caps. • Seeking stronger, faster, and/or science-based emissions reduction targets. Commenter(s) asked for a range of different targets. Some examples include reductions of 50% by 2030, 100% by 2050, 8% reductions per year, or deep reductions based on 1990 emissions. • Caps will spur innovation and covered fuel suppliers will be able to plan for and achieve compliance. • Concern about the proposed cap trajectory being unachievable and disruptive. • Support for DEQ's proposed base cap being informed by 2017-2019 emissions. • Seeking the first-year base cap to be lower to require immediate emissions reductions. 	<p>In response to comments and based on preliminary feedback provided by the EQC, DEQ has modified the proposed caps to achieve greater emissions reductions. The cap in 2022 is still based on average emissions from 2017 through 2019. As proposed, the cap is based on a trajectory that declines 50% by 2035 and 90% by 2050 from this baseline. Since the threshold for covered liquid fuels and propane suppliers declines over time to include more covered entities and emissions, this decline is calculated from a hypothetical base cap if the lowest threshold (proposed to begin in 2031) were applied at the beginning in 2022. DEQ believes these targets address the need to reduce significantly greenhouse gas emissions while balancing the other program goals. DEQ has also updated the caps based on additional information regarding related entities of covered fuel suppliers. DEQ has also revised the definition for related entities in OAR 340-271-0020. Attachment E to the staff report to the EQC provides for more information on calculation of the caps.</p>
Caps	2	<p>Add detail to table 2 explaining calculation of the caps.</p>	<p>The proposed CPP rules in OAR chapter 340, division 271 describe the regulatory provisions that enable DEQ to operationalize the program and that allow affected parties to understand how to participate and comply.</p>

Comment Subject	Comment ID	Description of Comment Category	Response
			<p>Certain specifics or explanations do not make sense to include as part of the rules. To provide insight into the calculations of the annual caps, DEQ has included Attachment E to the staff report to the EQC.</p>
Caps	3	<p>Allow DEQ to adjust caps, such as if targets are not being met, without changes to the rule.</p>	<p>DEQ is not proposing changes in response to these comments. Key benefits of establishing the caps in the rule are to provide certainty for covered entities in planning for compliance and ensure emissions reductions. DEQ has the ability to act through rulemakings to make changes to the rules, such as future years' caps, if needed. DEQ is also proposing a program review every five years to assess emissions reductions achieved and whether recommendations regarding caps should be considered by the EQC.</p>
Caps	4	<p>The number of compliance instruments to be distributed to natural gas utilities are not equal to 2019 emissions reported by the utilities.</p>	<p>The calculation of the number of compliance instruments to distribute to natural gas utilities is based on each utility's 2017 through 2019 average covered emissions. A utility's actual covered emissions and compliance obligations in the program may be lower than its reported emissions due to the proposed exclusions described in OAR 340-271-0110(4)(b)(B). For more information on the calculations for the distributions to the natural gas utilities (local distribution companies), see Attachment E to the staff report to the EQC.</p>
Caps	5	<p>Update Cascade's emissions that informed the cap calculations and compliance instrument distributions to local distribution companies to solely reflect data reported by Cascade.</p>	<p>In the Notice of Proposed Rulemaking, DEQ included language in OAR 340-271-0110(1) to demonstrate compliance obligations will first be informed by data reported by the covered fuel supplier. If there is not sufficient information from them then DEQ will use other best available information. Because Cascade reports emissions from gas delivered to Hermiston Generating Company, DEQ will be able to use this information to adjust Cascade's compliance obligations downward to account for OAR 340-271-0110(4)(b)(B)(iv). DEQ is</p>

Comment Subject	Comment ID	Description of Comment Category	Response
			utilizing this methodology and the caps and compliance instrument distribution tables in the rule are reflective of this. Please see Attachment E to the staff report to EQC for more information.
CCIs	6	Allow CCI entities to use volunteers in addition to paid staff and subcontractors.	<p>DEQ is not proposing to make changes in response to this comment. DEQ believes it is important for CCI entities to have paid staff capable of fulfilling the requirements of being a CCI entity. DEQ's intent is for CCI funds to pay for the cost of being a CCI entity and the costs of project development and implementation, including any staff or subcontracting costs.</p> <p>Although DEQ is not changing this requirement, DEQ is revising the proposed rules to clarify that an applicant does not need to have sufficient staff at the time they apply to be a CCI entity. Once approved as a CCI entity, they can hire the necessary staff. If an applicant has existing volunteers, DEQ notes that those volunteer positions could become staff positions.</p> <p>As described in this response to comment (Comment ID 36) elsewhere, DEQ is proposing a higher contribution amount to earn CCI credits. DEQ agrees with comments that CCI funds need to support emission reduction projects that on average reduce emission by at least one MT CO₂e per CCI credit distributed by DEQ. CCI funds also need to reflect the full costs of developing and implementing equitable pipeline of these projects, such as paying CCI entity staff.</p>
CCIs	7	Allow CCI funds to support/subsidize a specific type of project. Examples of specific requests include, transportation electrification, charging stations, electric trucks.	DEQ has concluded that changes to the rules are not necessary to respond to these comments. Projects must reduce anthropogenic greenhouse gas emissions in Oregon. However, DEQ has clarified eligible projects in OAR 340-271-900(2). The example projects described in

Comment Subject	Comment ID	Description of Comment Category	Response
			<p>the comment summary are eligible to be supported with CCI funds.</p> <p>Regarding CCI project approval, DEQ notes that it has also revised OAR 340-271-0950 to clarify the role of the equity advisory committee, which includes informing DEQ on projects that are of interest to the environmental justice communities they represent. DEQ added provisions on outreach to environmental justice communities to inform DEQ decision-making about CCI entities and projects that may receive CCI funds to ensure the program is meeting the purposes in OAR 340-271-0900. This outreach is in addition to outreach conducted by CCI third parties. Both the environmental justice communities and equity advisory committee will provide input to DEQ on which proposed projects are most of interest.</p>
CCIs	8	Strengthen public engagement on CCI projects, especially by environmental justice communities. Commenter(s) sought DEQ outreach to environmental justice communities to solicit their input on projects that would be of interest. Commenter(s) suggested trainings for community-based organizations to become CCI entities as a way to build capacity.	DEQ has revised equity advisory committee rules in OAR 340-271-0950 so that DEQ will conduct outreach to environmental justice communities to seek input on projects that are of interest. As CCI entities develop and identify eligible projects as described in OAR 340-271-0900, they will also need to conduct outreach to environmental justice organizations and work with other local and community-based organizations.
CCIs	9	Allow smaller fuel suppliers to earn CCIs credits before they become covered when the threshold declines. Commenter(s) sought for fuel suppliers to earn CCI credits at a lower cost and bank them for use later as a way to reduce compliance costs.	DEQ is not proposing to make changes in response to these comments. The declining threshold is meant to provide smaller fuel suppliers with additional time to plan for emissions reductions. DEQ expects that this will help mitigate compliance costs and any administrative burdens. Once covered, DEQ believes it is appropriate for covered fuel suppliers to be able to make the

Comment Subject	Comment ID	Description of Comment Category	Response
			<p>contribution amount that is in effect at that time. As described elsewhere, DEQ is also proposing to limit banking of CCI credits to two compliance periods.</p>
CCIs	10	<p>Allow trading of CCIs credits. Commenter(s) described scenarios where a covered fuel supplier sells assets or distribution channels to identify when trading of CCI credits may be helpful.</p>	<p>DEQ is not proposing to make changes in response to these comments. Covered fuel suppliers are not required to earn CCI credits, so they could choose to contribute funds only for the number of CCI credits that they anticipate they will need for any compliance period. If a covered entity is issued more CCI credits than it can use to meet a compliance obligation, then the fuel supplier can use those CCI credits, subject to the proposed limitation on banking (See response to Comment ID 25). In addition, the CCI contribution amounts are listed in the proposed rules, subject to adjustments for inflation. These factors may limit the usefulness of trading as a cost containment measure or flexibility measure for covered fuel suppliers.</p> <p>Although CCI credits are not tradeable in the proposed program, if a covered fuel supplier undergoes a change in ownership, then the new owner would acquire any CCI credits following a change in ownership.</p> <p>Compliance instruments are however tradeable and one of the ways in which covered fuel suppliers are incentivized to reduce their covered emissions earlier, resulting in earlier emissions reductions and associated benefits.</p>
CCIs	11	<p>CCIs should result in new projects that are not otherwise being funded.</p>	<p>DEQ is not proposing to make changes in response to this comment. CCI entities could propose new projects that are not otherwise being funded. They could also propose to expand existing or planned projects to provide additional emission reductions and community benefits. DEQ believes that all such approaches could achieve the</p>

Comment Subject	Comment ID	Description of Comment Category	Response
			<p>purposes of CCIs. DEQ will review projects in work plans with the equity advisory committee.</p>
CCIs	12	<p>Clarify the timeframe in which CCI projects will be completed and/or require timely completion of projects, such as within three years. Commenter(s) requested that if projects are not completed in a timely manner, such as three years, that further investments be halted.</p>	<p>DEQ is not proposing to make changes in response to this comment. Each CCI entity must submit a work plan and annual reports that describes projects implemented according to that work plan. CCI entities cannot begin work until DEQ approves a work plan. Timelines will vary by CCI entity and by project. If projects are not being implemented according to the work plan, the report must also include steps that will be taken to improve performance of the CCI entity. The proposed rules also allow DEQ to revoke CCI entity approval in full or in part if necessary..</p> <p>DEQ will conduct a program review on CCIs every two years, and if necessary, DEQ may propose changes regarding the timeline for project implementation. Contributions to CCI entities may begin as early as 2023. Once CCI entities begin receiving funds, it will take time for them to hire and train staff in order to begin project implementation. DEQ will consider this during the program review.</p>
CCIs	13	<p>Comments on whether CCI projects should sequester or remove emissions:</p> <ul style="list-style-type: none"> • CCI projects should not only reduce emissions, but also sequester or remove emissions, especially through natural and working lands. • Sequestration projects could generate important co-benefits of CCI projects related to health and resiliency. 	<p>DEQ is not proposing to make changes in response to these comments. While sequestration is an important tool for addressing climate change, the CPP is designed to drive reductions of anthropogenic greenhouse gas emissions, primarily those from fossil fuel combustion. DEQ believes that CCI funded projects need to support the transition away from fossil fuels, focusing on mitigating costs and reinforcing equity. One of the CCI priorities is supporting the transition of residential, commercial, industrial and transportation-related uses of fossil fuels in and near environmental justice communities. Environmental justice communities include</p>

Comment Subject	Comment ID	Description of Comment Category	Response
		<ul style="list-style-type: none"> CCI projects should only reduce emissions, not sequester emissions. 	communities of color, communities experiencing lower incomes, rural communities, tribal communities and coastal communities.
CCIs	14	<p>Concern about fraud/waste associated with CCIs. Commenter(s) requested that CCI credits be invalidated if outcomes are not achieved or requested penalties.</p> <p>Other commenter(s) sought for DEQ to state in rules that covered entities are not held responsible if CCIs/projects do not achieve their purposes. Commenter(s) noted while the intent when contributing funds may be to support eligible projects, the covered entity has no insight into what the funds will be used for and should not be liable.</p>	<p>In response to the comments, DEQ has modified OAR 340-271-0930 to require CCI entities to manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). DEQ has also modified OAR 340-271-0930 to clarify that when reviewing work plans submitted by CCI entities, DEQ will consider whether the work plan is likely to result in an average of at least 1 MT CO₂e of anthropogenic greenhouse gas emissions reductions per CCI credit distributed by DEQ for contributions to that CCI entity. Further, CCI entities can only receive CCI funds after they have entered into a written agreement with DEQ.</p> <p>However, If a contribution of CCI funds does not result in 1 MT CO₂e of emissions reduction, the covered fuel supplier is not liable. CCI entities are responsible for spending CCI funds according to program rules and their written agreement with DEQ. If a CCI entity uses CCI funds according to program rules but does not achieve at least 1 MT CO₂e of emissions reduction for the average CCI credit, this is not a violation of the rules.</p> <p>As described in OAR 340-271-8000(1), DEQ will review CCIs every two years and may propose changes if the 1 MT CO₂e average is not being achieved program-wide.</p>
CCIs	15	<p>CCI projects must provide benefits to environmental justice, frontline, and/or disadvantaged communities. Commenter(s) requested a minimum portion of funds be used for the most</p>	<p>In response to comments, DEQ has modified the rule to better support equity and environmental justice communities. This includes a modified OAR 340-271-0900(1)(e) to focus on homes, businesses, and infrastructure in or near environmental justice</p>

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		<p>disadvantaged and impacted communities. For example, commenter(s) requested that 100% of funds be used to benefit the most disadvantaged and impacted communities. Other commenter(s) offered specific minimum percentages, such as 25% to disadvantaged communities, 10% for low-income households or communities, 10% to tribes, or 10% to communities of color. Commenter(s) requested reporting on this percentage achieved.</p>	<p>communities. DEQ has also clarified in OAR 340-271-0920(1) that when DEQ is evaluating applications to be a CCI entity DEQ will consider the ability of the applicant to advance the purposes of CCIs. DEQ does not propose to set specific amount of funds for specific communities within Oregon or for specific uses or beneficiaries.</p> <p>Each CCI entity must describe how its proposed projects will benefit environmental justice communities and support each of the purposes of CCIs in OAR 340-271-0900(1)(b) through (e). DEQ will review the work plans in consultation with the equity advisory committee.</p> <p>DEQ has also revised OAR 340-271-0950 to clarify and expand the role of the equity advisory committee. In addition to outreach conducted by CCI third parties, DEQ also added provisions for outreach by DEQ to environmental justice communities to inform decision-making about CCI entities and projects that may receive CCI funds.</p>
CCIs	16	<p>Emissions reductions from implemented CCI projects must be one or more of: real, additional, verifiable, enforceable, and/or long-lived. Commenter(s) contrasted CCIs with offsets in similar programs.</p>	<p>DEQ agrees that CCI projects must reduce emissions if allowed as an alternative compliance option. DEQ has proposed a CCI program review every two years and will use that as an opportunity to track progress towards achieving purposes of CCIs including achieving on average one MT CO₂e of emissions reductions for each awarded CCI credit. The program review offers an opportunity for DEQ and the EQC to consider changes to the program to better meet goals, if and as needed.</p> <p>The design of CCI rules were informed by public input during the program development and designed to work for communities in Oregon. Projects must be located in Oregon with benefits to environmental justice</p>

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			communities as a priority. As a result, there are ways in which CCIs are different from offsets used in other emissions reduction programs.
CCIs	17	Expressed concerns that administrative requirements will be burdensome for DEQ and the equity advisory committee.	DEQ is proposing to make changes in response to these comments. DEQ believes that the process and requirements for CCI entities are important for ensuring the purposes of CCIs are achieved, including the review and approval processes for DEQ and the equity advisory committee. However, DEQ has modified some of the processes and administrative requirements.
CCIs	18	Include a date by which DEQ will distribute CCI credits to provide predictability and certainty.	DEQ is making changes in response to these comments. DEQ's current proposal is to distribute CCI credits to a covered fuel supplier that submits an accurate and complete application for the credits to DEQ. This process will be initiated based on when applications are received, rather than at a set date. DEQ has updated the proposal so that covered fuel suppliers seeking CCI credits for use in a demonstration of compliance must submit applications no later than November 14 of the year the demonstration of compliance will be submitted. This will provide DEQ time to process requests and distribute CCI credits.
CCIs	19	Limit the ability for CCI entity personnel to receive DEQ funds.	DEQ is not proposing to support CCI entity operations with DEQ nor state funds. CCI funds are contributed by covered fuel suppliers to CCI entities. CCI entity personnel could receive CCI funds, such as in the form of a salary associated with their work implementing CCI projects.
CCIs	20	Limit the administrative costs, salaries, and marketing that can be paid for with CCI funds.	While program rules do not set a specific limit on administrative or similar costs, the rules do require that these costs be included in a budget as part of a work plan submitted for DEQ approval. These costs may also be limited by the written agreement between DEQ and the CCI entity. The administrative costs paid for with CCI

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			<p>funds can only be those that are related to project implementation and/or related to the requirements of being a CCI entity. DEQ also recognizes that CCI funds will need to be used for costs indirectly associated with emissions reductions projects, including environmental justice community outreach, capacity building, emissions calculations and monitoring, project development costs, and potential costs associated with job training for emission reduction projects.</p>
CCIs	21	<p>Commenter(s) provided feedback on the allowable usage of CCIs credits. Examples include:</p> <ul style="list-style-type: none"> • Concerned about the use of CCIs credits or does not support the use of CCI credits in the program. • Concerned that CCIs could allow covered entities to "pay to pollute." • General support for CCIs in CPP, including support for the proposed limits on using CCI credits. • CCIs should be available at the program start, not beginning in 2023 as proposed. • CCIs would be an important compliance tool for covered fuel suppliers • Increase the allowable use of CCIs, such as allowing a greater percentage of compliance to be achieved or 	<p>DEQ does not propose to change the allowable usage of CCI credits. DEQ believes that Community Climate Investments allow for some degree of compliance flexibility, while reducing emissions and prioritizing benefits for environmental justice communities in Oregon.</p> <p>DEQ proposes for the maximum allowed usage of CCIs to begin at 10% of a compliance obligation for the first compliance period, increase to 15% of a compliance obligation in the second compliance period and increase to 20% for the third and future compliance.</p> <p>As noted in response to Comment ID 25, DEQ is proposing to include a limit on banking of CCI credits through no more than two compliance periods, after which the CCI credit is cancelled if it remains unused. DEQ has also removed the individual entity purchase limits for CCIs. DEQ believes these changes will continue to allow time for the CCI program to develop before the maximum amount of allowable CCI credits might be used toward compliance, will limit banking of large amounts of CCI credits, and still provide covered fuel suppliers with an option to earn CCIs if they are unable to make enough emissions reductions.</p>

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		<p>allowing 20 percent to be achieved at program start.</p> <ul style="list-style-type: none"> • There should be no restrictions on the usage of CCIs. • The allowable use of CCI credits should be lower, such as 10%, or 15%, or at a level that would align with programs in other jurisdictions such as California or Quebec. • The limit on CCI credit usage should decrease over time, rather than increase. • Percentage should be based on the capacity of CCI entities to spend the funds. • Set a spending limit on contributions since DEQ does not regulate consumer rates and covered fuel supplier CCI spending might impact rates. 	
CCIs	22	<p>Commenter(s) provided feedback on calculation of emissions reductions achieved by CCI projects, Examples include:</p> <ul style="list-style-type: none"> • DEQ should perform these calculations, not CCI entities. • Clarify how emissions reductions will be calculated, and over what time period. • Use established methods for estimating emissions reductions. 	<p>DEQ is not proposing changes in response to these comments. DEQ believes it is appropriate for CCI entities to propose a method to calculate emissions reductions from their projects. DEQ's review for approval in the work plan is an opportunity to consider, with the equity advisory committee, what the CCI entity is proposing and offer suggestions and propose changes to the methodology at that time. DEQ does intend to approve similar methodologies for different CCI entities if the projects are also similar.</p>

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CCIs	23	Prioritize projects that achieve multiple air pollutant reductions, i.e. not just greenhouse gases but also criteria pollutants and/or toxics.	The purposes of the Climate Protection Program are to reduce greenhouse gas emissions from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination. DEQ will prioritize projects that best achieve the purposes of CCIs described in OAR 340-271-0900. These purposes do include prioritizing both reductions of greenhouse gas emissions by an average of at least one MT CO ₂ e per CCI credit distributed by DEQ as well as reductions of other air contaminants that are not greenhouse gases, particularly in and near environmental justice communities.
CCIs	24	Require work plans to include estimated emissions reductions	DEQ has modified OAR 340-271-0930(4) to require work plans to include an estimate of the anticipated reductions during the period of the work plan.
CCIs	25	<p>Commenter(s) sought at least 1 MT CO₂e of greenhouse gas emissions reductions per CCI credit. Examples of how this could be implemented were:</p> <ul style="list-style-type: none"> • Evaluate emissions reductions per credit or project. • Evaluate emissions reductions per CCI entity. • If 1 MT CO₂e of greenhouse gas emissions reductions are not achieved, require 1 MT of emissions reductions of other air contaminants. • Revise the definition of what a CCI credit is. 	The proposed OAR 340-271-0900 defines the purposes of CCIs, which includes the intention to achieve at least 1 MT of CO ₂ e reduction on average for CCI credits distributed by DEQ. When reviewing applications for CCI entity approval and when reviewing CCI entity work plans, DEQ will consider the entity's ability to reduce anthropogenic greenhouse gas emissions by an average of at least 1 MT CO ₂ e. DEQ will monitor whether and how the program is achieving this by conducting a program review every 2 years, which will include analysis of this purpose as well as provide an opportunity to make recommendations to the EQC if changes to CCIs are needed. DEQ does not believe that this requires a definition change or that CCI credits should be required to result in 1 MT of emissions reductions of other air contaminants.

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CCIs	26	Seeking clarity and/or further development of CCIs and/or CCI implementation process.	The proposed CPP rules in OAR chapter 340, division 271 describe the regulatory provisions that enable DEQ to operationalize the program and that allow affected parties to understand how to participate and comply. If the program is adopted, implementation of certain aspects will continue to be developed as well as guidance for certain topics. This is how DEQ implements most programs. Certain specifics cannot be part of the rules, as details for implementation will be directly informed by the equity advisory committee that first must be convened, as well as input from environmental justice communities in Oregon. Specifics of implementation of projects supported by CCI funds will be up to the CCI entity implementing the project(s), though DEQ is requiring reporting on progress of project implementation. In response to comments, DEQ did modify proposed rules to clarify the purposes of CCIs, eligible projects that can be supported by CCI funds, CCI entity applications and approvals, including entering into a written agreement with DEQ, and the role of the equity advisory committee.
CCIs	27	Seeking clarity on eligible types of CCI projects.	Projects must reduce anthropogenic greenhouse gas emissions in Oregon. DEQ has revised OAR 340-271-0900 to clarify eligible projects. DEQ has also revised OAR 340-271-0950 to clarify the role of the equity advisory committee, which includes informing DEQ on projects that are of interest. In this rule, DEQ also added provisions on outreach to environmental justice communities to seek input to inform DEQ decision-making about CCI entities and projects that may receive CCI funds to ensure the program is meeting the purposes in the rules as well as the interests of these communities. Ultimately, project types will be decided during implementation will depend on the feedback DEQ receives on what kinds of projects are most of interest.

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CCIs	28	Seeking for marginalized community members to staff CCIs.	The proposed OAR 340-271-0950 describes the intended make-up of the DEQ-appointed equity advisory committee, which focuses on Oregonians with lived experiences. As proposed, marginalized/ impacted/ environmental justice community members are a target audience that DEQ seeks to include on the committee. When it comes to staffing of DEQ-approved CCI entities themselves, DEQ does not set specific requirements other than the entity be a 501(c)(3) nonprofit and demonstrate they will have staff and capacity capable of conducting the CCI work described in OAR chapter 340, division 271. DEQ anticipates that a small number of CCI entities will be working with local and community-based organization as subcontractors on implementing projects throughout Oregon, however organizations can also apply to be CCI third party entities. As noted earlier, DEQ believes it is important for CCI entities to have paid staff capable of fulfilling the requirements of being a CCI entity. DEQ's intent is for CCI funds to pay for the cost of being a CCI entity and the costs of project development and implementation, including any staff or subcontracting costs.
CCIs	29	Commenter(s) expressed interest in being a CCI entity.	Thank you for your comment. DEQ is encouraged to learn organizations are interested in participating.
CCIs	30	Commenter(s) provided feedback on the limits for earning and banking CCI credits. Examples include: <ul style="list-style-type: none"> • Support for the proposed limits on earning and banking CCIs credits. • Removing the ability to bank CCI credit or further limit the banking of CCI credits. For example, some suggested that 	DEQ has modified the OAR 340-271-0820 and OAR 340-271-0830 to remove the annual limit on the number of CCI credits that a covered fuel supplier may be issued and to add a limit on banking CCI credits. DEQ proposes to retain the provisions that limit the ability to earn CCIs if there are no CCI entities. During development of the proposed rules for the Climate Protection Program, DEQ heard from many stakeholders that they preferred limits to banking of CCI credits. DEQ also heard from many stakeholders that they preferred

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		<p>CCI credits should be used toward demonstrating compliance within the compliance period following that in which the CCI credit was granted.</p> <ul style="list-style-type: none"> • Support for the proposed inability to earn CCI credits if there are no approved CCI entities. • Opposition to the rule that covered fuel suppliers could only contribute funds to CCI entities if they are approved. • If there are no CCI entities during a compliance period, but a CCI entity is approved during the subsequent three months, DEQ should not allow covered fuel suppliers to earn CCI credits for the compliance period (which DEQ proposed provisions relating to this in OAR 340-271-0820(3)(a)(D) and (E)). 	<p>the ability to bank CCI credits. To balance these interests, DEQ previously proposed to allow banking of compliance instruments to provide covered fuel suppliers with flexibility in when and how they use their CCI credits but proposed to limit the number of CCI credits a covered fuel supplier could earn (and therefore limit the amount that could be banked).</p> <p>Based on public comment, DEQ is revising this to be a banking limit, instead of a limit on the number of CCI credits that can be earned, to make the intent clearer and to reduce the complexity of earning CCI credits. DEQ proposes that banking of CCI credits be limited to 2 compliance periods, based on the due date to submit a demonstration of compliance form. In other words, if a covered fuel supplier earns 100 CCI credits in compliance period 1 but only ends up choosing to use 90, the covered fuel supplier could hold the 10 remaining CCI credits when it demonstrates compliance for compliance period 2. If the CCI credits remain unused after compliance period 2, the covered fuel supplier would no longer hold those 10 CCI credits.</p> <p>Since CCI credits are earned based on contributing funds to an approved CCI entity, DEQ cannot modify program rules to allow earning CCI credits in the absence of an approved CCI entity. DEQ's intent is to approve at least one CCI entity.</p>
CCIs	31	<p>Commenter(s) felt the role of the equity advisory committee should be expanded. For example, the committee should have more oversight of CCI entities and provide direction to CCI entities, such as</p>	<p>DEQ has proposed the role of the equity advisory committee to support the CCI part of the program by providing input that will help inform DEQ as it makes decisions/approvals. The written agreement/contract that the agency will have with any approved CCI entities will</p>

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		encouraging subcontracting with community-based organizations.	help ensure DEQ oversight of these entities' activities and in meeting the CPP goals and CCI purposes.
CCIs	32	Commenter(s) offered feedback on the proposed two-year program review on the CCIs portion of the CPP. Examples include: <ul style="list-style-type: none"> • Support for the proposed program review. • The program review on CCIs should be annual or quarterly • The program review should include involvement from environmental groups, the public, and media. • The program review should include recommendations for changing the CCI price as needed to meet climate and/or equity goals. 	DEQ believes the proposed review every two years of the CCIs program is a good balance to allow enough time for CCI funds to be spent and projects to be implemented, while reviewing frequently enough to regularly see if CCIs are achieving their purposes as described in the CPP rules. The review provides an opportunity for DEQ to make recommendations if changes are needed. In the review, DEQ may make any recommendations regarding any aspect of the CCI part of the program. This could include changes to the contribution amount to earn a CCI credit. More generally, DEQ can propose changes to rules through rulemaking at any time, not just as a result of a program review, and the EQC has the authority to act more quickly to adopt temporary rules, if and as needed.
CCIs	33	Commenter(s) offered feedback on DEQ's proposal to require that projects support by CCI funds be located in Oregon. Examples include: <ul style="list-style-type: none"> • Support for the proposed rule • This should explicitly state that it is inclusive of tribal lands. • There should be no geographic limitations on project locations to ensure sufficient supply/reduce program costs. 	Projects must be located in Oregon. During the rulemaking process, DEQ, as informed by public input, focused the scope of eligibility to Oregon to ensure project benefits are seen for Oregon communities. This is inclusive of tribal lands.
CCIs	34	Commenter(s) provided feedback on the role of covered entities in CCIs. Examples include:	DEQ has concluded that covered entities should not be subcontractors of CCI entities or directly receive CCI funds because allowing for it may present a potential

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		<ul style="list-style-type: none"> • Covered entities should have a role in owning/implementing CCI projects, such as the ability to implement projects themselves or be able to select projects that get funding. • Covered entities should be able to collaborate with CCI entities to further support the process/projects. • Supported for DEQ's proposal of not allowing covered entities or their related entities to be subcontractors to CCI entities or receive CCI funds, • Covered entities or their related entities should be able to be subcontractors or receive CCI funds. • CCI funds should be available to covered entities for fuel infrastructure investments to be able to support emissions reductions and to support local businesses that are fuel retailers. 	<p>conflict of interest. As long as the covered entities do not directly receive CCI funds, they could still partner with CCI entities or indirectly benefit from CCI projects that reduce greenhouse gas emissions, as some projects may indirectly reduce covered entity compliance obligations. Covered entities could be partners and subject matter experts in supporting the implementation of projects supported by CCI funds, so long as the covered entities are not formal subcontractors of the CCI entity.</p>
CCIs	35	<p>Commenters(s) provided feedback regarding DEQ's proposal requiring a covered fuel supplier to distribute CCI funds equally between all approved CCI entities. Examples include:</p> <ul style="list-style-type: none"> • Concern that if there are many CCI entities, this requirement 	<p>DEQ has revised the CCI application and approval process in response to comments. DEQ believes requiring equal distribution of CCI funds between CCI entities may help to ensure all CCI entities are able to fund projects. This will support a greater variety of projects, provide benefits to more environmental justice communities, and allow DEQ to better compare the successes of different CCI entities and their projects.</p>

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		<p>could be burdensome for covered fuel suppliers.</p> <ul style="list-style-type: none"> • Instead of equal distribution, there could be specific limits on the percentage of funds each CCI entity can receive, for example, none can receive more than 40% of the total it is eligible to accept during a given year from any one covered fuel supplier. • Limits could be based on the size and/or capacity of each CCI entity. 	<p>DEQ anticipates approving a small number of CCI entities, which limits the administrative burden to covered fuel suppliers. DEQ believes that an equal distribution of funds is simpler than establishing different percentages per CCI entity. However, in the written agreement between DEQ and a CCI entity, DEQ can now place a limit on the amount of CCI funds that an entity may accept. DEQ will also be tracking how each CCI entity spends fund on eligible projects as part of the work plans and annual reports.</p>
CCIs	36	<p>Commenter(s) provided input on CCI funds. Examples include:</p> <ul style="list-style-type: none"> • The contribution amount to earn a CCI credit should be higher. • The contribution amount should be lower, such as to be reflective of offset prices in other markets or the domestic social cost of carbon, not global. • The contribution amount should be at whatever level corresponds to the cost of implementing projects that would reduce 1 MT CO₂e, including capacity building in early years; or at a level to achieve the program's climate and equity goals. 	<p>DEQ has modified the contribution amount to earn CCI credits to begin with \$107 in 2023 and increase by \$1 per year through 2050 (values will also be adjusted for inflation). DEQ based these changes on potential costs for CCI eligible projects to reduce 1 MT CO₂e per CCI credit and comments that the previously proposed social cost of carbon would not include many costs indirectly associated with emissions reductions, including community outreach and capacity building costs, administrative and indirect costs such as emissions calculations and monitoring, project development costs, and also potential costs associated with job training for emission reduction project implementation. The proposed CCI contribution amounts are adjusted for these factors.</p> <p>The updated proposed contribution amount is informed by comments received, marginal abatement cost analyses, including analysis from DEQ's contractor ICF. Specific projects will be determined during program implementation and as informed by the equity advisory</p>

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		<ul style="list-style-type: none"> The contribution amount should be higher to be at an amount that would cover all project costs, such as inclusive of overhead costs. DEQ should be able to adjust the contribution amount, as needed. CCI funds should be more limited, such as excluding administrative costs to ensure the money is focused on achieving the outcomes of emissions reductions. Interest accrual should be spent on CCI projects. 	<p>committee and environmental justice communities in Oregon, so DEQ use representative projects to inform this analysis.</p> <p>DEQ is proposing a program review of CCIs every two years and a key part of that review will be assessing the amount of greenhouse gas emissions reductions achieved for every CCI credit distributed by DEQ. DEQ could make recommendations to the EQC on the contribution amount and other program elements to better support the CCI priorities as needed.</p> <p>DEQ has also modified the definition of CCI funds to include any interest accrual.</p>
CCIs	37	<p>Commenter(s) provided feedback on DEQ’s prioritization of projects that achieve the purposes of CCIs. Examples include:</p> <ul style="list-style-type: none"> Modify OAR 340-271-0950(2) to clarify that DEQ will prioritize projects that best achieve the purposes of CCIs. Prioritize emissions reductions, then benefits to communities, then cost-effectiveness. 	<p>DEQ has modified OAR 340-271-0920 to directly refer to OAR 340-271-0900 and clarify that when DEQ is evaluating applications to be a CCI entity, DEQ will consider the ability of the applicant to advance the purposes of CCIs. DEQ does not propose to set specific amount of funds for specific communities within Oregon or for specific uses or beneficiaries.</p> <p>Each CCI entity must describe how its proposed projects will benefit environmental justice communities and support each of the purposes of CCIs in OAR 340-271-0900(1)(b) through (e). DEQ will review the work plans in consultation with the equity advisory committee. to advance the purposes of CCIs.</p>
CCIs	38	<p>Commenter(s) provided feedback on CCI credit availability. Examples include:</p>	<p>Once a CCI entity is approved, the availability of CCI credits is based on the amount of funds covered fuel suppliers opt to contribute to CCI entities. A covered fuel supplier receives CCI credits from DEQ upon submitting</p>

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		<ul style="list-style-type: none"> • CCI credits are an important compliance mechanism. • Clarify what the supply of CCI credits will be. • The cap should not decline until CCI entities are approved/CCI credits are available. • DEQ should create a funds escrow/holding account/market assurance fund to hold early funds and provide CCI credits even if there are not yet CCI entities (instead of requiring direct payment from covered fuel suppliers to CCI entities). 	<p>a receipt to DEQ for the payment of CCI funds to the CCI entity. This occurs prior to implementation of the project that will be funded. After receiving the CCI funds, the CCI entity uses the funds to implement a project. In this way, the implementation of projects, their costs, and timeline for implementation is not related to a covered fuel supplier's ability to earn or use CCI credits to demonstrate compliance.</p> <p>DEQ is proposing project work be done through third-party CCI entities. DEQ plans to have a first group of CCI entities approved in 2023, so covered fuel suppliers have the option to begin making contributions before the first demonstration of compliance is required toward the end of 2025. While DEQ cannot guarantee there will always be CCI entities approved throughout the life of the program, but if the program is adopted, DEQ will work to get CCI entities approved, so covered fuel supplier can use this voluntary alternative compliance option.</p>
CCIs	39	DEQ should commit to reaching out to environmental justice communities for their input on aspects of CCIs and to encourage their applications or participation. DEQ should ensure technical assistance and resources to these communities, the equity advisory committee, and/or CCI entity applicants to support participation in the CCIs part of the program.	DEQ has revised OAR 340-271-0950 to clarify the role of the equity advisory committee. DEQ has also added provisions stating DEQ will provide training support, reach out to, and seek input from environmental justice communities to inform DEQ decision-making about CCI entities and projects that may receive CCI funds to ensure the program is meeting the purposes in the rules as well as environmental justice community interests.
CCIs	40	Commenter(s) provided feedback on rules related to selection of CCI entities. Examples include:	DEQ believes that 501(c)(3) nonprofit organizations are well positioned to be CCI entities. Applicants for CCI entity approval must submit proof that they are a 501(c)(3) nonprofit organization. Whether contributions to CCI entities that result in issuance of a CCI credit would

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		<p>The CCI entity eligibility requirements and application process may be limiting or overly detailed.</p> <ul style="list-style-type: none"> • Certain specific types of organizations should be eligible in addition to 501(c)(3) nonprofit organizations, such as tribes, local governments, for-profit entities, and/or school districts and transit agencies that operate fleets. • Nonprofit organizations should not be CCI entities. • If nonprofit organizations are CCI entities, covered fuel suppliers should not be able to receive a tax deduction for contributing CCI funds. • Greater oversight is needed. • Only allow one nonprofits to be eligible for collecting CCI funds and distributing to other CCI entities with eligible projects. • Only approve one entity as that would make it easier to track CCI funds and projects. • 501(c)(3) nonprofit organizations are not required to complete annual financial audits thus this may be a difficult eligibility requirement to meet. Allowing applicants to demonstrate through records 	<p>be tax deductible is a matter of tax policy that is beyond the EQC's authority to determine.</p> <p>DEQ anticipates that it will approve a small number of CCI entities that will subcontract with various local, community based, and other organizations to implement projects throughout Oregon. The CCI entity eligibility requirements and application are designed to help DEQ, informed by the equity advisory committee, to select applicants who will be best able to have appropriate financial controls on the CCI funds to implement projects, and achieve the purposes of CCIs. DEQ made several changes to the application process including that the CCI entity cannot receive CCI funds until a written agreement with DEQ is in place, in response to comments.</p> <p>DEQ has modified the eligibility requirements and will not require applicants to attach three years of independent financial audits. Instead, the applicant must attach three years of financial statements. However, DEQ has modified OAR 340-271-0930(2) to require annual financial auditing of CCI funds after a CCI entity is approved and receives CCI funds. The cost of these audits can be paid with CCI funds.</p> <p>While there is no requirement to have full-time staff, the program rules do require that CCI entities have staff capable of conducting work associated with being a CCI entity. Those staff can be hired after the applicant is approved as a CCI entity and CCI funds can be used to pay staff for work associated with being a CCI entity.</p> <p>DEQ has changes the amount of information on potential projects that the applicant must provide on the</p>

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		<p>they are in good financial standing for recent years.</p> <ul style="list-style-type: none"> • Do not require applicants to have full-time staff to implement projects. • Do not require the applicant to sign the application under penalty of perjury. • The project information, such as emissions reduction calculations, required on the application is too detailed and that DEQ should instead primarily collect information regarding the applicant's ability to manage CCI funds and partner with others on project implementation. • Support for the proposed eligibility requirements for CCI entities. • Support for the requirement to include an emissions reduction calculation methodology in the application. 	<p>application. While project information would be useful in deciding who to approve as a CCI entity, DEQ recognizes that applicants may need to develop aspects of this following approval as a CCI entity. DEQ will still request that applicants provide a general description of potential projects if known. DEQ will also retain the certification statement on the application.</p>
CCIs	41	<p>Commenter(s) provided input on the proposed oversight of CCI entities. Examples include:</p> <ul style="list-style-type: none"> • Support for the proposed rules • Seeking greater oversight of CCI entities to guard against fraud and/or ensure CCIs are meeting their purposes. 	<p>DEQ believes the oversight of CCI funds and entities is an important aspect of ensuring greenhouse gas emissions reductions are being achieved effectively. In response to comments, DEQ has made changes to help further achieve this. DEQ revised some of the requirements of OAR 340-271-0930 to consolidate some of the financial tracking and reporting requirements, however, DEQ has modified OAR 340-271-0930 to require annual financial auditing of CCI funds after a CCI</p>

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		<ul style="list-style-type: none"> Seeking independent/third-party auditing of CCI entities, their reports, or their projects. The oversight-related requirements for CCI entities are too complex or administratively difficult, such as reporting requirements, financial control requirements, and requests for DEQ approval of changes. 	<p>entity is approved and receives CCI funds. The cost of these audits can be paid with CCI funds. DEQ has also modified OAR 340-271-0930 to require CCI entities to manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). A CCI entity must also enter into a written agreement with DEQ and cannot receive CCI funds without that agreement.</p> <p>These processes the will help provide DEQ oversight of these entities' activities and in meeting the CPP goals and CCI purposes.</p>
CCIs	42	<p>Commenter(s) provided input on the proposed purposes of CCIs. Examples include:</p> <ul style="list-style-type: none"> Support for the proposed rules Modify OAR 340-271-0900(4), the purpose of CCIs related to transitioning away from fossil fuels, to include zero emission energy sources in addition to lower carbon energy sources. Modify OAR 340-271-0900(4) to focus on homes, businesses, and infrastructure specifically in and near environmental justice communities. 	<p>In response to comments, DEQ modified OAR 340-271-0900(1)(e) to focus on homes, businesses, and infrastructure in or near environmental justice communities. DEQ has also modified this section to include zero emission energy sources.</p>
CCIs	43	<p>Commenter(s) had suggestions on the equity advisory committee membership. Examples include:</p> <ul style="list-style-type: none"> Seeking greater clarity in the rules on the member selection process, such as timelines for 	<p>DEQ's intent is to form the equity advisory committee in 2022, although DEQ does not believe it is necessary for the process and timeline to be further described in the rules. DEQ seeks to have a diverse range of expertise, interest, and lived experience on the committee. The examples described by commenter(s) could be incorporated.</p>

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		<p>selection of and convening the committee.</p> <ul style="list-style-type: none"> • Seeking for certain representation to be included in the membership. Examples of specific requests included representation of environmental justice communities, environmental expertise, rural areas, scientific expertise, and project implementation expertise. • Seeking assurance that members could not be employed by/linked to a CCI entity and/or members and the organizations they represent should not be eligible to receive CCI funds. 	<p>The proposed rules do not explicitly prevent members from being associated with a CCI entity or its subcontractors. DEQ does not believe that such a rule would be necessary and could be counterproductive if it discourages potential members from joining the committee. DEQ could require members to disclose any conflicts of interest and could require members to recuse themselves from any discussion regarding approval of the CCI entity, applicant, or subcontractor with whom they are associated. Additionally, DEQ notes that the committee is an advisory body and that DEQ will make all decisions regarding CCI entity and project approval.</p>
CCIs	44	<p>There should be separate CCI programs for different regulated sectors so each can reflect/support projects that reduce emissions emitted from that sector.</p>	<p>DEQ is proposing to approve CCI entities that will implement projects that meet the purposes of CCIs described in OAR 340-271-0900, which include reducing anthropogenic greenhouse gas emissions. If a covered fuel supplier chooses to contribute CCI funds to support these projects, they must contribute equal funds to any approved CCI entity at that time. Because the emissions cap is for all covered fuel suppliers to meet collectively, DEQ is not prescribing that projects supported by CCI funds must address emissions from a specific sector.</p>
Definitions	45	<p>Amend "evaluation period" to clarify it does not apply to local distribution companies.</p>	<p>DEQ has made a revision to clarify that the evaluation period is used for distribution of compliance instruments to covered fuel suppliers that are not local distribution companies.</p>

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Definitions	46	Expand the definition of biofuels/biomass-derived fuels to allow for new products. For example, align with the federal Renewable Fuel Standard. Clarify which emissions from biofuels are exempt.	Biomass-derived fuels has the meaning given the term in OAR 340-215-0020. DEQ has included a non-exhaustive list of examples for clarity. Biomass-derived fuels include, without limitation, biomethane, biodiesel, renewable diesel, renewable propane, woody biomass, and ethanol.
Definitions	47	Include definition of 'local distribution company'.	In OAR 340-271-0020, definitions from divisions 200 and 215 are incorporated into the CPP by reference. This term is defined in division 215. DEQ did not also include a definition directly in the proposed CPP division 271 in order to avoid potential discrepancies.
Definitions	48	Seeking changes to definition of environmental justice communities, such as in consultation with EJ Task Force. Commenter(s) asked whether this would be defined on a project-by-project basis in the context of CCI.	DEQ engaged with environmental justice, tribal and community based organizations that participated on the rulemaking advisory committee, including holding separate meetings with those organizations throughout the development of this rule. The definition of environmental justice communities was suggested by these groups. Therefore, DEQ will retain this definition.
Enforcement	49	Penalty funds from enforcement/rule violations should support CCI projects, work training, and/or other projects.	According to ORS 468.135, civil penalties imposed by DEQ, including those under the Climate Protection Program, are credited to the state General Fund. The Oregon Legislature decides what is done with the General Fund as it is part of the state budget. DEQ does not have the ability to ensure specific projects are funded with enforcement civil penalties. DEQ does have a policy that allows violators to direct up to 80% of a civil penalty toward a Supplemental Environmental Project (SEP), with the remainder to the state General Fund. SEPs are projects with environmental benefits within the state of Oregon and must meet certain criteria to be approved. More information about SEPs is available here: https://www.oregon.gov/deq/regulations/pages/sep.aspx . When a violator seeks to fund a SEP, DEQ rules do not direct the violator to fund a specific type of project.

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			Regardless of whether a violator funds an SEP or pays 100% into the state General Fund, the violator would still be required to achieve its compliance obligations under the CPP, which could include the use of CCI credits.
Enforcement	50	<p>Commenter(s) provided input on the proposed enforcement rules. Examples include:</p> <ul style="list-style-type: none"> • Support for the proposed enforcement rules. • Support specifically for DEQ's proposal that each MT CO₂e for of a compliance obligation not achieved be a separate violation. • Include more and/or stronger enforcement/penalties for violators of the regulation. Commenter(s) suggested as increasing penalties or holding individuals, such as CEOs, accountable for rule violations. • The proposed enforcement rules are too aggressive. Commenter(s) did not support the proposal to classify all violations as Class I with the highest base penalty. Commenter(s) cited other similar greenhouse gas programs like California as not being this aggressive. 	<p>The proposed enforcement rules for the CPP are in OAR chapter 340, division 12, and OAR 340-271-8100. They generally align with DEQ's approach for enforcement of other programs. The person held accountable for the violation is the covered entity subject to regulation under the CPP.</p> <p>DEQ believes that the penalties for the identified Class I violations are appropriate for the program to deter non-compliance. Violations that are not categorized as Class I are categorized as Class II violations. The calculation of the penalty includes the base penalty, standard DEQ penalty factors, and any economic benefit realized as a result of the violation. DEQ may assess a single base penalty and aggregate multiple occurrences of a violation under the "O" factor in the Division 12 penalty assessment formula. DEQ may also assess multiple base penalties for groups of violations.</p>
Equity	51	Analyze current effects of greenhouse gases on environmental justice,	DEQ recognizes the importance of quantifying these types of impacts, but this type of analysis is outside the scope of this rulemaking.

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		frontline, and/or disadvantaged communities.	
Equity	52	Strengthen the program to better meet equity goals, better protect, or provide benefits to environmental justice, frontline, and/or disadvantaged communities. Commenter(s) requested that the program prioritize emissions reductions in environmental justice, frontline, and/or disadvantaged communities. Commenter(s) requested measurement or tracking of equity outcomes.	<p>DEQ acknowledges different stakeholders, communities, and members of the public have different goals in mind for the CPP. DEQ identified three key goals of the CPP during program development as: achieve significant reductions of greenhouse gas emissions, promote benefits, and alleviate burdens for environmental justice and impacted communities, and contain costs for businesses and consumers. These goals were directly informed by input received. Ultimately, the primary purpose of the CPP is to reduce anthropogenic greenhouse gas emissions in Oregon.</p> <p>DEQ believes the proposed program weaves equity considerations throughout its design. The emissions cap has been revised to further reduce greenhouse gas emissions from fossil fuel combustion compared to the caps in the Notice of Proposed Rulemaking. Greenhouse gases are often emitted at the same time as health-hazardous co-pollutants, especially in the transportation sector. Thus, for this sector, reducing one pollutant under the cap will likely reduce another pollutant that is not directly regulated in CPP. Similarly, the BAER approach for covered stationary sources has been revised to prioritize emissions reductions from these sources, which are in specific geographic locations, and thus can provide benefits to environmental justice communities located near the source. In addition, the CCI purpose and priorities have re-emphasized these direct benefits to environmental justice communities in Oregon.</p> <p>The success of a program of this kind will mean different things to different groups and whether or not goals are</p>

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			being met is difficult to predict and until the program begins and progresses. If the CPP is adopted, DEQ will conduct regular program reviews and continue to analyze impacts, such as emissions reductions achieved, equity impacts, direct costs of meeting compliance as well as indirect costs to businesses and consumers. Relatedly, DEQ and the EQC can make changes to the program in the future, if and as needed in order to address unintended impacts or better meet goals.
Equity	53	Support for rule provisions that recognize/prioritize environmental justice, frontline, and/or disadvantaged communities.	Thank you for your comments. Additionally, in response to comments and to further strengthen rule provisions on equity, DEQ modified OAR 340-271-0900(1)(e) to focus on homes, businesses, and infrastructure in or near environmental justice communities. Further, DEQ modified 340-271-0920 to clarify that when DEQ is evaluating applications to be a CCI entity DEQ will consider the ability of the applicant to advance the purposes of CCIs.
Fiscal Impact Statement	54	Assess fees for CPP and/or raise revenue from covered fuel suppliers.	DEQ is not proposing fees for CPP in this rulemaking. See the Fee Analysis included in the staff report to the EQC for more information.
Fiscal Impact Statement	55	Consistently and/or clearly, identify positive and negative fiscal impacts.	The Fiscal Impact Statement has a few key sections, starting with the cost of compliance section. This is meant to focus on discussion of potential direct costs to regulated parties that may come out of the rulemaking. Some readers may consider these negative impacts, though DEQ believes it may be more appropriate to discuss them as costs. There are additional sections to discuss impacts to others, such as the public, governments, and broadly those that are not directly regulated by the proposed program. Throughout the Fiscal Impact Statement, DEQ worked to discuss direct impacts and indirect impacts. The sections discussing the public, governments, and those not directly regulated are

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			largely all under the indirect impacts section since they are directly regulated by the proposed program. Within this indirect category, DEQ discuss potential positive and negative economic impacts, mainly discussed in the 'Public' section.
Fiscal Impact Statement	56	<p>Commenter(s) provided input on the analysis in the fiscal impact statement. Examples include:</p> <ul style="list-style-type: none"> • The fiscal impact statement was insufficient, not comprehensive and/or not accurate. • Expanded the analysis, such as including consumer/retail fuel price impacts also referred to as the delivered cost of energy, loss of business opportunity, or the cost of earning CCI credits. • Commenter(s) included projected natural gas utility ratepayer impacts for potential compliance with CPP. • More accurately describe what covered fuel suppliers must do to comply, e.g. sell less or different fuels or purchase CCI credits, which is different than saying they must reduce emissions. • The estimate of the cost of a BAER assessment was too low. 	<p>DEQ analyzed the fiscal impacts of the proposed CPP to the best of the agency's ability and as required by Oregon Revised Statutes for a rulemaking like this. Although not required under those statutes, DEQ contracted with ICF to conduct a study to assess different greenhouse gas emissions reduction program designs to analyze potential effects on emissions, equity, air quality, and public health co-benefits and macroeconomic effects on Oregon's economy. This modeling study was shared and discussed with the advisory committee and the public.</p> <p>DEQ has updated the Fiscal Impact Statement with information and analysis provided in comments in order to show the range of potential impacts. DEQ has also updated the Fiscal Impact Statement for changes to CPP as recommended in the staff report to the EQC. The ICF modeling study was conducted to inform key program options at a high-level and not as a formal fiscal impact analysis. However, DEQ has also updated the Fiscal Impact Statement to include more information from the ICF study on potential macroeconomic impacts of CPP. Separately, in some instances, commenters did not support DEQ's analysis but did not provide alternative impacts assessments, though DEQ did try to reflect these comments.</p>

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		<ul style="list-style-type: none"> • Commenter(s) provided information on costs and benefits to further inform DEQ's fiscal impact statement. 	
Fiscal Impact Statement	57	Include impacts of CCI projects on special districts, government buildings, and public entities.	The fiscal impacts related to the implementation of CCI projects are dependent on how this portion of the program is implemented and will be informed by the project types that are approved by DEQ, as informed by the equity advisory committee and environmental justice communities in Oregon. Therefore, DEQ cannot estimate the impacts of CCI projects on certain specific entities or places at this time.
Fiscal Impact Statement	58	Include impacts of leaded aviation fuels	DEQ is not proposing to regulate fuels used for aviation in the CPP. As such, analysis of this is not included in the Fiscal Impact Statement for this rulemaking.
Fiscal Impact Statement	59	Discuss impacts on DEQ/LRAPA permitting staff to implement BAER.	DEQ will coordinate with LRAPA on the CPP. Currently there are no covered stationary sources in Lane County for BAER. In the event that new sources are proposed to be located in Lane County and have the potential to emit 25,000 MT CO ₂ e or greater of covered emissions, the covered stationary source(s) would submit a permit addendum application to LRAPA, LRAPA staff will incorporate requirements from the BAER order into the new permit.
Fiscal Impact Statement	60	DEQ's assessment of housing costs, as required by ORS 183.534, is not correct. The commenter(s) disagreed with DEQ's conclusion that the proposed rules would not have an impact on the supply of housing or land for residential development and will not impact the cost of labor or administration related to such development	DEQ acknowledges in the housing cost assessment included as part of the staff report to EQC that the program could affect the price of fuels or goods. However, DEQ has not changed its determination that the proposed rules would not have an impact on the supply of housing or land for residential development and will not impact the cost of labor or administration related to such development, but notes this comment in the Fiscal Impact Statement.

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Fiscal Impact Statement	61	<p>Seeking a more comprehensive economic analysis that specifically looks at indirectly impacted and/or small business effects. Commenter(s) raised that according to ORS, if the statement of cost of compliance shows significant adverse effect on small business, the agency must reduce that effect. Commenter(s) stated that this is what some modeling shows thus DEQ must reduce significant adverse effects on small business. To this point, the commenter(s) were specifically seeking analysis and reduced adverse effects sectors, such as small businesses in the forest sector. Commenter(s) sought comprehensive economic analysis and reduced adverse effects for not just directly regulated small businesses, but also for indirectly impacted small businesses.</p>	<p>DEQ analyzed the fiscal impacts of the proposed CPP to the best of the agency's ability and as required by Oregon Revised Statutes. DEQ has included specific program design elements in the CPP to contain costs to businesses and consumers, especially as relating to directly regulated small businesses as that is what ORS 183.333 and 183.540 require.</p> <p>For discussion on potential costs of the proposed CPP, please see the Fiscal Impact Statement included as part of DEQ's staff report to the EQC. Small businesses in the forest sector are not directly regulated by the proposed CPP, but DEQ has included provisions in the proposed program to support Oregon businesses and has included some analysis in the Fiscal Impact Statement on indirect impacts to non-directly regulated Oregon businesses and consumers. The Fiscal Impact Statement has been updated with information and analysis provided in comments, but economic impacts, of a program of this kind are difficult to predict.</p> <p>If the CPP is adopted, DEQ intends to conduct regular program reviews and continue to analyze impacts and benefits, such as fuel availability impacts, costs of meeting compliance as well as indirect costs to businesses and consumers. Relatedly, DEQ and the EQC have the ability to make changes to the program in the future if and as needed in order to address impacts, such as significant adverse economic impacts. Please see Comment ID</p>
Fiscal Impact Statement	62	<p>Commenter(s) provided their own or third-party analysis on various topics relating to CPP such as analysis of greenhouse gas emissions, analysis of other program options, analysis of</p>	<p>DEQ analyzed the fiscal impacts of the proposed CPP to the best of the agency's ability and as required by Oregon Revised Statutes. DEQ has considered comments received, including analyses submitted, and has made changes to the proposed rules as well as to the Fiscal</p>

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		fiscal impacts, or analysis of Oregonian's willingness to pay for greenhouse gas emissions reductions. Commenter(s) asked DEQ to consider the findings of specific studies such as IPCC reports, a Guidehouse Inc. analysis of CPP, an Energy Strategies LLC and RECON Insights Group LLC macroeconomic impacts analysis report, and more. Commenter(s) sought for these studies to be considered generally, and others sought specifically for their consideration in relation to the fiscal impact statement.	Impact Statement included in the staff report to the EQC. Information from analyses submitted to DEQ have been included in the Fiscal Impact Statement included in the staff report to the EQC in order to show the range of potential impacts.
Fiscal/ Modeling Study	63	Expressed concerns that certain program impacts were not modeled/investigated in-depth or at all, such as certain environmental or economic impacts. Commenter(s) sought investigation of impacts to ratepayers.	DEQ contracted with ICF to conduct emissions, health, macroeconomic, and equity analyses to inform program development. The modeling was designed to inform key program options at a high-level. As a required by Oregon Revised Statutes, DEQ developed the Fiscal Impact Statement to discuss the potential fiscal and economic impacts of the proposal. While DEQ did not have sufficient information to analyze certain potential impacts of interest, some commenters provided additional information and DEQ has included these additional information in the Fiscal Impact Statement in the staff report to the EQC in order to show the range of potential impacts. If adopted, DEQ will continue to conduct various and additional analyses on the CPP as the program progresses.
Fiscal/ Modeling Study	64	Expressed concerns that compliance pathways were not modeled/investigated in-depth or at all, such as how fuel suppliers will	While DEQ conducted modeling on various compliance pathways, DEQ did not modeling on individual compliance pathways specific covered entities. The CPP is designed to allow flexibility in meeting compliance.

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		reduce transportation fuel use, forecasting biofuel/alternative fuel availability to ensure sufficient supply to meet compliance, etc.	DEQ is not prescribing how entities can reduce covered emissions. This can include electrification, reducing supply, offering more alternative fuel options such as RNG, earning CCIs and more. The Fiscal Impact Statement does discuss direct impacts to directly impacted entities and how entities may use CCI credits and provided some examples of associated costs of using CCIs.
Fiscal/ Modeling Study	65	Expressed concerns/disagreements specifically with the modeling DEQ conducted with ICF, such as assumptions and/or results.	DEQ contracted with ICF to conduct emissions, health, macroeconomic, and equity analyses to inform program development. The modeling was designed to inform key program options at a high-level. The modeling assumptions were shared and discussed with the public and the rulemaking advisory committee. If adopted, DEQ intends to continue to conduct various and additional analyses on the CPP as the program progresses.
General	66	Clarify the due date for the reporting of a change in ownership or operational control. Eliminate the reporting requirement unless the change altered regulatory responsibilities or requirements.	DEQ has not made changes to this proposed provision. Since owners or operators are responsible for complying with any DEQ regulations, DEQ believes any change relating to this is necessary to report in writing to DEQ in a timely matter, i.e. within the proposed 30 days of the change.
General	67	Acknowledge/follow science when creating climate policy.	DEQ looked to the current science to inform the design of the CPP such as in setting the declining caps over time and to understand the available opportunities for covered entities to reduce emissions. If adopted, CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change.
General	68	Concerns about costs of doing business and seeking a regulatory program that does not put Oregon business at a competitive	To address leakage concerns, DEQ considered the level of leakage risk associated with different covered entity sectors. CPP design reflects differing considerations by sector as DEQ worked to minimize the risk of leakage of

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		<p>disadvantage. Commenter(s) sought less stringent regulations and/or protections for energy-intensive, trade-exposed (EITE) industries. Commenter(s) offered suggestions on what these protections for EITE industries/facilities could include, such as access to CCIs/offsets, credits to natural gas utilities for price mitigation, and more.</p> <p>Concerned about emissions/jobs leakage, such as into non-regulated sectors or to jurisdictions outside of Oregon. Interest in addressing the potential for leakage in the rules.</p>	<p>activity or emissions. For stationary sources that will be subject to BAER, the approach is designed to determine and require emissions reductions that are commercially available, technologically feasible, and cost-effective for the individual source. OAR 340-271-0320(2) details what DEQ may consider when developing and issuing a BAER order. DEQ will consider for example whether a strategy under consideration by DEQ to reduce covered emissions has an impact on the type or quality of good(s) produced at the source. The threshold for BAER sources tries to capture the largest sources of emissions while minimizing the number of directly regulated sources.</p> <p>Stationary sources that receive their natural gas from utilities will not be directly regulated by CPP, but businesses (particularly those that are heavily reliant on natural gas, gasoline or diesel) could see price increases, especially in the short term. Price increases could lead businesses to shift operations to outside of Oregon in order to avoid these costs. The proposed rules include several provisions designed to mitigate or avoid these impacts, but other state programs reducing demand for fossil fuels are also important.</p> <p>For fuel suppliers, all fossil fuels consumed in Oregon are imported. Choosing an appropriate threshold for program inclusion to try and avoid leakage risk as well as avoid disrupting regular markets is especially difficult in the because quantities delivered and the companies delivering fuels can vary greatly from one year to the next. DEQ is proposing a threshold for inclusion that declines over time, which DEQ believes can help address leakage concerns, provides smaller businesses more</p>

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			<p>time to prepare for regulation, and provides certainty for the Oregon fuels market.</p> <p>DEQ has tried to design a program that balances compliance flexibility options with significant emissions reductions. The program reviews provide an opportunity for DEQ to analyze the program and report to the EQC on progress as well as impacts, and make any relevant recommendations to amend the program, if necessary.</p> <p>On leakage to non-regulated sectors (such as through electricity supply), there are Oregon policies such as HB 1547 (2016), the Renewable Portfolio Standards, HB 2021 (2021), and others that directly address emissions from the electricity supply or require more renewable/clean electricity.</p>
General	69	CPP or reducing fuel emissions from fuel use in Oregon will not affect climate change.	<p>Science tells us that anthropogenic greenhouse gas emissions contribute to climate change and that significant reductions in these emissions are needed to avoid the worst effects of climate change. The CPP is not expected to alone achieve all necessary emissions reductions to align with what science says is needed globally. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to transition our energy system and help our state do our share of reducing emissions in amounts that climate science shows are needed globally to avoid the worst effects of climate change.</p>
General	70	Climate change and/or human-caused climate change does not exist or is not a problem.	<p>Scientific consensus is very clear: anthropogenic greenhouse gas emissions are contributing to climate change. The CPP is not expected to alone achieve all necessary emissions reductions to align with what science requires. If adopted, the CPP will be one of many complementary policies and programs in Oregon working</p>

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			to take meaningful action on climate change and transition our energy system.
General	71	<p>Commenter(s) provided input on whether compliance with the program would be achievable. Examples include:</p> <ul style="list-style-type: none"> • Concerned about covered entities' ability to comply with the program, for example it may be costly or there is not sufficient current technology to achieve compliance. There are few/expensive options for electrifying heavy-duty transportation. There is limited ability to procure significant amounts of alternative/biofuels in the near-term. • Commenter(s) that are covered entities submitted comments suggesting they believe they will be able to comply with CPP by using a variety of strategies. 	<p>If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change and transition our energy system. Each of these programs can work to drive innovation in different ways. DEQ contracted with ICF as part of the program development process to model different program options and found that significant emissions reductions can be achieved in regulated sectors by deploying several strategies and with technologies that exist today. Technologies and costs will change over time and as the program progresses and DEQ anticipates these changes will only work to enhance the ability of covered entities to meet compliance.</p>
General	72	<p>Expressed concerns about DEQ's administrative capacity and ability to implement the program. For example, the CCIs portion of the program is administratively burdensome and DEQ does not have the necessary resources to review BAER assessments.</p>	<p>DEQ acknowledges the significance and scope of the proposed Climate Protection Program. DEQ has worked to develop a streamlined program with clear requirements, which will aid the agency in implementing, covered entities in complying, and third-party CCI entities in participating. The agency has been successfully implementing large state-wide programs in recent years such as the Clean Fuels Program, Cleaner Air Oregon, the EV Rebate program and more.</p>

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General	73	<p>The program will impact the economy, increase the costs and/or availability of goods and/or fuels in Oregon, which will have negative impacts on Oregon consumers and industry. Examples include:</p> <ul style="list-style-type: none"> • Increasing fuel costs could impact public safety. • The program would negatively impact fuel usage, indirectly impacting Oregon businesses and consumers. • Fuel should be available to all those in the state that use/need it. • Concerns about fuel availability and fuel rationing. • The program would complicate business' ability to respond in emergency situations, such as situations that require increased fuel usage. 	<p>DEQ has included specific program design elements in the CPP to contain costs to businesses and consumers, especially as relating to directly regulated small businesses as ORS 183.333 and 183.540 require. For more discussion on potential costs of the proposed CPP, please see the Fiscal Impact Statement included as part of DEQ's staff report to the EQC. While the true impacts, including economic impacts, of a program of this kind are difficult to predict and cannot be known until the program begins, as part of program development, DEQ contracted with ICF to analyze the impacts of potential program options to implement an emissions cap in Oregon. Across multiple program design scenarios, ICF concluded a program of this type could reduce greenhouse gas emissions while maintaining the overall health of the economy. If the CPP is adopted, DEQ intends to conduct regular program reviews.</p>

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			<p>DEQ can propose changes to rules through rulemaking at any time, not just as a result of a program review, and the EQC has the authority to act more quickly to adopt temporary rules or consider variances. Additionally, in response to the concerns raised in these comments, DEQ has added proposed OAR 340-271-0800(3). This proposed rule provides that if the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than twenty percent higher than the change in cost for the same fuel over the same period in each of the states adjacent to Oregon (not including California), DEQ will investigate and report on the cause(s) to the commission, and include recommendations on alternatives to ameliorate or reduce such impacts. If necessary, such actions could be taken on an expedited basis via a temporary rule. OAR 340-271-8110 also authorizes DEQ to extend reporting or demonstration of compliance deadlines, as DEQ deems necessary or appropriate.</p>
General	74	<p>Commenter(s) provided input on energy reliability, affordability, and/or energy choice. Examples include:</p> <ul style="list-style-type: none"> • Seeking a regulatory program that is fair and affordable. • Fossil fuels such as natural gas or propane are currently affordable/reliable/clean and should therefore continue to be able to be used in Oregon. • Concerns regarding land use, costs, and/or other impacts of generating renewable energy. 	<p>DEQ has worked to design the program in a way that allows for compliance flexibility and that will contain costs. A key example of this is that the CPP is designed to allow flexibility in meeting compliance as DEQ is not prescribing how covered fuel suppliers reduce greenhouse gas emissions from fossil fuels. This can include reducing the amount of fossil fuel supplied, offering more alternative fuel options such as RNG, supporting electrification, and more. DEQ believes that energy efficiency and electrification can be an important part of decarbonization and the CPP has been designed in a way to support transition away from fossil fuels and toward cleaner energy sources, such as biofuels and</p>

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		<ul style="list-style-type: none"> • Concerns about the costs of electrification and supply of electronic technology • Government funding is needed to support electrification. • Concerns regarding the costs and logistics of electrification generally. • Opposition to incentives or subsidies for clean energy/technology. • Support for a diverse energy mix, which could mean natural gas and/or RNG as an example. Energy choice is what could help ensure reliability and/or affordability. 	<p>electricity. Ultimately, covered entities' emissions can be reduced in many ways, including electrification, as well as offering more alternative fuel options, and they have the flexibility to base their decisions on costs and customer interests. This "technology neutral" regulatory approach has been deployed in other programs and has successfully supported emissions reductions, one example being the Oregon Clean Fuels Program. Additionally, CPP uses three-year compliance periods which allow more time for covered entities to identify and develop emission reduction strategies and helps mitigate annual emission changes across a longer time period.</p> <p>As noted above (Comment ID 73), DEQ plans to conduct program review, but can propose changes to rules through rulemaking at any time, not just as a result of a program review, and the EQC has the authority to act more quickly to adopt temporary rules or consider variances. Additionally, in response to the concerns raised in these comments, DEQ has added proposed OAR 340-271-0800(3).</p>
General	75	<p>Expressed concerns about/seeking a stop to fracking, natural gas development, and/or use of natural gas in certain applications. Commenter(s) had further specific suggestions relating to regulation of natural gas such as use zoning to prohibit the use of natural gas or asking the Energy Trust of Oregon to stop supporting natural gas.</p>	<p>DEQ staff have concluded that the EQC generally cannot regulate greenhouse gas emissions that occur outside of Oregon (such as from natural gas development), and there currently is not any active natural gas development in Oregon.</p> <p>Regulation of specific uses of natural gas is outside the scope of this rulemaking. Instead, the CPP sets an overall limit on emissions from fossil fuel combustion, including natural gas.</p>
General	76	<p>Expressed concerns regarding pollution, mainly air pollution and/or co-pollutants to greenhouse gas</p>	<p>DEQ recognizes there are health-hazardous co-pollutants emitted alongside certain greenhouse gases, especially from the transportation sector. In uses like in vehicles,</p>

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		emissions, but also water. Examples include health impacts, wildfire smoke, environmental impacts, burdens to environmental justice/impacted communities, and more.	when greenhouse gas emissions are reduced, co-pollutant emissions will also be reduced. The primary purpose of the CPP is to reduce anthropogenic greenhouse gas emissions from fossil fuel combustion, though CPP purposes also include achieving co-benefits from reduced emissions of other air contaminants, and enhancing public welfare for Oregon communities, particularly environmental justice communities. There are other programs in Oregon and at DEQ, such as Cleaner Air Oregon, which are specific to reducing other air contaminants, specifically health-hazardous pollutants. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to reduce greenhouse gas emissions and support reductions of co-pollutant emissions.
General	77	Expressed concerns regarding the worsening impacts of climate change and/or interest in actions to address climate change. examples include for current and future generations, for nature, for economic impacts of climate inaction, and more.	DEQ agrees swift and meaningful action to reduce greenhouse gas emissions and address climate change is necessary. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change.
General	78	Expressed concerns that the proposal will not meet the goals discussed during program development (greenhouse gas emissions reductions, equity, and cost containment). Commenter(s) suggested these goals should be weighted equally and that the program should be modified to ensure all are met.	DEQ acknowledges different stakeholders, communities, and members of the public may have different goals in mind for the CPP. DEQ identified three key goals of the CPP during program development as: anchored in achieving significant reductions of greenhouse gas emissions, while promoting benefits and alleviate burdens for environmental justice communities and containing costs for businesses and consumers. These goals were directly informed by input received. DEQ has tried to develop a rule that optimizes these goals while supporting the primary purpose of reducing anthropogenic greenhouse gas emissions from fossil fuel

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			<p>combustion. CCIs offer a voluntary and alternative means of compliance for covered entities as an option besides directly reducing their own emissions/compliance obligations in the program. DEQ will prioritize projects that best achieve the purposes of CCIs described in OAR 340-271-0900, which focus on promoting benefits for environmental justice communities. Other program design elements of the CPP, such as allowing for flexibility in how covered entities can achieve compliance, will contain costs. If the CPP is adopted, DEQ will conduct regular program reviews and continue to analyze impacts, such as emissions reductions achieved, equity impacts, direct costs of meeting compliance as well as indirect costs to businesses and consumers. Relatedly, DEQ and the EQC can make changes to the program in the future if and as needed in order to address unintended impacts or better meet goals.</p>
General	79	Seeking clarification on which stationary sources may be covered by the program.	DEQ has listed potentially covered entities in Attachment D.
General	80	<p>Commenter(s) provided input on the CPP's alignment with Governor Brown's Executive Order 20-04. Examples include:</p> <ul style="list-style-type: none"> • The CPP is not in achieving the objectives of the EO. <p>The CPP is going beyond the EO.</p>	Governor Brown's Executive Order 20-04 directed DEQ to develop a program to cap and reduce emissions. The proposed Climate Protection Program would do this. The Executive Order initiated CPP's development, but the proposed rule is consistent with DEQ's rulemaking process and the EQC's statutory authorities.
General	81	Provide more timelines for submittals/requests, such as covered entities responding to recordkeeping requests, DEQ responding to applications for CCIs, etc.	In response to comments, DEQ has clarified provisions on timing, such as by when DEQ will distribute compliance instruments. DEQ also clarifies when covered fuel suppliers should submit requests for CCI credits if they intend to use them for an upcoming demonstration of compliance deadline, and that DEQ will indicate the

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			number of days a covered entity has to fulfill a records request at the time DEQ makes any such request.
General	82	Publish all data submitted by covered entities.	DEQ will audit all data submitted for accuracy and/or compliance with requirements. When posting data publicly, DEQ will work to present the information in a useful, transparent way, while also protecting confidential business information or market sensitive information, subject to the Oregon Public Records Law, ORS 192.311 to 192.478. That may mean that not all data submitted will be posted publicly. For example, DEQ may post aggregate or summary information rather than individual information and/or provide information anonymously.
General	83	Protect confidential business information. Exempt from public disclosure fuel suppliers' fuel volume data (and other commercially sensitive information) under OAR 340-214-0130(3)(b) through (d). Acknowledge some information in a BAER assessment may be trade secret.	Any information provided to DEQ is subject to the Oregon Public Records Law, ORS 192.311 to 192.478 and this rulemaking cannot expand DEQ's authority to withhold information from disclosure in response to a public records request beyond what is current available under that law. If regulated entities under division 271 believe that any information they submit to DEQ is trade secret or confidential business information, DEQ recommends that it is marked as confidential (as described in OAR 340-214-0130), so that DEQ may evaluate whether it may be exempt from disclosure in response to a public records request.
General	84	Reduce the need for unnecessary fuel combustion and/or emissions resulting from requirements of other DEQ regulations, such as year-round fuel combustion to reduce co-pollutants that are seasonal.	These changes are outside the scope of CPP. However, DEQ notes that in the context of a BAER assessment or BAER order, DEQ will consider environmental impacts of reducing emissions, such as increases in co-pollutant emissions if applicable.
General	85	Require independent/third-party auditing to ensure emissions goals are being met.	Greenhouse gas emissions data is reported to DEQ's Greenhouse Gas Reporting Program. The rules describing this are found in OAR chapter 340, division 215. This data is the basis of how DEQ will track

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			<p>emissions for the Climate Protection Program. Certain emissions and types of reporters, mainly large sources of greenhouse gas emissions, are also required to have their reported data be verified by an independent third party. The rules describing this are found in OAR chapter 340, division 272. All the covered entities subject to the proposed CPP are large enough such that their reported emissions will be verified. This will help ensure the accuracy of the emissions data and provide greater confidence in tracking emissions over time in relation to the targets and requirements in the CPP. Additionally, each submission and demonstration of compliance deadline in the CPP is an opportunity to review progress on emission reductions. Similarly, DEQ has proposed program reviews in the CPP rules, which provide another benchmarking opportunity.</p>
General	86	Require recordkeeping for 30 years.	<p>DEQ is proposing recordkeeping requirements of ten years for covered stationary sources and seven years for covered fuel suppliers. These timelines are relevant for the different types of regulation proposed in the CPP for each of these different types of covered entity. DEQ also considers the fiscal impact of recordkeeping requirements and believes requiring records to be kept for 30 years would be burdensome and more expensive and therefore did not change the proposed recordkeeping requirements.</p>
General	87	Rule 340-271-0110(3) contains a typo in the sentence regarding aggregation of emissions from related entities.	<p>Thank you for your comment. The typo has been corrected.</p>
General	88	<p>Commenter(s) provided input on the role of carbon sequestration in CPP. Examples include:</p> <ul style="list-style-type: none"> • Support for carbon sequestration and/or direct air 	<p>DEQ is not proposing changes in response to these comments. Carbon sequestration is an important tool to address climate change, but the Climate Protection Program is focused on reducing of anthropogenic</p>

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		<p>capture. Suggestions to include sequestration in CPP.</p> <ul style="list-style-type: none"> • CPP should incentivize carbon sequestration as it could benefit rural Oregonians. • Covered entities should be allowed to reduce emissions and compliance obligations by demonstrating they are removing carbon. • CPP should include voluntary sequestration programs that could have financial incentives. • Support for the focus on reducing anthropogenic sources of greenhouse gas emissions. 	<p>greenhouse gas emissions, primarily those from fossil fuel combustion.</p>
General	89	<p>Include carbon pricing to be included in CPP, such as a carbon tax.</p>	<p>DEQ is not proposing changes in response to these comments. The proposed CPP includes market-based program design elements used in other carbon pricing programs to allow optionality in how covered fuel suppliers choose to comply. However, DEQ has concluded that the EQC does not have statutory authority to adopt rules that include a carbon tax or that authorize the sale of, or charge a price for, compliance instruments.</p>
General	90	<p>Support for and seeking a broad, strong, regulatory program to reduce greenhouse gas emissions. The proposed CPP must be strengthened to achieve more.</p>	<p>The proposed CPP covers some of the most significant sources of greenhouse gas emissions in Oregon and the primary purpose of the program is to reduce anthropogenic greenhouse gas emissions from fossil fuel combustion. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change. In response to comments, DEQ has revised the proposal to strengthen the program such as lowering caps to</p>

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			increase emissions reduction ambition and modifying provisions to further prioritize environmental justice communities.
General	91	Support for the Climate Protection Program as proposed.	Thank you for your comment.
General	92	<p>Commenter(s) expressed opposition to the proposed CPP. Examples include:</p> <ul style="list-style-type: none"> • CPP may be redundant/duplicative of other existing programs, such as from the Energy Trust of Oregon or the Oregon Clean Fuels Program. • Opposition generally to DEQ/Executive Order/state program(s) for climate. • Preference within this for action through the legislature or at a national or global scale. • Opposition due to the program's potential negative impacts on Oregon business, especially small businesses and such as those in the agriculture sector. • Opposition because per capita emissions are decreasing. • Do not enact the CPP at this time due to the COVID-19 pandemic, until the PUC has completed its natural gas fact finding process, until further analysis on the impacts is 	<p>The CPP is not expected to alone achieve all necessary emissions reductions to align with what science requires. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change and transition our energy system. Each program can work to drive innovation in different ways. Though some businesses may be regulated in both the CPP and Oregon Clean Fuels Program, each program does different things and regulate different scopes of emissions. DEQ acknowledges the significance and scope of CPP and recognizes concerns raised about potential program impacts. If adopted, DEQ intends to conduct regular program review and continue to analyze the CPP to assess direct and indirect impacts of the program as it progresses, including economic impacts, interactions with other programs, and success in reducing emissions.</p>

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		<p>conducted, or until the public has had more time to understand the impacts.</p>	
<p>Outside the scope of this rulemaking</p>	<p>93</p>	<p>DEQ received many comments on topics that are outside the scope of this rulemaking, which is to establish a new Climate Protection Program to set enforceable limits on greenhouse gas emissions from fossil fuels used throughout Oregon, including diesel, gasoline, natural gas, and propane, used in transportation, residential, commercial and industrial settings and certain emissions at stationary sources. Examples include:</p> <ul style="list-style-type: none"> • Asking for greater collaboration between states/regions. • Asking DEQ to work with Governor's office and/or legislature to review the program, expand regulatory authority, and/or scope of CPP. • Asking DEQ to work with other agencies to better track certain sources of emissions. • Provide more analysis/information on the impacts of exemptions. • Improve tracking of greenhouse gas emissions from other sectors, such as forestry sector. 	<p>DEQ received many comments on topics that are outside the scope of this rulemaking, which is to establish a new Climate Protection Program to set enforceable limits on greenhouse gas emissions from fossil fuels used throughout Oregon, including diesel, gasoline, natural gas, and propane, used in transportation, residential, commercial and industrial settings and certain emissions at stationary sources.</p> <p>Some commenters suggested additional sectors or industries should be included in the proposed regulation, however DEQ has concluded that the EQC does not have the authority to regulate emissions from some of the suggested sources. Relatedly, other commenters sought broader regulation generally, with some specific topics suggested; however, the EQC's primary regulatory authority is to regulate emissions of air contaminants.</p> <p>Some commenters sought for additional DEQ tracking or analysis. Some of the suggestions again were outside the scope of the EQC's authority or outside the scope of this rulemaking. Relatedly, for rulemakings, DEQ is required to analyze mainly the direct impacts of the proposed rule. If the program is adopted, DEQ will also continue to monitor various impacts as the program progresses.</p> <p>In response to commenters seeking for the agency to coordinate with others, it is worth noting that while there are not necessarily proposed CPP rules that address coordination, and it is outside the scope of this rulemaking, DEQ does already coordinate with the</p>

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		<ul style="list-style-type: none"> • Analyze emissions from certain sources, such as logging and wildfires. • Protect soil and/or existing/old forests because they store carbon. • Regulate the timber/logging/forestry industry. • Improve urban planning. • Improve land management. • Limit building energy requirements. • Reduce demand for transportation energy consumption, such as through strategic location of ODOT weigh stations. • Increase public transit options. • Decrease the need for cars and trucks. Reduce speed limits. • Reduce engine idling. • Reduce EV registration fees. • Provide green jobs training, such as specifically for workers in fossil fuel industries to transition to new jobs. • Support for geoengineering. • Support for green buildings. • Improve collaboration between state agencies and/or reporting by DEQ to other state agencies. 	<p>Governor's Office, other Oregon state agencies, as well as other governments on climate-related topics, and DEQ intends to continue to do so.</p>

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Program Design Elements	94	<p>Commenter(s) provided input on the point of regulation for natural gas. Examples include:</p> <ul style="list-style-type: none"> • Support for DEQ's proposal to regulated emissions from natural gas delivered by a local distribution company to a stationary source/large end-user at the utility. • Regulate emissions from natural gas use by covered stationary sources at the stationary source, not as covered emissions of the local distribution company. • Regulate stationary sources for combustion of covered fuels so that more stationary sources would be directly covered by CPP and stationary sources would be incentivized to reduce these emissions and emissions of co-pollutants. 	<p>Point of regulation for natural gas was a topic of discussion throughout the program development process. DEQ is proposing that the three local distribution companies (natural gas utilities) serving Oregon be the single points of regulation for the gas they deliver both to their customers and on behalf of customers of marketers that sold the natural gas delivered by the utility. This is because tracking fuel end-users is complex, inefficient, and burdensome for small users and for DEQ. Regulating natural gas at a few entities will simplify the program for both the regulated community and DEQ, and allow for more efficient tracking of progress towards emissions reduction targets.</p>
Program Design Elements	95	<p>Seeking for DEQ/EQC to not move forward with the CPP at this time unless improvements are made to strengthen the program.</p>	<p>The CPP is not expected to alone achieve all necessary emissions reductions to align with what science requires. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change and transition our energy system. DEQ acknowledges significant and scope of the CPP and t importance commenters have raised of the CPP achieving its goals. If adopted, DEQ will conduct regular program review and will continue to analyze the CPP to assess the success of the program as it</p>

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			progresses, including emissions reduction achievements, equity impacts, and costs.
Program Design Elements	96	Add alternative compliance and/or offsets in addition to community climate investments. For example, allow for covered entity voluntary offset programs hosted by the covered entity that offset emissions from energy consumed in Oregon.	During the program development process, DEQ heard it was important for the program to provide benefits directly for Oregon communities. Community Climate Investments are a unique concept developed for and specific to the Oregon Climate Protection Program. They are a voluntary program feature that allow covered entities flexibility in how to meet compliance and the funds will be invested to result in direct health, economic, and welfare benefits to environmental justice communities in Oregon. Community Climate Investment credits use a single contribution amount. This single price supports an equitable distribution of projects by allowing for a variety of projects to be equally supported by CCI funds. With the CCI program design, covered entities can receive CCI credits one they have contributed funds, while the third-party entities can work with communities on type of projects that should be implemented. DEQ does not believe that other offsets or alternative should be included in CPP at this time.
Program Design Elements	97	Allow investors, brokers, or others to trade compliance instruments to increase market liquidity.	Although the proposed rules only allow covered fuel suppliers to hold compliance instruments, the rule does not exclude brokers from helping to facilitate trades between covered fuel suppliers (without holding the compliance instruments themselves). DEQ notes concerns over limited trading due to the small number of covered entities under CPP, but DEQ does not believe that the potential for increased market liquidity would justify the additional administrative costs to DEQ to allow for brokers to hold compliance instruments themselves.
Program Design Elements	98	Clarify that DEQ "will" make calculations/compliance obligation determinations based on emissions	In the Notice of Proposed Rulemaking, DEQ included language in OAR 340-271-0110(1) to demonstrate compliance obligations will first be informed by data

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		data and information in emissions data reports required according to OAR chapter 340, division 215.	reported to Oregon's Greenhouse Gas Reporting Program here at DEQ (OAR chapter 340, division 215); then if there is not sufficient reported information, then DEQ may use other best available information. In response to comment, DEQ modified language in OAR 340-271-0450 to tie back to this earlier section describing that DEQ will rely on this reported data for calculating compliance obligations.
Program Design Elements	99	Clarify the language in OAR 340-271-0110(4)(b)(B)(iii) regarding "as determined by DEQ"	OAR 340-271-0110(1) states DEQ will rely on data required to be reported according to OAR chapter 340, division 215, the Oregon Greenhouse Gas Reporting Program, for emissions calculations in CPP. DEQ determines compliance obligations and will do so first, informed by data reported directly by each covered fuel supplier. If the covered fuel supplier does not report sufficient information for DEQ to determine their obligation, DEQ will use other best available information. This is meant to primarily include data reported by other regulated entities under the Oregon Greenhouse Gas Reporting Program. The exemption referenced in the comment is for natural gas known to not be combusted. Because the local distribution companies do not know or report this information to DEQ, this is an example where DEQ may have better information that has been reported by a permitted facility to make an adjustment to a local distribution company's compliance obligation. See the spreadsheet included as Attachment E of the staff report to the EQC for how DEQ used this methodology in determining the local distribution companies' hypothetical covered emissions for 2017 through 2019 to inform cap setting.
Program Design Elements	100	Commenter(s) provided input on the compliance instrument reserve. Examples include:	The purpose of the compliance instrument reserve is to hold compliance instruments for covered fuel suppliers who become covered for a calendar year after DEQ has

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		<ul style="list-style-type: none"> • Support for the compliance instrument reserve. • The amount held in reserve is too high and could constrain compliance. • The reserve size should be based on 1.5-2% of each annual cap not used for LDCs. • Seeking for excess compliance instruments in the reserve to be retired and/or not roll over. • Seeking certainty that excess compliance instruments in the reserve would not be retired, but that they should be redistributed if unused. • The reserve should be used to providing compliance instruments to any/all covered fuel suppliers if the program becomes too constrained, rather than being for new entrants. This comparable to the use of reserves in similar programs. • Further detail was needed in the rules to better describe the use of and distribution from the reserve. • DEQ should create individual caps for new entrants using the reserve for the first three or more years after it enters the program. 	<p>already distributed the compliance instruments from the cap for that year (for example, if DEQ distributes 2022 compliance instruments in early 2022, a covered fuel supplier whose emissions rise above the 200,000 MT CO2e threshold for the first time in 2022 would not have received any compliance instruments). Since the compliance instruments come from annual caps, DEQ believes it is appropriate for the reserve to roll over from year to year and to distribute to covered fuel suppliers as needed. The amount held in the reserve corresponds to roughly 1.5 percent of the cap for each of the first two years, plus a replenishment the year after a compliance instrument is distributed. Over time as the reserve size specified in the rule decreases, DEQ has the option to either retire the excess compliance instruments in the reserve or distribute them to covered fuel suppliers. DEQ believes either action may be appropriate depending on the circumstances and will retain both options in the proposed rule.</p> <p>Distribution from the reserve is described in OAR 340-271-0420(5). DEQ believes this process is sufficient. DEQ does not believe that setting individual caps for new entities is necessary.</p>

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Program Design Elements	101	CPP should link with other regional carbon markets, such as WCI and Washington's developing program.	DEQ is not proposing to link the proposed program to any other program or other jurisdiction.
Program Design Elements	102	Include a date when DEQ will distribute compliance instruments and ensure the date is early enough for covered fuel suppliers to be able to demonstrate compliance.	In response to comments, DEQ has added language in OAR 340-271-0420 to clarify DEQ will distribute compliance instruments annually and will do so prior to the end of the first quarter of each year.
Program Design Elements	103	Only use data from 2022 or later to make determinations about who is a covered fuel supplier. This may be necessary due to annual variability in the fuels sector.	DEQ believes it is appropriate to use historical reported emissions data to determine who is covered, in contrast to waiting until late 2023, when emissions for the year 2022 have been report and verified. DEQ also notes that it will use historical data for determining the distribution of compliance instruments to covered fuel suppliers that are not local distribution companies (liquid fuels and propane suppliers).
Program Design Elements	104	Recognize book and claim accounting for biofuels. Account for this in the definition of covered fuel supplier biofuel emissions in the formula for distribution of compliance instruments. Another commenter sought for this to be accounted for in covered emissions, such as to allow for book and claim accounting of RNG or RNG procured on behalf of Oregon customers, regardless of delivery to specific end-user.	<p>Emissions are determined using greenhouse gas emissions data reported to DEQ's Greenhouse Gas Reporting Program (OAR chapter 340, division 215). Covered emissions do not include biomass-derived fuels. Biomass-derived fuels has the meaning given the term in OAR 340-215-0020. Biomass-derived fuels include, without limitation, biomethane, biodiesel, renewable diesel, renewable propane, woody biomass, and ethanol.</p> <p>For a covered fuel supplier that is a local distribution company (natural gas utility) reporting emissions associated with biomethane, also known as renewable natural gas, the natural gas utility can claim biomethane delivered within Oregon provided the natural gas utility can show sufficient documentation to prove ownership. The biomethane can be sourced from projects anywhere in North America, as long as the biomethane is injected into a common carrier pipeline network. The natural gas</p>

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			<p>utility can claim the same volume of biomethane via displacement, also known as book and claim, without tracking the gas to a specific end-user.</p> <p>Though not covered emissions in CPP, DEQ will use emissions associated with biofuels in the methodology for determining the number of compliance instruments distributed to covered fuel suppliers that are not local distribution companies (liquid fuels and propane suppliers) as described in OAR 340-271-0420. These emissions are not covered emissions for demonstration of compliance but are used in the determining the number of compliance instruments distributed to liquid fuels and propane suppliers.</p>
Program Design Elements	105	<p>Seeking more frequent program review(s) and/or specifics to be included in the program review(s), which DEQ proposed to occur every five years. Examples include:</p> <ul style="list-style-type: none"> • Seeking a mid-term review to ensure that the program is reducing greenhouse gas emissions as intended, but while also maintaining affordability, reliability and energy choice. • Seeking for program reviews to be conducted more frequently, such as every three years to align with compliance periods, or annually. • There should be annual review of the incremental costs versus 	<p>DEQ believes the proposed program review every five years is a good balance to allow enough time for demonstrations of compliance to occur, while reviewing frequently enough to regularly assess if and how the program is achieving its purposes as described in the CPP rules. Reviewing more frequently may not provide enough time for the program to progress and see changes compared to the last review. The review provides an opportunity for DEQ to make recommendations if changes are needed. If needed, DEQ can propose changes to the rules through rulemaking at any time, not just as a result of a program review, and the EQC has the authority to act more quickly to adopt temporary rules, or consider variances.</p> <p>In response to some suggestions from comments it is worth noting that it will be difficult to determine cost impacts from CFP versus CPP as they are complementary policies that each work to reduce</p>

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		<p>benefits of this program compared to the Oregon Clean Fuels Program to determine which is most effective.</p> <ul style="list-style-type: none"> • Seeking for more economic analysis in the program review. • Complete a report by June 30 of the last year of a compliance period to project availability of compliance instruments and adjust caps moving forward, if necessary. 	<p>emissions. On another point, the emissions caps are set in rule to provide certainty, and while DEQ may recommend that there should be changes to caps as a result of DEQ's program review, DEQ will only be able to adjust caps through a rulemaking approved by the EQC.</p>
Program Design Elements	106	<p>General support for/interest in various measures that can reduce greenhouse gas emissions including electrification and energy efficiency. Examples include:</p> <ul style="list-style-type: none"> • Interest in renewable energy in the electricity mix as well as insulation and efficient HVAC to further energy efficiency. • To further prioritize electrification, there should be limits on the use of RNG, such as only up to 10% of fossil gas can be RNG for difficult-to-electrify sources. • Concerns about and/or do not support the use/availability/environmental impacts of alternative fuels/biofuels generally, such as RNG, hydrogen, bio/renewable diesel. 	<p>The CPP is designed to allow flexibility in meeting compliance as DEQ is not prescribing how covered fuel suppliers reduce greenhouse gas emissions from fossil fuels. This can include reducing the amount of fossil fuel supplied, offering more alternative fuel options such as RNG, supporting electrification, and more. DEQ believes that energy efficiency and electrification can be an important part of decarbonization and the CPP has been designed in a way to support transition away from fossil fuels and toward cleaner energy sources, such as renewable energy or more efficient use of energy. This is especially done through CCIs. Ultimately, ways covered entities can reduce emissions can include electrification, as well as offering more alternative fuel options. This "technology neutral" regulatory approach has been deployed in other programs and has successfully supported emissions reductions, one example being the Oregon Clean Fuels Program.</p>

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Program Design Elements	107	Interest in more rule provisions to address/account for different types of RNG/biomethane to ensure emissions reductions. For example, only emissions consistent with Green-E's Renewable Fuels Standards to be exempt.	The primary purpose of the CPP is to reduce anthropogenic greenhouse gas emissions from fossil fuel combustion. The program is designed to allow flexibility in meeting compliance, as DEQ is not prescribing what covered fuel suppliers must do to reduce these emissions. This can include reducing the amount of fossil fuel supplied, offering more alternative fuel options such as RNG, supporting electrification, and more. This "technology neutral" regulatory approach has been deployed in other programs and has successfully supported emissions reductions, one example being the Oregon Clean Fuels Program. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change. Different programs can apply different approaches to focus on other sources of emissions and parts of the economy. For example, the CFP takes into account emissions from the lifecycle of a fuel where CPP's focus is combustion of fossil fuels. Greenhouse gas emissions data reported to DEQ's Greenhouse Gas Reporting Program is the basis of how DEQ will track emissions for the CPP. At the time of this rulemaking, emissions from combustion of biomethane are required to be reported to DEQ (OAR chapter 340, division 215), and reporting is currently done in a way that aligns with EPA reporting.
Program Design Elements	108	Interest in more rule provisions to address/account for hydrogen sales. For example: <ul style="list-style-type: none"> • Seeking clarification on how emissions from hydrogen will be accounted for. • The compliance instrument distribution methodology 	Greenhouse gas emissions data is reported to DEQ's Greenhouse Gas Reporting Program. The rules describing this are found in OAR chapter 340, division 215. This data is the basis of how DEQ will track emissions for the Climate Protection Program. At the time of this rulemaking, hydrogen is an emerging technology and while it is currently not supplied in Oregon, the CPP allows for emerging technologies and alternative fuels like hydrogen to support meeting compliance in CPP. DEQ

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		<p>should account for hydrogen in addition to biofuels.</p> <ul style="list-style-type: none"> It may not be feasible to include/account for hydrogen in the rules at this time, but DEQ should to work on this in the future with stakeholders. 	<p>recognizes hydrogen as an area needing a closer look in CPP and other DEQ programs and will continue to investigate this topic into the future. DEQ thanks stakeholders offering to assist the agency with this and believes it is a topic for continued collaboration.</p>
Program Design Elements	109	<p>Commenter(s) provided input on the proposed three-year compliance periods. Examples include:</p> <ul style="list-style-type: none"> Support for the proposed three-year compliance periods. Seeking longer compliance periods to allow for more flexibility or better account for weather variations. Seeking shorter compliance periods than proposed, such as quarterly or annual reporting/compliance periods. Commenter(s) stated that this more frequent demonstration of compliance would more effectively track if the intended program goals were being achieved and/or minimize the potential for covered entities to go bankrupt or re-enter the program as a different entity. Do not require an annual compliance demonstration within the three-year compliance period. 	<p>DEQ has modified OAR 340-271-0450 to clarify the relationship between the three-year compliance period and the demonstration of compliance. An annual compliance demonstration is not required. There is one compliance demonstration submitted after the conclusion of each three-year compliance period, which is used to demonstrate compliance with each of the annual compliance obligations.</p> <p>DEQ believes the three-year compliance periods strike a balance of regularly tracking program progress with minimizing regulatory burdens for the covered fuel suppliers, especially those that are small businesses with limited resources to dedicate to regulatory compliance. Three-year compliance periods can also help mitigate an unanticipated increase in emissions in any one year.</p>

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		<ul style="list-style-type: none"> • Confusion regarding annual compliance obligations. • Seeking clarification on compliance period length, deadlines, and connection to cap years and compliance obligation. 	
Program Design Elements	110	<p>Commenter(s) provided input on the proposed compliance instrument distribution methodology. Examples include:</p> <ul style="list-style-type: none"> • Support for the proposal • Support for inclusion of emissions from biofuels. • Distribute fewer compliance instruments than a covered entity's obligation as a way to promote emissions reductions. • Do not include emissions from biofuels. • Do not distribute compliance instruments for free/at no cost to covered entities. • Auction a portion of compliance instruments in order to raise funds for emissions reduction projects, such as for carbon sequestration. • Ensure each entity receives a smaller annual distribution than the preceding year. • The total emissions in the formula for compliance 	<p>DEQ has concluded that neither DEQ or EQC have statutory authority to sell or auction compliance instruments. DEQ is instead proposing to distribute compliance instruments directly to covered fuel suppliers at no cost. DEQ will generate compliance instruments in an amount equivalent to the annual cap and distribute those according to the process described in OAR 340-271-0420.</p> <p>Each year's statewide emissions cap is set in rule and is not based on ongoing changes in covered emissions. Declining caps over time will ensure covered entities are required to reduce emissions. Due to annual variability in fuels supplied, DEQ will base the compliance instrument distribution to liquid fuels and propane suppliers on a three-year moving average of each entity's covered emissions and biofuel emissions. This means that an individual fuel supplier's distribution may increase in a given year, but each year the total distribution to all fuel suppliers will decrease. Aside from compliance instruments held in the reserve, DEQ will distribute all compliance instruments.</p> <p>DEQ believes that by including emissions from biofuels in the compliance instrument distribution methodology, the program can incentivize covered fuel suppliers to provide more biofuels and fewer fossil fuels.</p>

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		instrument distribution should reference USEPA factors to quantify emissions.	
Program Design Elements	111	Commenter(s) provided input on what should happen to compliance instruments when a fuel supplier ceases to be covered. Examples include: <ul style="list-style-type: none"> • Seeking for compliance instruments to be retired and/or not held in the reserve. • Seeking certainty that compliance instruments would not be retired, but that they should be redistributed if unused. 	When a covered fuel supplier ceases to be covered, DEQ may choose to retire, redistribute, or cancel its remaining compliance instruments. DEQ will decide which option to pursue at that time. DEQ also notes that covered fuel suppliers who are approaching cessation may choose to trade their compliance instruments rather than continue to hold them until they cease to be covered.

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Program Design Elements	112	<p>Commenter(s) provided input on the subject of cost caps/controls. Examples include:</p> <ul style="list-style-type: none"> • Support for the absence of these types of provisions in CPP. • Interest in cost caps/controls and/or program off-ramps or assurances to be included in the rules. • These provisions may be necessary if it becomes increasingly difficult to comply due to limited availability of compliance instruments or to address increasing costs, for example due to fuel shortages or fuel rationing, or if fuel prices exceed an increase of 2 cents per gallon. • Refer to CFP. If CFP is adjusting its stringency to respond to impacts to the fuels markets, so should CPP. • Concern about the ability to respond to emergency/unforeseen situations, such as due to fuel shortages or alternatively increased fuel usage due to an emergency. Emergency exemption provisions should be included to respond to emergencies that result in 	<p>DEQ has modified the proposed rules in response to these comments. Any of the potential situations mentioned by commenters are difficult to predict or put specific descriptions and bounds around to be able to determine if that particular case is in fact occurring. DEQ can propose changes to rules through rulemaking at any time, not just as a result of a program review, and the EQC has the authority to act more quickly to adopt temporary rules, or consider variances.</p> <p>Additionally, in response to the concerns raised in these comments, DEQ has added proposed OAR 340-271-0800(3). This proposed rule provides that if the average annual statewide retail cost of gasoline, diesel or natural gas in Oregon increases year-over-year by an amount that is more than twenty percent higher than the change in cost for the same fuel over the same period in each of the states adjacent to Oregon (not including California), DEQ will investigate and report on the cause(s) to the commission, and include recommendations on alternatives to ameliorate or reduce such impacts. If necessary, such actions could be taken on an expedited basis via a temporary rule. OAR 340-271-8110, also authorizes DEQ to extend reporting or demonstration of compliance deadlines, as DEQ deems necessary or appropriate.</p>

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		increased fuel usage and/or to ensure reliability.	
Program Design Elements	113	<p>Commenter(s) provided feedback on compliance flexibility/optionality for covered fuel suppliers. Examples include:</p> <ul style="list-style-type: none"> • Eliminate or limit program design elements that provide optionality for covered fuel suppliers in how to comply, including banking or trading of compliance instruments. • Concerns about these flexibility or cost containment measures due to harm to environmental justice communities. • Place geographic limits on trading of compliance instruments to protect communities near sources of emissions. • Support for compliance flexibility measures, including trading and banking of compliance instruments, such as using trading to reduce compliance costs. 	<p>The cap on emissions is to require reductions across all covered fuel suppliers over time. Additional program elements, such as CCIs, will also work to directly provide investments in and benefits to environmental justice communities in Oregon. DEQ believes providing options and flexibility for meeting compliance, such as through trading and banking of compliance instruments, will allow each covered fuel supplier to choose pathways to comply that work best for them, which will ultimately result in a more achievable, cost-effective, and successful CPP. Allowing for trading of compliance instruments, where one entity can trade or sell unused compliance instruments to another entity, is a key program design element that may help entities to collectively comply with the caps in the most cost-effective ways for everyone. DEQ is proposing no restrictions on trading between covered fuel suppliers. Relatedly, allowing for banking of compliance instruments, where an entity can save unused compliance instruments for use toward compliance in some future year, is a key program design element that may help entities to comply with the declining caps over time, especially as emissions reductions actions become more difficult/costly and the caps become more stringent over time. DEQ is proposing no time limits on banking of compliance instruments.</p> <p>On the suggestion for geographic limits to trading of compliance instruments, DEQ considered this but ultimately decided it did not make sense given the types of sources of emissions covered by the cap. Covered fuel suppliers provide fuels all over the state that result in emissions when the fuel is combusted at its end-use,</p>

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			which again occurs all over the state. Because of this, limiting trading of compliance could make it harder for covered fuel suppliers to comply while not actually resulting in any localized benefits
Program Scope	114	DEQ and/or EQC lack authority to establish certain aspects of the proposed CPP.	DEQ has concluded that the EQC has the statutory authority to adopt the CPP as proposed, including authority to adopt each element of the program for which comments asserted that the EQC did not have authority. If adopted, DEQ will have authority to implement the program.
Program Scope	115	Support for/seeking significant regulation of use/emissions from fossil fuels, natural gas, and/or methane. Support for clean energy and a shift away from fossil fuels. This may include support for alternative fuels/biofuels such as RNG, biodiesel, hydrogen, etc. Replace existing fossil/greenhouse gas emitting infrastructure with new infrastructure or cleaner technologies. Provide subsidies or incentives for clean energy/technologies.	The primary purpose of the CPP is to reduce anthropogenic greenhouse gas emissions from fossil fuel combustion. DEQ is proposing to achieve reductions from these emissions by setting a declining cap on emissions over time. The program design supports and incentivizes the shift away from fossil fuels toward cleaner/alternative energy sources. The CPP is designed to allow flexibility in meeting compliance, as DEQ is not prescribing what covered fuel suppliers must do to reduce greenhouse gas emissions from fossil fuels. This can include reducing the amount of fossil fuel supplied, offering more alternative fuel options such as RNG, supporting electrification, and more. Ultimately, ways covered entities can reduce emissions can include electrification, as well as offering more alternative fuel options. This "technology neutral" regulatory approach has been deployed in other programs and has successfully supported emissions reductions, one example being the Oregon Clean Fuels Program.
Program Scope	116	Broadly seeking for the program to cover more sources of greenhouse gas emissions. For example: <ul style="list-style-type: none"> • Seeking an economy-wide cap and trade program or for all 	DEQ has concluded that EQC does not have statutory authority to include in the CPP the regulation of greenhouse gas emissions from some of the commenter-suggested sources. DEQ has concluded that EQC does not have statutory authority to include in the CPP the

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		<p>entities that emit greenhouse gases to be covered.</p> <ul style="list-style-type: none"> • Seeking that at least all major emitting sources/industries be covered or all sources within EQC's authority to regulate be covered. • Regulate emissions more than just those that result from fuel combustion. • Regulate emissions from burning solid fuel/coal. • Regulate lifecycle emissions such as upstream, extraction, transmission, processing, fugitive emissions, and/or consumption-based emissions. 	<p>regulation of emissions that originate or occur outside of Oregon. Separately, some of the suggestions are actually proposed to be regulated in CPP, including emissions from combustion and burning of solid fuels such as coal. The only real use of solid fuel in Oregon may be at certain stationary sources and these are covered under the BAER approach if annual covered emissions equal or exceed 25,000 MT CO₂e.</p> <p>DEQ is proposing to achieve significant reductions from greenhouse gas emissions from certain sources by setting a declining cap. If adopted, the CPP will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change. Different programs can apply different approaches to focus on other sources of emissions and parts of the economy. For example, the Oregon Clean Fuels Program focuses on lifecycle emissions of fuels used in the transportation sector and the EQC recently adopted rules to further regulate methane emissions from landfills in Oregon.</p>
Program Scope	117	<p>Commenter(s) provided input on the proposed declining thresholds for inclusion for covered fuel suppliers. Examples include:</p> <ul style="list-style-type: none"> • Support for the proposal. • DEQ's balanced regulatory burdens for small businesses with the need to cover/reduce more GHG emissions and/or prevent leakage of greenhouse gas emissions to outside Oregon. 	<p>DEQ proposed the declining thresholds for liquid fuels and propane suppliers based on public comment during development of the proposed program. The decline over time is intended to balance the need to reduce emissions with the complexity of the regulation for small businesses, as well as the risk of leakage of greenhouse gas emissions to outside of Oregon.</p>

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		<ul style="list-style-type: none"> • Seeking lower threshold(s) for inclusion to capture more emissions and have more fuel suppliers regulated sooner. • The threshold for inclusion should start at 25,000 MT CO2e rather than declining over time over the first few years/compliance periods. • Seeking higher threshold(s) for inclusion and/or no regulation of smaller fuel suppliers. • Concerns about program costs and/or complexity that may make it difficult for some fuel suppliers, especially those that are smaller, to comply. • The threshold be raised to 200,000 MT CO2e or 300,000 MT CO2e for every year. 	
Program Scope	118	Exclude regulation of watercraft and marine fuel(s) in the program.	Climate Protection Program sets enforceable limits on greenhouse gas emissions from fossil fuels used in transportation, residential, commercial and industrial settings and certain emissions at stationary sources throughout Oregon, including diesel, gasoline, natural gas, and propane. Covered liquid fuels and propane suppliers, whether they provide fuels that are eventually used in watercraft or trucks, are the point of regulation under CPP. Except for fuels used in aviation, DEQ does not propose to change emissions obligations from covered fuels suppliers for end uses of fuels by businesses or consumers.
Program Scope	119	Regulate natural gas power plants in CPP. Commenter(s) were also	DEQ acknowledges comments in this rulemaking that have requested that natural gas power plants be

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		specifically seeking for DEQ to regulate emissions from electric power plants or electricity generation that were not covered in House Bill 2021 (2021).	<p>regulated under CPP. DEQ acknowledges HB2021 is critical to ensuring the ongoing decarbonization of electricity used in Oregon, but also notes HB2021 will not address all emissions associated with electricity generation as detailed in public comments.</p> <p>DEQ also notes that the natural gas power plants in Oregon that might be subject to CPP operate under the authority of site certificates issued by the Oregon Energy Facility Siting Council, and there are questions about DEQ and EQC authority to regulate the greenhouse gas emissions from these sources.</p>
Program Scope	120	Regulate emissions from natural gas interstate pipelines.	DEQ staff have concluded that it is likely that EQC would be preempted from regulating greenhouse gas emissions from interstate pipelines under the Natural Gas Act, administered by the Federal Energy Regulatory Commission.
Program Scope	121	Regulate emissions from agriculture, animal agriculture. Commenter(s) provided suggestions on how to achieve emissions reductions from the agriculture sector, such as by changing conventional agricultural practices by incentivizing organic regenerative practices.	DEQ staff have concluded that the EQC does not have the statutory authority to regulate these sources in the CPP.
Program Scope	122	Regulate more and/or smaller stationary sources. Commenter(s) sought regulation of all stationary sources and certain stationary sources. Examples include new sources, landfills, facilities in certain neighborhoods/counties, facilities that combust natural gas, large refineries, and oil train terminals.	Stationary sources expected to have covered emissions that equal or exceed 25,000 MT CO ₂ e are proposed to be covered under the BAER approach. This includes existing facilities as well as proposed new facilities that may be built in Oregon and are have potential to emit covered emissions at or above this threshold. DEQ is proposing this threshold for inclusion because it has some precedent as being used in other programs and it captures the largest sources of emissions. At this

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			<p>threshold, most industrial process emissions occurring in Oregon are covered, while minimizing the number of businesses that are directly regulated. As ORS 183.333 and 183.540 require, DEQ must mitigate economic impacts for directly regulated small businesses. This threshold for inclusion is a useful way to mitigate impacts as it excludes many small businesses from the regulation, and therefore mitigates their regulatory burden and economic impacts of the program. DEQ believes this threshold balances the interests of different commenters by covering a large sum of greenhouse gas emissions while minimizing the number of and impacts on directly regulated sources, especially those that are small businesses.</p> <p>In response to commenters seeking for DEQ to regulate certain specific stationary sources, some of the suggested sources are regulated by other DEQ programs. For example, in 2021, the EQC significantly expanded its regulation of greenhouse gas emissions from landfills. Staff believe that separate program is more suited to address emissions from landfills and therefore has proposed to exclude regulation of landfills from CPP. For some of the other sources commenters suggested DEQ regulate, staff have concluded that DEQ and EQC do not have the statutory authority to regulate them directly, such as sources that are not located in Oregon, like refineries. Most stationary sources that combust natural gas are regulated in CPP. Much of these emissions are covered under the cap program if the natural gas supplier is a local distribution company (natural gas utility). For sources that meet the threshold discussed above, some are also regulated for not just their industrial process emissions, but also emissions</p>

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			from natural gas combustion if that natural gas was delivered by an interstate pipeline company.
Program Scope	123	<p>Commenter(s) provided input on the program scope. Examples include:</p> <ul style="list-style-type: none"> • The program scope should not include co-pollutants and/or providing benefits to environmental justice communities. • Oregon/EPA already have several other programs, such as Cleaner Air Oregon/NAAQS, to address non-greenhouse gas air emissions. • Align the scope with Governor Brown's Executive Order 20-04. • Address other air pollutants besides greenhouse gases, such as NOx, VOCs, HAPs, toxics, and/or black carbon. For example, some suggested regulations on particulate matter emissions from diesel engines or from indirect sources. 	<p>The primary purpose of the CPP is to reduce anthropogenic greenhouse gas emissions from fossil fuel combustion. The suggested air contaminants are not greenhouse gases, though DEQ and EPA have other regulatory programs to directly regulate other air pollutants. DEQ, informed by public comment, proposes that the Climate Protection Program should support reduction of co-pollutants, which will provide benefits to environmental justice communities since they are disproportionately impacted climate change, air contamination, and energy costs. The CPP does not set specific requirements for reductions of air contaminants that are not greenhouse gases. However, certain provisions of the program and especially CCIs are designed to support reductions of other air contaminants, such as co-pollutants that are emitted alongside greenhouse gases, which will promote health and welfare benefits. DEQ acknowledges the scope and significance of CPP, but notes if adopted, it will be one of many complementary policies and programs in Oregon working to take meaningful action on climate change and air pollution.</p>
Program Scope	124	<p>Commenter(s) provided input on regulation of biofuels. Examples include:</p> <ul style="list-style-type: none"> • Regulate emissions from biofuels. • Support for the exclusion of emissions from biomass- 	<p>ORS 468A.020 (3) generally prohibits the EQC from regulating CO2 emissions from the combustion or decomposition of biomass. While some biofuels do have anthropogenic emissions of N2O and CH4 in addition to biogenic CO2 when combusted, DEQ has proposed not to regulate these very small amount of anthropogenic emissions from biofuels, especially since DEQ could not</p>

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		derived fuels from covered emissions.	regulate all biogenic emissions. The primary purpose of the CPP is to reduce anthropogenic greenhouse gas emissions from fossil fuel combustion.
Program Scope	125	Commenter(s) provided input on regulation of aviation fuels. Examples include: <ul style="list-style-type: none"> • Regulate greenhouse gas emissions from aviation fuels. • Support for the proposed exclusion. 	The federal government has jurisdiction to regulate pollutant emissions from aircraft and the Clean Air Act prohibits states from adopting any other standards for emissions from aircraft.
Program Scope	126	Suggested language edits to ORS 340-271-0110(5)(b)(B)(viii) to add 'total' before 'nominal electric generating capacity.'	DEQ has made this revision to clarify that the nominal electric generating capacity applies across the entire permitted source as one total, not per individual unit.
Program Scope	127	Commenter(s) expressed support for market-based mechanisms in a greenhouse gas emissions regulatory program while expressed concerns that the scope of the proposed program is too small/should cover more of the economy. This could make it more difficult for regulated entities to achieve compliance and could make the program more costly.	As discussed in other responses to comments, the scope of the program reflects DEQ's conclusion regarding the extent of the EQC's statutory authority and certain policy considerations. DEQ believes that the incorporation of market-based mechanisms is helpful for cost containment in the program.
Rulemaking	128	Adopt CPP now, but open another rulemaking to expand and/or strengthen the program.	DEQ or the EQC may consider amendments to the CPP division of rules in future rulemakings.
Rulemaking	129	A 2022 effective date for the program is quick if the program is adopted in 2021. Features such as DEQ guidance or electronic compliance tools may not be available and regulated entities would have minimal time to plan for compliance. DEQ	DEQ believes it is important for the program to begin in 2022 to start progress toward significant emissions reductions. DEQ will take steps following adoption of the rules to inform covered entities of compliance requirements, including preparation of guidance documents. DEQ notes that CPP uses three-year compliance periods to that the first demonstration of

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		<p>should describe the readiness to the EQC and if needed program features are not in place, that DEQ should recommend a later start to the program.</p>	<p>compliance for covered fuel suppliers is not required until November 2025.</p> <p>DEQ intends to use an electronic tool for covered fuel suppliers to view their compliance instruments and for all covered entities to submit forms to DEQ. DEQ expects to release different forms as they are available and will offer training to covered entities. If a particular form in the electronic reporting tool is not ready by a deadline for permitting or reporting, DEQ may develop an alternative.</p>
Rulemaking	130	<p>During program development, government to government relationship with tribes was not sufficient/as promised and should be improved.</p>	<p>The government-to-government relationship with tribes is an important part of any DEQ rulemaking. DEQ contacted the Tribal Chairs of Oregon’s nine federally recognized tribes prior to undertaking this rulemaking, inviting consultation on the issues and process raised during the initial planning stage. As part of the CPP rulemaking, DEQ met with three tribal councils to discuss the rulemaking and had two representatives of tribal governments and tribal organizations participate on the EQC appointed rulemaking advisory committee. Additionally, although not consultation itself, DEQ staff also presented on this rulemaking to the state’s Economic Development and Community Services and Natural Resources Tribal Clusters regarding this work and directly soliciting additional opportunities for formal consultation. Input from Oregon Tribes throughout this extensive process has informed how the agency developed these proposed rules, including how the program includes specific provisions to produce a more equitable transition away from fossil fuels in Oregon’s environmental justice communities, including tribal communities.</p>

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Rulemaking	131	<p>During program development, RAC membership did not include sufficient representation. Examples include:</p> <ul style="list-style-type: none"> • Include more industry representation/members to represent those likely to be directly affected by the rule. • Few directly regulated entities were on the RAC and that competitors cannot represent each other on the committee. • Improve representation of impacted communities, scientists, and/or environmental groups on RACs and/or include less representation from potentially regulated entities. 	<p>The advisory committee consisted of 34 stakeholders, including environmental justice community-based organizations, representatives for potentially regulated industries, environmental organizations, industry groups, working lands, local governments, and tribal representatives. The EQC appointed the advisory committee for the CPP rulemaking. The advisory committee composition balanced multiple and diverse opinions, lived experiences and expertise, while supporting equitable engagements.</p>
Rulemaking	132	<p>During program development, RAC or public comments were not heard or responded to and DEQ did not make changes to the proposal. During program development, concerns that environmental justice and/or community voices were not heard or respected.</p>	<p>DEQ listened to and read all comments presented throughout the development of the CPP and has been informed by them. DEQ incorporated much of the input it received into the Notice of Proposed Rulemaking and has subsequently incorporated much of this input into the attached proposed rules.</p> <p>DEQ notes that many commenters expressed contrasting viewpoints, so it is not possible for all comments to be incorporated into the CPP because they are mutually exclusive. DEQ attempted to address concerns raised in comments where possible, has altered many program elements, and has sought to balance different concerns throughout the development of the Climate Protection Program.</p>

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			<p>Equitable engagement was a key focus for DEQ in the rulemaking process, informing the design of the RAC process and committee selection. DEQ acknowledges that these are initial steps in pursuing equitable engagement and recognizes the need for additional work and ongoing efforts to support equitable outcomes.</p> <p>DEQ provided resources to community-based organizations participating on the advisory committee. DEQ also held separate informational meetings with those organizations to better support their participation on the RAC, and to discuss ways in which DEQ could better center equity in CPP design.</p>
Rulemaking	133	Seeking interpretation services in Spanish and ASL to be available at next public hearing.	Equitable engagement was key focus for DEQ in the CPP rulemaking process, but DEQ acknowledges that these are initial steps and recognizes the need for additional work and ongoing efforts. DEQ was able to provide community materials in Spanish at the town hall meetings held prior to the formal rulemaking process. DEQ was also able to translate certain documents and presentations at the public hearings into Spanish. A translator was available to translate any comments in Spanish to English. DEQ will continue to consider areas where the agency can provide more and better accessibility through translation services and remote platforms.
Rulemaking	134	<p>Commenter(s) provided input on a requested extension of the public comment period. Examples include:</p> <ul style="list-style-type: none"> • Requests or support for extension of public the comment deadline. • Opposition to the extension. 	After over a year of public outreach and stakeholder engagement to consider, develop and discuss a wide range of potential components of the CPP, DEQ published the notice of proposed rulemaking with a 60-day comment period. In response to multiple requests for extension of the comment period, DEQ extended the public comment period by 21 days in order to allow an additional opportunity to submit comments on the

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			proposed rules. DEQ believes it provided more than a reasonable amount of time to receive public comments, and received more than 7,600 comments.
Rulemaking	135	Support for climate action and/or program adoption immediately, before the end of 2021, and/or in order for the program to begin in 2022.	Thank you for your comment.
Rulemaking	136	<p>Commenter(s) noted that they had received information from their utility, NW Natural, on the proposed Climate Protection Program and provided input to DEQ on this information. Examples include:</p> <ul style="list-style-type: none"> • Commenter(s) asked if DEQ was aware of these requests or had approved a webpage the utility designed to solicit comments. . • Commenter(s) welcomed being notified but were concerned that they were asked to provide feedback to the utility via a utility webpage and not directly to DEQ. • Commenter(s) did not want NW Natural to collect feedback to provide to DEQ. 	DEQ did not approve, review, or request that NW Natural develop any external webpages to solicit comments on the CPP rulemaking. DEQ has no authority or role in reviewing or regulating NW Natural's communications with its customers. Based on the comments, DEQ referred this information to the Public Utilities Commission (PUC), the body that regulates NW Natural as a utility, in order for the PUC to take any further action that it deems appropriate.
Stationary Sources/BAER	137	Clarify how BAER would apply to new or expanding sources.	DEQ has proposed provisions to address new sources and include them in the BAER approach. At this time, DEQ has not proposed specific provisions to address existing sources applying to make modifications because at the time of this rulemaking, internal analysis showed there are unlikely to be any such sources in the near-term that would be captured by CPP. However, an existing

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			source would become covered if its covered emissions increased to 25,000 MT CO ₂ e or greater. DEQ may consider addressing modified sources through a future rulemaking.
Stationary Sources/BAER	138	Clarify that DEQ "will" or "must" make a BAER determination for each stationary source required to submit a BAER assessment. Commenter(s) requested DEQ to make a BAER determination within a set timeframe, such as within 3 months or 6 months of receiving a BAER assessment. Commenter(s) suggested DEQ set a timeframe within which a source must provide any requested additional information, e.g. 10 days.	The language in OAR 340-271-0320(1) enables DEQ to issue a BAER order for any covered stationary source required to conduct a BAER assessment. This means if the source fails to submit an assessment, DEQ still has the ability to issue a BAER order. To provide more certainty, DEQ has added a section at the end of OAR 340-271-0320 stating that DEQ will provide a public status update if for some reason DEQ has not yet issued a BAER order, if applicable, after 18 months of the date on which DEQ notified a covered stationary source that it must conduct a BAER assessment.
Stationary Sources/BAER	139	Clarify when requirements will become part of a facility's permit and who will make BAER determinations.	DEQ will issue a BAER order, which will be an agency order that establishes the required actions the owner or operator of a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken. OAR 340-271-0150(2) and (3) describe the permitting requirements for new and existing covered stationary sources to incorporate the requirements of a DEQ-issued BAER order into a source's air permit. New and existing sources must apply to DEQ (or LRAPA, as applicable) for a permit addendum by submitting a permit modification application. For existing sources, if the application is approved, the permit addendum will amend the source's existing permit until the BAER requirements can be incorporated into the operating permit. For new sources, if the application is approved, the permit addendum will be incorporated directly into the new operating permit so it will include the

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			BAER requirements directly and an addendum will not be needed.
Stationary Sources/BAER	140	Consider the use of Environmental Product Declarations (EPDs) as a way of evaluating emissions.	While DEQ is not proposing to require that EPDs be submitted as part of a BAER assessment, a covered stationary source may choose to submit them.
Stationary Sources/BAER	141	Covered stationary sources that reduce emissions below the 25,000 MT CO ₂ e threshold should no longer have obligations in CPP. For example, they should no longer be required to submit five-year update reports.	In response to comments, DEQ modified the proposed OAR 340-271-0130(2) to describe cessation provisions for covered stationary sources if their emissions remain below 25,000 MT CO ₂ e for five consecutive years. Any source that ceased to be covered but meets applicability again in the future will become subject to the CPP again.
Stationary Sources/BAER	142	Increase public involvement/input in BAER process. Examples include: <ul style="list-style-type: none"> • Require a public comment period for each BAER determination and incorporation of changes based on comments received. • The source's CPP permit addendum application should be changed from a Category I to II permit action. • Use a public involvement approach similar to CAO Community Engagement. • Stationary sources should consider public/community input as they develop BAER plans/assessments. 	DEQ believes seeking input during decision-making when DEQ is determining the required actions to include in a BAER order will provide the greatest and most direct opportunity for public input to be considered. OAR 340-271-0320(5) states that DEQ will consult with the public and communities near sources before issuing a BAER order. After a covered stationary source submits an application for a CPP permit addendum, DEQ also proposes that a public comment period occur once DEQ has made its decisions on required actions and issued a BAER order by which the source must comply.
Stationary Sources/BAER	143	Modify language in OAR 340-271-0110(5) so DEQ will review actual emissions data to determine applicability for covered stationary sources.	DEQ will review actual emissions data to determine applicability for existing stationary sources. According to ORS 340-271-0110(5)(a)(A), DEQ will review emissions data from 2018 and later to determine applicability for existing stationary sources.

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			<p>ORS 340-271-0110(5)(a)(B) relates to new and proposed stationary sources with the potential to emit 25,000 MT CO2e of covered emissions or greater. DEQ will not have actual reported data yet as these new sources are not yet permitted nor required to report emissions to DEQ yet. New sources become applicable in CPP based on potential to emit emissions and at an early stage in their permitting process, rather than much later, after they start reporting emissions, in case any requirements in a DEQ BAER order have significant implications for construction of the source.</p>
Stationary Sources/BAER	144	Require BAER assessments to be submitted earlier than 1 year after date of notification, such as 6 months.	<p>DEQ is proposing changes in response to these comments. DEQ understands this type of analysis will take time for each source to complete, especially if they decide to contract with a third-party consultant to assist them with the assessment, but BAER assessments and the BAER process must be implemented in a timely manner to reduce emissions. In response, DEQ modified the language in OAR 340-271-0310(1)(a) to shorten the timeframe and require a covered stationary source to submit a complete BAER assessment to DEQ within nine months of the date of DEQ's notification to conduct a BAER assessment. DEQ has not changed the provisions in OAR 340-271-0310(6) allowing a covered stationary source to request an extension if they demonstrate progress in completing the submittal and the delay is for good cause.</p>
Stationary Sources/BAER	145	<p>Seeking for independent/third-party verification or auditing of various aspects of the BAER approach. Examples include:</p> <ul style="list-style-type: none"> • Require verification of BAER assessments and available 	<p>The BAER approach is mainly focused on unique industrial process emissions that are the result of different manufacturing processes. It is designed to determine and require emissions reductions that are commercially available, technologically feasible, and cost-effective for the individual source DEQ is assessing at that time. Each</p>

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		<p>emissions reduction opportunities that the stationary sources identify, with some suggesting this should be done every three years.</p> <ul style="list-style-type: none"> • Stationary sources should not be able to conduct the BAER assessment, or five-year review themselves, but a third-party should conduct them, or the source should at least conduct in consultation with a third-party. • Every three years, a third-party review should be conducted to make sure actions are being taken to ensure emissions reductions in-line with the cap decline. • A third-party should determine required actions, not DEQ. • DEQ should have to consult with third-party experts prior to making a BAER determination. 	<p>source will have different opportunities to reduce emissions, and these options may change over time with innovations. Covered stationary sources are required to submit BAER assessments to DEQ, which can be done in consultation with third parties. DEQ will determine the required actions each covered stationary source must take, but also has the option of consulting with third parties to inform agency decision-making.</p>
Stationary Sources/BAER	146	<p>Commenter(s) did not support DEQ's proposal of a call-in model for stationary sources or expressed concerns that the call-in process will be too slow.</p>	<p>DEQ believes the call-in model will assist DEQ with the administrative requirements related to its review of BAER and will assist with coordination as needed with other DEQ air pollution programs. DEQ also believes that a call-in process would support the requirement in OR 340-271-0320(5) for DEQ to consider input from the public and communities near sources before issuing a BAER order. In response to concerns about the timeliness of the BAER process, OR 340-271-0320(8) requires that DEQ</p>

Comment Subject	Comment ID	Description of Comment Category	Response
			provide a public status update if DEQ has not yet issued a BAER order after 18 months of the date on which DEQ notified the owner or operator of a covered stationary source that it must conduct a BAER assessment.
Stationary Sources/BAER	147	<p>Commenter(s) did not support the BAER approach generally.</p> <p>Comments questioned ability of BAER approach to reduce emissions. Examples include:</p> <ul style="list-style-type: none"> • Include stationary sources subject to BAER under the cap to ensure emissions reductions and incentivize innovation • Include all covered stationary sources under their own declining cap • If not under the cap, set other mandatory emissions reduction requirements, which could be industry-specific or as required actions a BAER order for each stationary source • Requiring emissions reductions emissions at a rate faster than 2-3% reductions per year. • Concerns that emissions from these stationary sources would not decline, or could even increase. • BAER process could still be used for stationary sources under the cap, such as to 	<p>DEQ is proposing changes in response to these types of comments. The BAER approach is separate from the cap and is mainly focused on unique industrial process emissions that are the result of manufacturing processes. DEQ developed the BAER approach recognizing that emissions reduction strategies vary greatly across industries and sources, particularly for most emissions covered by BAER which are industry-specific in nature. Some BAER sources and industries have fewer available cost-effective technologies and strategies to reduce emissions.</p> <p>While the covered stationary sources are required to conduct BAER assessments to inform DEQ, ultimately the agency will perform its own analysis and set the required actions each covered stationary source must take.</p> <p>DEQ recognizes comments emphasizing that BAER source need to achieve actual emissions reductions. In response to these comments, DEQ added OAR 340-271-0300 to identify CPP goals for covered stationary sources. These priorities include reducing covered emissions from covered stationary sources and reducing total covered emissions from covered stationary sources resulting from the combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions. DEQ will use the program review to assess how well BAER is meeting these priorities, and</p>

Comment Subject	Comment ID	Description of Comment Category	Response
		<p>determine eligibility flexibility measures such as the ability to use CCI credits.</p> <p>Other comments:</p> <ul style="list-style-type: none"> Supported stationary sources not having access to compliance flexibility mechanisms, such as offsets or CCI credits, whether under the cap or not. Stated that BAER sources should not identify their own opportunities to reduce emissions and the lack of declining emissions limits allows stationary sources to "self-regulate". 	<p>may make recommendations to the EQC on rule changes to better align if and as needed.</p>
Stationary Sources/BAER	148	<p>Concern about air quality impacts to communities near stationary sources. Improve monitoring of air quality, e.g. in neighborhoods near facilities and/or with better standards. Prioritize emissions reductions from sources near communities.</p>	<p>In establishing the requirements for a BAER order DEQ must consider input from the public and community organizations from nearby covered stationary source. DEQ must also consider the environmental, public health, and energy impacts of a strategy under consideration by DEQ to reduce covered emissions, including but not limited to air quality impacts for nearby communities and impacts related to switching to cleaner energy resources, zero-emissions energy resources, or renewable fuels.</p>
Stationary Sources/BAER	149	<p>Commenter(s) provided feedback on how new stationary sources should be regulated. Examples include:</p> <ul style="list-style-type: none"> Support for DEQ's proposal to treat new sources under the same regulation as the existing covered stationary sources. 	<p>DEQ believes the same standards should apply to existing covered stationary sources and to new covered stationary sources. However, DEQ has modified the threshold for new covered stationary sources to be based on the potential to emit 25,000 MT CO₂e rather than whether the source is anticipated to emit 25,000 MT CO₂e.</p>

Comment Subject	Comment ID	Description of Comment Category	Response
		<ul style="list-style-type: none"> • New sources should be held to more stringent requirements. The threshold for new sources subject to BAER should be lowered from 25,000 MT to 5,000 MT of anticipated emissions. • Requirements for new sources could be something other or different than BAER approaches which is more stringent. 	
Stationary Sources/BAER	150	<p>Commenter(s) provided feedback on the frequency at which review reports must be submitted and the frequency at which DEQ may request BAER assessments. Examples include:</p> <ul style="list-style-type: none"> • The review should be more frequent, such as every three years. • The review should be less frequent, such as every nine or ten years. • DEQ should require a new assessment more than once every five years, e.g. every two years. • The timeline is too short and should be extended, e.g., every ten years. 	<p>DEQ is not proposing changes in response to these comments. DEQ believes that the frequencies included in the proposed rules will help achieve the goals for regulating stationary sources. DEQ also believes that the frequencies balance the various comments submitted.</p>
Stationary Sources/BAER	151	<p>Commenter(s) provided suggestions on what should be included in BAER assessments. Examples include:</p>	<p>DEQ developed the BAER approach recognizing that emissions reduction strategies vary greatly from one industry to another and from one source to another. DEQ also recognizes that some sources and industries may</p>

Comment Subject	Comment ID	Description of Comment Category	Response
		<ul style="list-style-type: none"> • Sources should only need to provide a description of production processes that consume fossil fuels. • Remove the environmental and health impacts assessment requirements, as they are vague and burdensome for small sources of emissions. • Reference EPA's BACT/BART guidelines for what to include. • Clarify that the air quality impacts assessment should not inform whether a strategy to reduce greenhouse gas emissions is or is not chosen. • Sources should be allowed to take past greenhouse gas emissions reduction actions into account in identifying strategies. • Allow sources to propose off-site carbon reduction projects. • Allow for sources to include description of their preferred strategy. • Sources should be required to certify under penalty of perjury that the information submitted is true, accurate, and complete. 	<p>have less available and cost-effective technologies and strategies to reduce emissions. DEQ also recognizes comments emphasizing that BAER sources need to achieve actual emissions reductions and that stationary sources have large equity considerations as they are often located in or near environmental justice communities. DEQ believes the energy, environmental, health, and economic analyses required as part of the BAER assessment will aid DEQ's decision-making in different ways as DEQ determines the required actions in a BAER determination/order.</p> <p>While it is not a requirement of the BAER assessment in the rules, sources are allowed to provide information to DEQ to identify their own preferred emissions reduction strategies. On seeking submissions under penalty of perjury, a BAER assessment is an analysis that DEQ does require to be accurate but does not believe it needs to be submitted under penalty of perjury. Then, when it comes to a BAER order; a source is subject to DEQ enforcement actions if they do not comply with the requirements.</p>

Comment Subject	Comment ID	Description of Comment Category	Response
Stationary Sources/BAER	152	Commenter(s) provided input on what DEQ will consider cost-effective. Examples include: <ul style="list-style-type: none"> • Seeking clarity on cost-effectiveness • DEQ's proposal of comparing costs to whether a new source could not be built or an existing source could not be operated were too extreme and proposed a cost per metric ton of emissions reduced would be a better point of comparison. • Limit the types of costs DEQ will consider when making a BAER order and/or also consider cost savings. 	A BAER assessment requires the covered stationary source to analyze both costs and costs savings (benefits) in its economic impacts analysis of each strategy. DEQ will rely on this and other analyses to inform its cost-effectiveness analysis.
Stationary Sources/BAER	153	Commenter(s) provided input on the ability to request a contested case hearing. Examples include: <ul style="list-style-type: none"> • Opposition to this provision. • Support for this provision. 	Other divisions of program rules in OAR chapter 340 describe the process by which a regulated party may contest a case following an agency action. DEQ will retain this provision in the proposed CPP rules.
Stationary Sources/BAER	154	Commenter(s) sought other emissions/considerations in BAER. For example, include use of heating oil in businesses and homes, or regulate chip/semiconductor manufacturing as they use greenhouse gases with high global warming potentials.	Covered emissions regulated at covered stationary sources are meant to capture emissions not already regulated elsewhere in the CPP. This includes emissions from fossil fuel combustion not already covered, such as emissions from natural gas served by a direct connection to an interstate pipeline, as well as greenhouse gas emissions that occur from unique industrial manufacturing processes at an industrial facility. If a permitted source's combined covered emissions over the course of a year cross the threshold for program inclusion of 25,000 MT CO ₂ e, then the source will be regulated under the BAER approach. One example from a commenter expressed

Comment Subject	Comment ID	Description of Comment Category	Response
			<p>interest in regulating chip manufacturing. These are proposed to be regulated, as are the high global warming potential gases used in this manufacturing process, for any permitted semiconductor manufacturer with covered emissions that cross the threshold.</p> <p>Other sources of emissions suggested to be regulated, such as emissions from use of heating oil, are proposed to be regulated under the separate cap approach in the CPP. The emissions cap applies to emissions that result from the combustion of fossil fuels used in Oregon that were delivered by a liquid fuels supplier, propane supplier, or natural gas utility.</p>
Stationary Sources/BAER	155	<p>Commenter(s) provided input on what DEQ should consider when setting required actions through the BAER approach. Examples include:</p> <ul style="list-style-type: none"> • Consider the emissions reduction targets of Executive Order 20-04. • Consider requiring emissions reductions as much as is technologically achievable/feasible. • Reference EPA's BACT/BART guidelines for what to consider. • Consider whether sources are energy-intensive, trade-exposed (EITE) industry. • Supported for DEQ's consideration of the impact of a strategy on the type or quality of goods or products produced by the source. 	<p>In response to comments, DEQ added OAR 340-271-0300 to identify the CPP goals for covered stationary sources. These goals include reducing covered emissions from covered stationary sources and reducing total covered emissions from covered stationary sources resulting from the combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions. DEQ will use the program review described in OAR 340-271-8000(2) to assess how well BAER is meeting these priorities and may make recommendations to the EQC on rule changes to better align if and as needed.</p> <p>The BAER approach is designed to determine and require emissions reductions that are commercially available, technologically feasible, and cost-effective for the individual source DEQ is assessing at that time. DEQ referred to EPA BACT/BAER to inform what is required for BAER assessments.</p>

Comment Subject	Comment ID	Description of Comment Category	Response
		Explicitly include cost as an impact. <ul style="list-style-type: none"> • Recognize early actions, i.e., efforts sources have already taken to reduce emissions. • Seeking assurance DEQ will make a BAER determination/order on a case-by-case basis. 	In response to commenters seeking provisions to account for early action, DEQ has based all targets on reductions from recent emissions/actions. If a covered stationary source has recently implemented changes that now result in the source achieving its best available emissions reductions, DEQ would anticipate that would be reflected in the BAER assessments provided by the source.
Stationary Sources/BAER	156	Support for BAER approach for regulating stationary sources not under the cap.	Thank you for your comments.



State of Oregon Department of Environmental Quality

Climate Protection Program

Potentially Covered Entities

Greenhouse Gas Emissions Program 2021 Rulemaking – December 2021

Potentially covered entities

The following tables provide lists of the potentially covered entities in the proposed Climate Protection Program, separately for covered fuel suppliers and covered stationary sources.

This document lists which entities would initially be covered entities under the Climate Protection Program as proposed in the EQC Staff Report, if the EQC were to adopt the proposal. This document is based on information available to DEQ at the time the rules were proposed for adoption by EQC. DEQ notes that this is a preliminary list that may not comprehensively include all entities that would be covered entities. The final rules adopted by the EQC will inform the actual list of covered entities, and may capture additional or different entities than are listed here. All persons should consult any final adopted regulation itself to determine whether their interests may be affected by these rules.

Table D1. Potentially covered fuel suppliers

Potentially covered fuel suppliers included in Table D1 below would be subject to the proposed cap portion of the program beginning in 2022. This list is based on the proposed applicability, informed by data reported to DEQ's Greenhouse Gas Reporting Program and accounting for related entities. Additional fuel suppliers will become subject over time as the threshold for inclusion declines and as additional data becomes available, including information regarding related entities. Future applicability determinations will be based on emissions data and related entity information available at that future time.

Company Name	Type of Covered Fuel Supplier
Avista Utilities	Local distribution company
Cascade Natural Gas	Local distribution company
Northwest Natural Gas	Local distribution company
Associated Petroleum Products	Supplier of liquid fuel(s) and/or propane
BP Products North America, Inc.	Supplier of liquid fuel(s) and/or propane
BP West Coast Products LLC	Supplier of liquid fuel(s) and/or propane
Campo & Poole Distributing, LLC	Supplier of liquid fuel(s) and/or propane
Carson Oil Company, Inc.	Supplier of liquid fuel(s) and/or propane
Chevron Products Company	Supplier of liquid fuel(s) and/or propane
Equilon Enterprises LLC	Supplier of liquid fuel(s) and/or propane
Idemitsu Apollo Corporation	Supplier of liquid fuel(s) and/or propane
Jacksons Food Stores Inc.	Supplier of liquid fuel(s) and/or propane
P C Energy, LLC	Supplier of liquid fuel(s) and/or propane
PacWest Energy, LLC	Supplier of liquid fuel(s) and/or propane
Phillips 66 Company	Supplier of liquid fuel(s) and/or propane
Shell Trading (US) Company	Supplier of liquid fuel(s) and/or propane
Space Age Fuel, Inc.	Supplier of liquid fuel(s) and/or propane
Tesoro Refining & Marketing Company LLC	Supplier of liquid fuel(s) and/or propane
World Fuel Services, Inc.	Supplier of liquid fuel(s) and/or propane

Table D2. Potentially covered stationary sources

Potentially covered stationary sources included in Table D2 below would be subject to the proposed best available emissions reduction portion of the program. This list is based on the proposed applicability, informed by data reported to DEQ's Greenhouse Gas Reporting Program. Additional stationary sources may become subject over time as additional data becomes available and as new sources are constructed.

Source ID	Facility Name
01-0029	Ash Grove Cement Company
05-0005	United States Gypsum Company Rainier Plant
24-5398	Covanta Marion, Inc.
25-0027	Lamb Weston, Inc. Boardman East Plant
26-0027	SemiConductor Components Industries, LLC ON Semiconductor
26-1865	EVRAZ Inc. NA
26-3240	Microchip Technology Incorporated
26-9537	Owens Corning Corp. dba Owens Corning Foam Insulation, LLC
34-0055	Qorvo US
34-2681	Intel Corporation Aloha and Ronler Campuses
34-2804	Maxim Integrated Products, Inc. Maxim Fab North
34-2813	Jireh Semiconductor Incorporated
36-5034	Cascade Steel Rolling Mills, Inc.

Alternative formats

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



State of Oregon Department of Environmental Quality

Climate Protection Program

Calculations

Greenhouse Gas Emissions Program 2021 Rulemaking – December 2021

This document contains calculations for the proposed Climate Protection Program caps and compliance instruments for distribution to local distribution companies to supplement the EQC Staff Report on the Greenhouse Gas Emissions Program 2021 Rulemaking. This is provided based on information available to DEQ at the time the rules were recommended for EQC adoption and is not final unless EQC adopts the proposal.

**DEQ Greenhouse Gas Emissions Calculations
 to supplement rulemaking GHGCR2021**

**Metric tons of carbon dioxide equivalent (MT CO2e)
 Calculation for proposed OAR 340-271-9000 Table 2:
 Oregon Climate Protection Program Caps**

	2017	2018	2019		2022	2023	2024
Climate Protection Program Annual Caps					28,081,335	27,001,283	25,921,232
				Average 2017-2019	Share of Avg. Total at Threshold1		
Local Distribution Companies covered emissions	7,459,202	6,819,140	7,342,812	7,207,051			
NW Natural	5,979,280	5,436,132	5,864,503	5,759,972	21%		
Cascade	768,923	698,167	764,032	743,707	3%		
Avista	711,000	684,841	714,277	703,373	3%		
Fuel Suppliers (accounting for known related entities) with covered emissions above each threshold in each year							
Threshold1 (1st Compliance Period): 200,000 MT CO2e	21,548,303	20,834,961	20,239,585	20,874,283			
Threshold2 (2nd Compliance Period): 100,000 MT CO2e	21,991,148	21,859,644	21,538,144	21,796,312			
Threshold3 (3rd Compliance Period): 50,000 MT CO2e	22,510,708	22,854,257	21,909,288	22,424,751			
Threshold4 (4th Compliance Period and thereafter): 25,000 MT CO2e	23,016,770	23,127,074	22,361,481	22,835,108			
Total for all covered fuel suppliers (Threshold1)	29,007,505	27,654,102	27,582,397	28,081,335			
Total for all covered fuel suppliers (Threshold2)	29,450,350	28,678,784	28,880,955	29,003,363			
Total for all covered fuel suppliers (Threshold3)	29,969,910	29,673,397	29,252,100	29,631,802			
Total for all covered fuel suppliers (Threshold4)	30,475,972	29,946,215	29,704,293	30,042,160			

Data source: GHG emissions reported to DEQ's GHG Reporting Program. The emissions shown include the subset of reported emissions that are defined in the Climate Protection Program as "covered emissions."

Hypothetical caps for at different thresholds for 2022

Total for all covered fuel suppliers (Threshold1)	2022 Base Cap = Average 2017-2019 >>	28,081,335	27,001,283	25,921,232
Total for all covered fuel suppliers (Threshold2)	2022 Base Cap = Average 2017-2019 >>	29,003,363	27,887,849	26,772,335
Total for all covered fuel suppliers (Threshold3)	2022 Base Cap = Average 2017-2019 >>	29,631,802	28,492,118	27,352,433
Total for all covered fuel suppliers (Threshold4)	2022 Base Cap = Average 2017-2019 >>	30,042,160	28,886,692	27,731,225

Methodology: 2022 base cap informed by the 2017-2019 average of covered emissions. Trajectories for different base caps at different thresholds all assume 50% reduction from base cap by 2035 and 90% reduction by 2050.

year over year percent change (same regardless of base cap)

Note: the year over year percent change is the same regardless of base cap since the 2035 and 2050 reduction targets are the same

-4% -4%

Adjustments for threshold change years

Threshold2: 100,000 MT CO2e	Diff. between base caps for threshold 1&2 >>	922,029
Threshold3: 50,000 MT CO2e	Diff. between base caps for threshold 2&3 >>	628,439
Threshold4: 25,000 MT CO2e	Diff. between base caps for threshold 3&4 >>	410,357

Methodology: Adjustments for threshold change years (2025, 2028, 2031) adds the average 2017-2019 emissions for the corresponding threshold change to the cap for that first year. In the years after but before the next change, the trajectory continues on to achieve the hypothetical 2035 target.

Climate Protection Program Program Annual Caps

Annual Caps - not rounded (see row 4 for rounded finals)	28,081,335	27,001,283	25,921,232
year over year percent change		-4%	-4%
percent change from 2022 base cap		-4%	-8%
percent change from hypothetical 2022 base cap at lowest Threshold4		-10%	-14%

Methodology: Adjustments through 2035 based on above section. After 2035, caps are on a trajectory to meet original target reduction by 2050 from what would have been the 2022 base cap for all covered fuel suppliers at the 25,000 MT threshold (Threshold4).

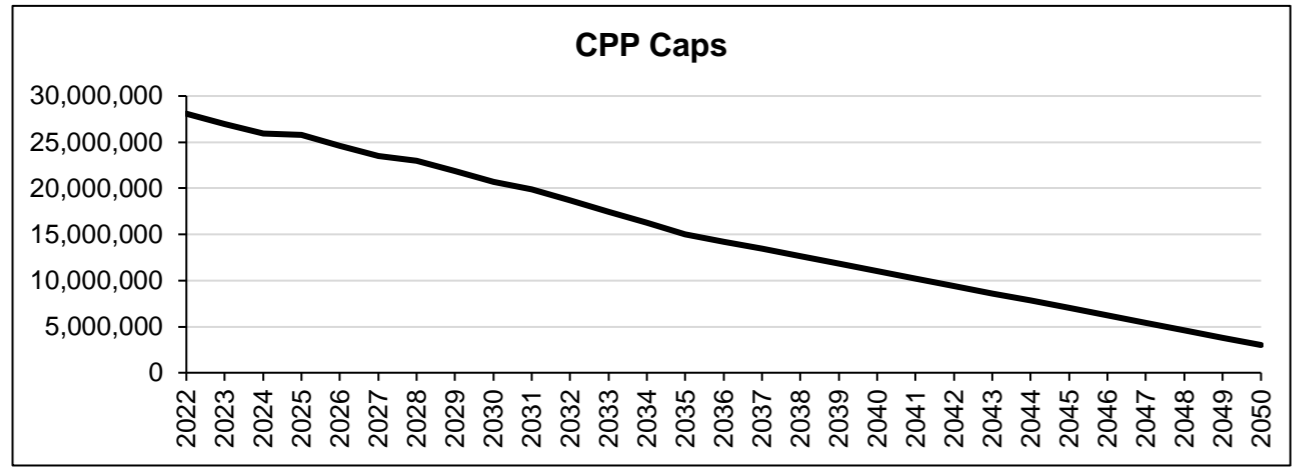
**Calculation for proposed OAR 340-271-9000 Table 4:
 Compliance instrument distribution to covered fuel suppliers
 that are local distribution companies**

Local Distribution Companies: Compliance Instruments for Distribution

NW Natural	5,759,972	5,538,434	5,316,897
Cascade	743,707	715,103	686,499
Avista	703,373	676,320	649,267

Methodology: Distribution to each local distribution company based on percent share of base cap and trajectory at Threshold 1. Trajectories assume original reductions from base cap by 2035 and 2050.

2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
25,763,209	24,637,057	23,510,904	23,013,190	21,842,149	20,671,108	19,910,424	18,688,088	17,465,752	16,243,416	15,021,080	14,219,956	13,418,831	12,617,707	11,816,583	11,015,459



24,841,181	23,761,129	22,681,078	21,601,027	20,520,975	19,440,924	18,360,873	17,280,821	16,200,770	15,120,719	14,040,667	13,291,832	12,542,996	11,794,161	11,045,325	10,296,489
25,656,821	24,541,307	23,425,793	22,310,279	21,194,765	20,079,252	18,963,738	17,848,224	16,732,710	15,617,196	14,501,682	13,728,259	12,954,836	12,181,413	11,407,990	10,634,567
26,212,748	25,073,064	23,933,379	22,793,694	21,654,009	20,514,325	19,374,640	18,234,955	17,095,271	15,955,586	14,815,901	14,025,720	13,235,538	12,445,357	11,655,176	10,864,994
26,575,757	25,420,289	24,264,821	23,109,354	21,953,886	20,798,418	19,642,951	18,487,483	17,332,015	16,176,548	15,021,080	14,219,956	13,418,831	12,617,707	11,816,583	11,015,459
-4%	-4%	-5%	-5%	-5%	-5%	-6%	-6%	-6%	-7%	-7%	-5%	-6%	-6%	-6%	-7%

25,763,209	24,637,057	23,510,904	22,384,751	21,258,598	20,132,445	19,006,293	17,880,140	16,753,987	15,627,834	14,501,682					
			23,013,190	21,842,149	20,671,108	19,500,066	18,329,025	17,157,984	15,986,942	14,815,901					
						19,910,424	18,688,088	17,465,752	16,243,416	15,021,080					

get for the new threshold level.

25,763,209	24,637,057	23,510,904	23,013,190	21,842,149	20,671,108	19,910,424	18,688,088	17,465,752	16,243,416	15,021,080	14,219,956	13,418,831	12,617,707	11,816,583	11,015,459
-1%	-4%	-5%	-2%	-5%	-5%	-4%	-6%	-7%	-7%	-8%	-5%	-6%	-6%	-6%	-7%
-8%	-12%	-16%	-18%	-22%	-26%	-29%	-33%	-38%	-42%	-47%	-49%	-52%	-55%	-58%	-61%
-14%	-18%	-22%	-23%	-27%	-31%	-34%	-38%	-42%	-46%	-50%	-53%	-55%	-58%	-61%	-63%

5,095,359	4,873,822	4,652,285	4,430,747	4,209,210	3,987,673	3,766,135	3,544,598	3,323,061	3,101,523	2,879,986	2,726,387	2,572,787	2,419,188	2,265,589	2,111,990
657,895	629,291	600,687	572,083	543,478	514,874	486,270	457,666	429,062	400,458	371,854	352,021	332,189	312,357	292,525	272,693
622,214	595,161	568,109	541,056	514,003	486,950	459,897	432,845	405,792	378,739	351,686	332,930	314,173	295,416	276,660	257,903

2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
10,214,334	9,413,210	8,612,086	7,810,962	7,009,837	6,208,713	5,407,589	4,606,465	3,805,340	3,004,216

9,547,654	8,798,818	8,049,983	7,301,147	6,552,311	5,803,476	5,054,640	4,305,805	3,556,969	2,808,133
9,861,144	9,087,720	8,314,297	7,540,874	6,767,451	5,994,028	5,220,605	4,447,182	3,673,759	2,900,336
10,074,813	9,284,631	8,494,450	7,704,269	6,914,087	6,123,906	5,333,724	4,543,543	3,753,362	2,963,180
10,214,334	9,413,210	8,612,086	7,810,962	7,009,837	6,208,713	5,407,589	4,606,465	3,805,340	3,004,216
-7%	-8%	-9%	-9%	-10%	-11%	-13%	-15%	-17%	-21%

10,214,334	9,413,210	8,612,086	7,810,962	7,009,837	6,208,713	5,407,589	4,606,465	3,805,340	3,004,216
-7%	-8%	-9%	-9%	-10%	-11%	-13%	-15%	-17%	-21%
-64%	-66%	-69%	-72%	-75%	-78%	-81%	-84%	-86%	-89%
-66%	-69%	-71%	-74%	-77%	-79%	-82%	-85%	-87%	-90%

1,958,390	1,804,791	1,651,192	1,497,593	1,343,993	1,190,394	1,036,795	883,196	729,596	575,997
252,860	233,028	213,196	193,364	173,532	153,699	133,867	114,035	94,203	74,371
239,147	220,390	201,633	182,877	164,120	145,364	126,607	107,850	89,094	70,337

DEQ Natural Gas Emissions MTCO2e	GHG RP data		
	2017	2018	2019
NW Natural	6,094,471	5,532,776	5,970,954
Avista	711,000	684,841	714,277
Cascade	1,517,691	1,727,822	1,927,768
Clean Energy	2,981	3,692	2,679
Gas Transmission NW	4,688,517	5,555,281	6,509,780
Kelso-Beaver Pipeline	1,093,240	1,367,354	1,419,724
NW Pipeline GP / Williams Northwest Pipeline	272,532	276,936	269,121
Total	14,380,432	15,148,701	16,814,304

Covered Emissions in CPP: Deliveries (-) Exemptions in OAR 340-271-0110(4)	2017	2018	2019
NW Natural	5,979,280	5,436,132	5,864,503
Cascade	768,923	698,167	764,032
Avista	711,000	684,841	714,277

<< Used in Cap analysis
 << Used in Cap analysis
 << Used in Cap analysis
 << Used in Cap analysis

Adjustments for CPP

Methodology:

Option 1: If all the fuel delivered to an exempt end-use is known to be combusted, can rely on the end-user emissions data reported directly by the utility to determine the emissions that should be removed from the utility's obligation.

Option 2: If some of the fuel delivered to an exempt end-use is known to NOT be combusted, need to rely on the more detailed end-user emissions data reported by the permitted facility. Will then take the volume of combusted natural gas reported by the facility and apply the utility emissions calculation methodology to that volume to determine the emissions that should be removed from the utility's obligation.

Cascade: Need to adjust Cascade's obligated emissions downward to account for CPP exemption of deliveries to electric generating facilities (i.e. Hermiston)

--- Can use Option 1: Cascade reports estimated emissions from combustion associated with all fuel delivered to large end-users. All fuel delivered to Hermiston is known to be combusted so can use Cascade's reported data to make the adjustment to Cascade's obligated emissions.

NW Natural: Need to adjust NW Natural's obligated emissions downward to account for CPP exemption of fuel delivered that is known to not be combusted (i.e. some fuel delivered to Dyno Nobel)

---- Need to use Option 2: NW Natural reports estimated emissions from combustion associated with all fuel delivered to large end-users. Not all fuel delivered to DynoNobel is combusted so need to use DynoNobel's reported data to make the adjustment to NW Natural's obligated emissions. Utility's emissions estimation methodology is applied to the natural gas fuel volume known to be for combustion and that was reported by the facility.

Exclusions for natural gas used at electric generating facility (Fuel is known to be combusted; using data reported to GHG RP by NG Supplier)

Hermiston Generating Company (Source ID 30-0113)

Gas Delivered by: Cascade

Natural gas combusted at a large electric generating facility; utility's reported emissions i.e. comp 748,768 1,029,654 1,163,736 for Cascade adjustment in CPP

Exclusions for natural gas not used for combustion (Fuel is known to not be combusted; using some data reported to GHG RP by Permitted Facility)

Metric Tons CO2e/MMBtu: 0.0531148

Dyno Nobel INC (Source ID 05-2042)

Gas Delivered by: NW Natural

Facility NG Use for Non-Combustion processes (Ammonia Production) (Mscf) 2,026,837 1,698,900 1,903,294

Using Utility combustion calc methodology because volume is known to NOT be combusted and need to remove from utility obligation in CPP

Utility HHV for emissions calc 1.070 1.071 1.053

Assuming natural gas was combusted at this excluded use; utility's reported emissions i.e. compli 115,191 96,644 106,451 for NW Natural adjustment in CPP

Formula is non-combustion Mscf*Utility HHV*emissions factor

Thresholds	DEQ non-natural gas fuel supplier emissions (MT CO2e)	Covered Emissions in CPP: OAR 340-271-0110(3)		
200,000	Compliance Period 1			
100,000	Compliance Period 2			
50,000	Compliance Period 3			
25,000	Compliance Period 4			
	Highlight = multiple related entity emissions summed to determine applicability			
	Related Entities	2017	2018	2019
	Phillips 66 Company	4,174,598	5,389,042	5,228,676
	Equilon Enterprises (Shell Oil Products)	3,504,951	3,520,802	3,737,366
	Tesoro Refining and Marketing Company LLC	3,633,404	3,579,656	3,666,518
	BP West Coast Products LLC	4,877,200	4,460,608	3,347,198
	Chevron USA Inc.	2,759,694	2,679,517	2,662,967
	Space Age Fuel Inc.	818,569	993,478	769,116
	Carson owns Campo & Poole, PC Energy	0	0	308,659
	World Fuel Services Corporation	29,594	71,447	264,168
	Idemitsu Apollo Corporation	0	172,276	254,918
	Pilot Travel Centers, LLC	71,871	174,565	196,023
	MIECO Inc.	119,572	100,681	189,152
	Musket Corporation	46,326	65,918	175,024
	McCall Oil & Chemical Corp	216,917	186,767	174,979
	Plains Midstream Canada ULC	101,667	153,489	137,646
	Apex Oil Company, Inc.	80,404	89,052	111,324
	ED STAUB AND SONS PETROLEUM, INC.	97,818	87,621	107,604
	Hattenhauer Distributing Company	106,778	125,578	106,277
	Byrnes Oil Company, Inc.	114,828	98,949	100,531
	ELBOW RIVER MARKETING LTD., A CORPORATION OF CANADA	36,300	111,327	94,369
	Powell-Christensen Inc	43,463	63,341	79,561
	A & B Enterprises, Inc.	49,929	72,993	73,063
	PetroGas, Inc.	24,136	54,740	72,355
	SeSequential-Pacific Biodiesel, LLC	53,243	58,850	51,796
	Devin Oil Co., Inc.	49,399	59,186	49,168
	REG MARKETING & LOGISTICS GROUP, LLC	72	50,712	48,999
	Kiva Energy, Inc.	45,186	38,974	47,294
	Heller & Sons Dist Inc	41,763	35,380	43,467
	Valero Marketing and Supply Co.	84,269	72,234	39,783
	Coleman Oil Company	14,095	12,398	34,978
	Tyree Oil, Inc.	18,943	27,936	34,054
	Amerigas Propane, Inc.	78,286	72,930	33,960
	Farmers Supply Cooperative	27,066	28,810	32,046
	COLVIN OIL I, LLC	39,922	28,764	31,388
	Jubitz Corporation	25,216	30,188	29,442
	Costco Wholesale Corporation	1,545	1,074	27,615
	AH Schade, Inc.	23,367	26,085	24,588
	CHS INC. OF MINNESOTA	24,135	17,562	21,747
	Wilson Oil dba Wilcox & Flegel	44,445	30,480	20,166
	Connell Oil, Inc.	9,843	16,398	18,976
	HICKSGAS, LLC	16,565	16,349	18,544
	BRETTTHAUER OIL COMPANY	1,442	16,302	18,277
	Maverik Inc.	17,203	16,198	17,570
	MORROW COUNTY GRAIN GROWERS, INC.	14,277	14,140	16,580
	CONRAD & BISCHOFF, INC.	15,113	2,240	15,625
	ARS Fresno LLC	11,541	20,831	14,099
	Truax Corporation	16,887	15,953	10,676
	SUBURBAN PROPANE, L.P.	27,452	13,482	10,307
	Franklin United Inc	6,422	6,454	10,125
	Marc Nelson Oil Products, Inc.	18,150	21,745	9,712
	Wilco Farm Stores	2,885	4,544	8,168
	Quality Petroleum Products, Inc.	8,768	9,299	7,733
	Hartland Fuel Products, LLC	7,726	4,575	7,528
	NESTE US, INC.	0	0	5,709
	PetroCard Inc.	4,728	5,474	4,693
	WSCO PETROLEUM	14,627	11,615	4,684
	Pratum Co-Op	8,819	4,169	4,207
	Owyhee Motor Sales, Inc.	4,222	4,255	3,871
	Pounder Oil Service, Inc.	9,513	6,222	3,757
	Mid Columbia Producers Inc	7,112	7,820	3,187
	Southern Counties Oil Co.	582	9,435	3,179
	HENDERSON FUEL COMPANY	2,566	3,699	3,017
	Hood River Supply Association	1,230	2,309	2,809
	Sheldon Oil Company	1,923	2,558	1,448

Shasta Siskiyou Transport	2,657	2,582	1,089
Sunwest Energy Corp.	0	1,008	968
Welt and Welt Inc.	593	741	890
Fred Meyer Stores Inc., dba FM Fuel Stop	0	2,089	882
Don Small & Sons Oil Distriution Company	3,857	4,567	823
NORTHWEST SOLVENTS & SUPPLY, INC.	818	706	658
Tarr, LLC	858	798	332
Leathers Enterprises, Incorporated	0	216	274
CityServiceValcon LLC	1,228	0	161
Sage Petroleum Products LLC	229	126	115
Valley Wide Cooperative, Inc.	0	118	41
PINNACLE PROPANE EXPRESS, LLC	306	352	29
Baird Oil Company	11	16	12
AOT ENERGY AMERICAS LLC	485	26,200	0
AVFuel Corporation	0	0	0
Campo & Poole and PC Energy	243,991	211,858	0
Carson Oil Company, Inc.	53,669	76,639	0
EASTERN AVIATION FUELS, INC.	0	0	0
Ebar Oil Company	0	0	0
EPIC Aviation, LLC	0	0	0
Mansfield Oil Company of Gainesville, INC	0	2,817	0
Rainier Petroleum Corporation	321	0	0
Stinker Stores, Inc.	374	0	0
Universal Propane of Grants Pass, Inc.	2,869	0	0
UPS Fuel Services, Inc.	8,774	1,555	0
Vitol Inc	1,318,979	0	0

From: [Sharla Moffett](#)
To: [GHGCR2021 * DEQ](#)
Cc: [SINGH Nicole * DEQ](#); [MCCONNAHA Colin](#)
Subject: CPP Comments
Date: Monday, October 25, 2021 3:58:51 PM
Attachments: [image001.png](#)
[image002.png](#)
[2021_10-25_FINAL_OBI_CPP_Comments.pdf](#)
[Macroeconomic Impact Analysis of ODEQ CPP Rule_10-25-2021.pdf](#)

Nicole and Colin,
Please find OBI's CPP Comments attached.
Thank you.

Sharla Moffett | Director

Energy, Environment, Natural Resources and Infrastructure

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October 25, 2021

Nicole Singh
Office of Greenhouse Gas Programs
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

VIA EMAIL: GHGCR2021@deq.state.or.us

**Re: Comments on Greenhouse Gas Emissions Program Rulemaking 2021:
Climate Protection Program Proposed Rule**

Dear Ms. Singh:

Thank you for the opportunity to comment on the Department of Environmental Quality's (DEQ) proposed Climate Protection Program rule. I am writing on behalf of Oregon Business & Industry (OBI), Oregon's most comprehensive statewide business association, representing more 1,600 businesses that employ more than 250,000 people across our state. OBI represented its substantial membership throughout the planning/scoping phase last year and in the Rules Advisory Committee process this year.

OBI recognizes the need to take action on climate change. At the same time, policies must be undertaken thoughtfully to ensure Oregon's continued economic vitality and support future investment that sustain families via high-wage jobs, goods and services as well as the broad societal benefits businesses provide.

Our policy principles state:

OBI recognizes that climate change is real, and the business community plays an important role in leading a lower-carbon economy and we support state greenhouse gas emissions reduction policies that:

- Result in actual global greenhouse gas reductions
- Are not used as a general revenue source
- Are focused on positive environmental and economic outcomes
- Are fair and affordable for all Oregonians
- Do not result in a competitive disadvantage to Oregon businesses
- Do not focus on a single sector of the economy
- Address the unique challenges of Oregon's diverse business sectors
- Are commensurate with the state's emissions relative to global emissions and goals
- Nurture Oregon-based innovation
- Include adaption and mitigation strategies for long-term planning
- Provide regulatory and compliance certainty for businesses

The Climate Protection Program (CPP) is one of—if not the most—sweeping and impactful regulatory programs ever contemplated in Oregon. The policy will touch every Oregonian through the ubiquitous role that energy and transportation fuels play in our lives and livelihoods.

OBI recognizes the monumental task set before DEQ and we appreciate the discussions and professionalism with which DEQ staff carried out this rulemaking. OBI offered robust comments during the rulemaking process expressing grave concerns about policy directions that could hurt businesses, families and our state's economic resiliency. Unfortunately, many of our concerns were left unaddressed, and, more than ever, we must register our apprehension with the direction taken in the proposed rule. We respectfully request that DEQ thoughtfully consider our comments and urge staff to address our extensive concerns.

The Proposed Rule Fails to Achieve All Three CPP Goals

In each meeting, DEQ outlined three major program objectives represented graphically by a triangle in which the three program goals--GHG reduction, equity and cost-- must be equally achieved. If DEQ's modeling is correct, the program's current structure appears to achieve the emission reduction targets called for in Executive Order 20-04 and promotes equity for disproportionately impacted communities that is extensively addressed in many provisions. However, the proposed rule fails to address one side of the triangle: controlling costs. DEQ's failure to adequately address cost impacts to Oregon businesses will have a domino effect on families, jobs, cost of goods and services and critical public services as we discuss at length below.

Limited Compliance Options Could Lead to Market Volatility and Should Include a Cost Cap

The proposed rule's current structure provides limited options for compliance that could result in rate shock to consumers. DEQ's lack of authority to establish a market-based, cap-and-trade program, including price ceilings, makes it essential for the CPP to contain a cost cap.

To implement the CPP without this protection for consumers and businesses is simply reckless. DEQ is creating a brand-new program out of whole cloth that will stand alone and not link with any other existing program. Additionally, there are several variables that are currently unknowable, which could lead to higher than anticipated compliance costs resulting in steep and sudden market spikes. Most important for fuel suppliers is the availability of Community Climate Investments (CCI) (the only offset option provided in the program). Under the rule, CCI credits are restricted and there are no guarantees that fuel suppliers will have access to CCI credits in the first year(s) of the program. If CCI credits are not available, fuel suppliers must either reduce fuel sales or find more expensive alternatives (if they even exist). Fuel rationing would lead to significant increases in fuel costs and add pressure to an already highly stressed transportation sector. This problem would be compounding were DEQ to set aggressive carbon reduction targets in the early years of the program.

Moreover, the Oregon precedent for programs that reduce GHG emissions is to include a cost cap. Both the initial version of the Renewable Portfolio Standard and the revised "Coal to Clean" included cost caps. HB 2021, the "100% Clean" bill, also contains a cost cap. Not including a cost cap would not only defy existing precedent, but would allow for wild swings in compliance costs, which could have profoundly adverse consequences on Oregon businesses, and rate shocks for the economy as a whole. Other existing programs, such as the Clean Fuels Program,

also include mechanisms to address structural shortfalls in available credits. The inclusion of these structural elements to control compliance costs and market impacts in other programs acknowledges the many unknowns and supports building a pressure valve release into the CPP.

A cost cap is good policy, is essential to regulatory certainty for regulated entities, and protects Oregonians from steep and sudden price increases.

Limiting CCIs Risks Shortages, Market Volatility, Harm to Businesses and Consumers

DEQ significantly reversed course on allowable use of CCIs from the last Rules Advisory Committee meeting, which makes the cost cap discussion above even more poignant. The proposed rule reduces the use of CCI credits from 20% to 10% in the first three years and 15% in the ensuing three years.

Without consultation with the regulated community or explanation in the rule package, DEQ cut available CCI credits by half. What makes this particularly disturbing is the haste with which this policy is expected to be implemented. Businesses are already facing extreme pressures to implement a massive regulatory program with no time to understand, plan or budget for this sea change in policy.

Although we see substantial potential for a shortfall in available credits, even DEQ's own modeling revealed nearly full usage of the 20% allowable CCI credits for the duration of the program. Regulated entities' ability to maximize purchase of CCIs early in the program to bank allowances and thereby enable successful program compliance was an essential structural feature that DEQ determined to restrict dramatically. There is grave risk in this major policy reversal for businesses and consumers alike. In the absence of cost containment measures that exist in a typical cap-and-trade program, and without a cost cap, the crucial flexibility afforded by the 20% CCI allowance provision significantly increases the possibility of non-compliance resulting in harm to businesses and consumers.

There is no environmental justification for any limitation on CCI credits, given that GHG emissions are a global pollutant, and we, therefore, dispute any need for CCI limitations. We strongly urge DEQ to increase available CCIs to 25% for the first two compliance periods with a reduction to 20% for the balance of the program with a corresponding change in Table 6 of OAR 340-271-900.

Lastly, OAR 340-271-0810 appears to create a compliance challenge that must be resolved. As currently drafted, a covered fuel supplier may only contribute CCI funds to a CCI entity when the entity has been approved, which is required on or after March 1, 2023. To resolve address the concern that CCIs be available to regulated entities for compliance, the cap should not come down until CCIs are available from one or more CCI entities. In other words, the timing of establishing the cap must coincide with approval of CCI entities.

Promoting Air Quality, While Essential, Should Not Be an Objective of the CPP and Could Result in Failure to Achieve GHG Emissions Reductions

Oregon has robust air quality programs that, in many cases, are more stringent than federal standards. Regulating air quality is neither a new concept nor one that Oregon DEQ has taken

lightly. In addition to a robust air quality permitting program that has resulted in consistently meeting National Ambient Air Quality Standards, Oregon's permitting program is scheduled to undertake rulemaking that is certain to result in requirements that are even more stringent than the current rules. Cleaner Air Oregon, one of the most stringent air toxics rules in the nation, was adopted in November 2018 as a health-based program to reduce risk from air toxics for those living closest to stationary sources. Since adoption, the program has undergone one rulemaking to increase stringency, and a second rulemaking to further increase stringency is expected to be adopted in November 2021. DEQ is currently evaluating the Clean Trucks rule, establishing standards and timelines for manufacturers of heavy-duty trucks (both zero emissions and low NOx). DEQ data demonstrates that smoke from residential woodstoves and restaurants with wood burning ovens results in air contamination (PM 2.5) on par with catastrophic wildfires and has major impacts on human health. Efforts to reduce woodsmoke are ongoing through grants and other mechanisms. HB 2007, referred to by the Oregon Environmental Council as the second strongest diesel law in the nation, requires the phase out or retrofit of older diesel engines in the Portland metro region. Oregon has taken air quality very seriously and these as well as many other air quality regulatory programs are improving or will improve air quality in Oregon as they are implemented.

By nature, regulatory programs are very complex, require substantial DEQ resources to implement and monitor, and can be very costly for the regulated community since major capital investments are often required in order to comply. By requiring that the CPP also address air pollutants that are already regulated by other DEQ programs, we fear that CPP main goals may fail to be achieved. By imposing requirements for CCI projects to maximize reductions of both GHG and air contaminants, there is significant potential the program could fail to achieve the GHG reduction targets called for in EO 20-04. This would be an unfortunate result of the program's structure and one, we believe, is avoidable if GHG reduction is established as the primary objective for CCI projects. As climate advocates are calling for even more dramatic GHG emissions reductions in the CPP, this program needs to focus on its original intent to achieve the targets established in EO 20-04.

Fiscal Impacts Were Not Adequately Evaluated in ICF/DEQ's Analysis

DEQ's Fiscal Impact Statement presented at the July 8, 2021 RAC meeting was wholly inadequate as a result of ICF's lack of analysis on the cost of delivered energy as well as an incomplete draft rule presented at the final meeting. The rule package still lacks a robust economic analysis and we fear that modeling assumptions as well as limitations in the IMPLAN model used by ICF, DEQ's modeling contractor, have resulted in wildly optimistic economic outcomes than reflect real world scenarios. ICF estimated an extremely modest decrease in manufacturing and a slightly more significant impact on transportation with tremendously high health benefits and avoided health costs. It is critically important that DEQ make decisions based on the most accurate data. By year's end, Environmental Quality Commission will be weighing the costs and benefits of this program and it is incumbent upon the agency to enable policymakers to make the most informed decision possible.

Energy Strategies LLC and Recon LLC prepared an independent macroeconomic impact analysis of the proposed CPP at the request of several organizations, including OBI. This report is being independently submitted to DEQ and appended to our comment submittal, but it is important to underscore its conclusions and point out stunning and extraordinary discrepancies between this economic impact analysis and the one prepared by ICF.

ICF's modeling assumptions using the IMPLAN model did not account for numerous factors that were included in the Energy Strategies/Recon analysis using the CGE model:

- Limitations in the IMPLAN model used by ICF led to a conclusion that the CPP would have a beneficial effect on economic activity in 2050, however the CGE model predicts significant job losses, a major decrease in gross state product and income particularly among middle income earners (\$30,000-\$150,000 in 2021 dollars).
- 121,570 job losses are anticipated economy-wide by Recon, whereas ICF's model showed a net increase of 19,700 jobs. The discrepancy between the two analyses is a total of 141,270 jobs.
- The CPP's impact on state income also diverged dramatically with the IMPLAN model indicating a net positive increase of \$1.1 billion and the CGE model predicting a net loss of \$6.4 billion. The discrepancy between the two analyses is a total of \$7.5 billion in state income.
- In analyzing impacts of the CPP on the gross state product (GSP), IMPLAN showed a net increase of \$1.7 billion in GSP in Oregon by 2050 while the CGE differed dramatically with a \$9.8 billion hit to Oregon's GSP. The discrepancy between the two analyses is a total of \$11.5 billion.
- Under the CGE model, six separate business sectors were predicted to lose close to or more than \$1 billion in sales output.

DEQ's justification for many structural elements of the CPP was the seemingly positive macroeconomic impacts predicted that the policy would have on Oregon's economy over the life of the program. This simply is not the case. OBI cautioned DEQ of IMPLAN's limitations for analysis of this magnitude and recommended against the use of IMPLAN. ***It is paramount that DEQ examine these massively divergent economic conclusions and pause the CPP's implementation date until further work to reconcile these discrepancies can be carried out.***

The Rulemaking Should Not Move Forward Until the PUC Fact Finding Effort Is Complete

In conjunction with the CPP rulemaking, the Oregon Public Utilities Commission embarked on a fact finding effort – Docket UM 2178 – to fully evaluate the cost of compliance for natural gas utilities prior to the adoption of the regulation. In DEQ's haste to adopt and begin CPP program implementation, it is rapidly pushing the proposal toward adoption before the PUC process has come to a conclusion. All Oregon natural gas customers are likely to see prices escalate, but industrial customers will see larger percentage increases than residential and commercial customers.

It is inappropriate and premature to move forward with the CPP until the energy compliance costs have been fully evaluated. Until then, there is significant uncertainty with respect to the delivered cost of natural gas for all customer classes.

Regulation of GHG Credits and Offsets Is Not Within the Authority of DEQ or EQC

The Environmental Quality Commission and DEQ issue and enforce rules and regulations that are limited to and expressly granted by the Legislature. ORS 468A.025 authorizes the Commission to develop regulations to: "prescribe the degree of air pollution or air contamination

that may be permitted [in designated areas of the State].” The legislature has also provided DEQ the authority to establish permits for sources of emissions from stationary sources. Neither the Environmental Quality Commission nor DEQ has been granted authority to develop a program of credits or to use such credits as offsets for source specific emissions.

In particular, DEQ and Environmental Quality Commission do not have the authority to establish, approve, and oversee a third-party emissions credit scheme or allow for the trading of emissions credits by stationary sources of greenhouse gas emissions as a means of compliance. (See OAR 340-271-500, *et. seq.*). DEQ provides no legal authority to justify the proposed credit offset rule as required by ORS 183.335(2)(b). Moreover, DEQ has not provided a legally sufficient fiscal impact analysis, as required by ORS 183.335(2)(b).

CCIs Should Not Be the Only Alternative Compliance Instruments Available

From the outset of this rulemaking, OBI has been concerned that there be adequate compliance pathways available to regulated entities including carbon offsets. OBI has been supportive of the CCI concept as a unique way to support communities experiencing disproportionate impacts from climate change. However, CCI credits should not be the only offsets available and we urge DEQ to provide more flexibility in the types of offsets allowed by the program. Because climate change is a global phenomenon, there is no environmental justification for limiting carbon offsets of CCI credits if carbon offsets are real and verifiable. This approach puts all of DEQ’s proverbial eggs into one basket and this flexibility could be crucial to preventing market volatility.

Accountability for CCI Funds and Projects Is Essential

OBI supports the CCI concept as a way of providing critically important alternative compliance instruments to covered entities. The CCI program has the potential to generate in the hundreds of millions of dollars that will attract a variety of applicants with varying degrees of expertise in GHG reduction, proposing a wide array of projects with diverse objectives. We are extremely concerned with the lack of parameters on the CCI program and that this lack of structure is almost certain to invite projects that do not meet the goals envisioned by the CPP. These funds will be paid by regulated entities, but will essentially become public funds held in trust for reducing GHG emissions until expended. It is essential they are directed to the highest and best use and meet the goals of the CPP.

Accountability measures that should be undertaken for CCI projects:

- Limitations on administrative costs should be required to ensure that CCI revenue is focused on achieving program outcomes and not absorbed by administrative tasks. Per EO 20-04, the objective of this program is to reduce GHGs by 80% by 2050. In order to accomplish this objective, projects must result in real, measurable reductions of GHG. The lack of limitations on administrative costs is concerning and particularly when other accountability measures are missing.
- More structure is needed around CCI revenues, CCI entities and project selection. Under the current structure, revenue would be flowing directly into numerous non-profit organizations, which would be challenging to track to say the least. This needs to be considered more carefully and we suggest that one 501(c)(3) organization with recognized expertise in managing funds for climate projects be designated for collecting the revenue and distributing it to entities whose projects are approved consistent with project criteria.

- As stated in our previous comments, criteria should drive project selection. The criteria should prioritize (1) the greatest impact on actual GHG reduction, (2) projects that benefit the unique needs of communities and (3) projects that are cost effective.

CCI Project Reductions Should Require Third Party Verification

Third party verification is a practice commonly used to ensure the accuracy of reporting data. As these funds are being used to address urgent climate needs that result in critical global benefits, it is necessary to require third party verification that ensures the proper use of CCI revenue. While the proposed rule aspires to achieve a one-to-one benefit (the purchase of one CCI in exchange for one metric ton of GHG reduction), there is no way to ensure accountability for these expenditures without third party verification of GHG reductions from CCI projects. Third party verification would ensure that CCI revenue serves its intended purposes, critical GHG reductions are achieved and the public interest is protected.

CCI Eligibility Should Be Expanded

While the intent of restrictions on CCI eligibility is to maintain accountability, the fact is that many recipients are being excluded that could make important contributions to reducing GHG in Oregon. DEQ should expand eligibility for CCI projects beyond 501(c)(3) groups to include, Tribes, local governments, public colleges and universities, other non-profit entities and for-profit entities. While some have raised concern, particularly with enabling for-profit eligibility, the fact is there are many examples where public investment in private entities achieve important public benefits and does not throw open the door to improper use of CCIs if proper criteria are established. For these reasons, CCIs projects should not be limited only to 501(c)(3) organizations and could severely restrict options for achieving the goals of the program.

Additional Representation and Expertise for CCI Project Selection Should Be Included

We understand the intent of the Equity Advisory Committee and support the inclusion of communities disproportionately impacted by climate change. However, to balance and achieve the goals of the program, additional expertise is critical for project selection. Rural areas should be represented in the review of projects as well as representatives with technical, financial management, and other relevant expertise implementing climate projects. More thought should be given to what body is given final decision-making authority for project selection, since they will be distributing what are predicted to be large sums of CCI revenue. Neither the Equity Advisory Committee members nor the organizations they represent should be eligible to receive CCI funding for projects.

Regulated Entities Should Be Indemnified If Objectives Are Not Realized

Businesses should be indemnified (exempted) from action if the CCI's they purchase do not result in the expected GHG reductions, particularly since, under the current proposal, businesses have no control over project selection or implementation. This should be clearly stated in the rule language.

Proposed Rule Should More Thoughtfully Consider Impacts to Businesses and Oregonians

As previously stated, the CPP is unlike any other climate policy in existence and more careful consideration must be given to unintended consequences that will impact not just businesses and jobs, but all Oregonians. One result of the extremely restrictive structure of the proposed rule is likely to be that the only way for businesses to comply with this program is to limit their participation in the Oregon market or leave it altogether. This is manifested in different ways for different types of businesses that are directly or indirectly regulated by the program. For covered fuel suppliers, the only pathway for complying with the current proposal may be to ration their fuel supply to Oregon. This would negatively impact every energy customer in Oregon, place greater pressures on an already highly stressed transportation sector in its ability to deliver goods, and impact the cost of goods and services for all who live here. The result is that Oregon families could likely need to make difficult decisions about the essentials of everyday life including grocery purchases, heating homes, and trips to the doctor or pharmacy. The public sector our citizens rely on for critical services will also be impacted. Law enforcement, fire and other emergency services that ensure public safety and protection will be impacted as will education through increased costs for essential services like transportation, energy and reduced/free meal programs.

It is a myth to conclude that only directly regulated entities will be affected by the CPP. Oregonians' livelihoods and quality of life are closely tied to how this climate policy is carried out and greater thought must be given to how compliance pathways for regulated entities impact every person in our state.

Energy/Emissions Intensive Trade Exposed (EITE) Treatment Should Be Included

As raised in previous comments, OBI is gravely concerned with DEQ's lack of consideration for EITE businesses and the impact it will have on manufacturing in Oregon. The absence of EITE consideration in the proposed rule places manufacturers at a major disadvantage relative to similar businesses operating outside Oregon as a result of higher energy costs associated with regulatory compliance.

Leakage, which occurs when businesses shut down, relocate or shift production to operations elsewhere, is a real and well-documented environmental and economic effect of stringent policies that disadvantage trade exposed sectors that compete in national and international markets. In addition to the [Vivid Economics study](#) commissioned by Governor Brown highlighting leakage risks, cap and trade bills debated in several legislative sessions acknowledged and accommodated this unique vulnerability. Both Gov. Brown and the Legislature worked to reduce risk to Oregon's substantial and important manufacturing sector and the high wage jobs the sector provides. Manufacturing is already disadvantaged by a stringent regulatory structure in Oregon and, while manufacturers continue to operate in the state, the majority are no longer investing in their Oregon footprint and are choosing to expand in more business-friendly states.

Additionally, a recent [survey](#) by Oregon Business & Industry of nearly 500 Oregon business CPAs and local chamber leaders indicates that recent new state and local taxes are driving away Oregon's businesses and job creators. 80% of respondents have businesses considering

relocation or production shifts to other states. Oregon's regulatory environment including the CPP will have a compounding effect on business decisions as businesses try to control costs to remain competitive.

Early scoping documents for the rulemaking indicated that EITE businesses would receive treatment to level the playing field to minimize leakage concerns. Midway into the rulemaking process, we learned of DEQ's surprising policy reversal not to include consideration for the unique circumstances of EITEs. The majority of Oregon manufacturers are "price takers" rather than "price setters" and have little ability to recapture these substantial added costs by passing them down the supply chain. The result is that policies increasing operating costs have a direct impact on profitability and business decisions to remain in Oregon. This, in turn, negatively impacts Oregon jobs, particularly high wage jobs, and also reduces Oregon's important business tax base,

Perhaps what is most disturbing about this development is that the products our members proudly manufacture in Oregon will continue to be produced, but there is great risk that these businesses and the jobs they provide will migrate to locations that lack similar regulations. The end result is a lose/lose for Oregon's economy and global GHG emissions--particularly since GHG emissions are a global pollutant. While we need urgent global action to address the climate emergency, policies that displace, or increase, emissions elsewhere without net reductions globally does nothing to solve climate change.

We urge DEQ to reconsider EITE treatment for Oregon's vulnerable manufacturing sector. There are reasonable approaches available for addressing EITE challenges while reducing emissions.

Best Available Emission Reduction

OBI supports the Best Available Emissions Reduction (BAER) approach and appreciates DEQ's thoughtful approach to addressing facilities with unique emissions profiles that present challenges for placement under the cap. BAER is a program feature that provides alternate compliance pathways for approximately a dozen businesses unlike other stationary sources in Oregon. DEQ's acknowledgment that these facilities are different is important. However, BAER facilities are also unique from one another and BAER regulations will need to thoughtfully consider how these very different facilities should be assessed and treated. Facility-specific factors must be evaluated in the BAER process and it is important that DEQ not lump all BAER facilities into a one-size-fits-all approach. One approach would be to utilize EPA BACT Guidance as a mechanism for incorporating appropriate and necessary flexibility into the BAER process.

BAER Facilities Should Not Be Under the Cap

As is currently the intent of the proposed rule, emissions from BAER facilities should not be under the cap. Placing them under the cap would entirely defeat the purpose of this CPP provision and would severely restrict or preclude these facilities' continued operation in Oregon. Proposed BAER provisions contain extreme stringency and should not contemplate inclusion in the cap.

Five Years to Reassess BAER Is Too Short and Should Be Extended to 10 Years

DEQ has proposed a five-year BAER reassessment period, which should be lengthened to a minimum of 10 years. Implementation of BAER assessments will be a massive undertaking for facilities that will require time and major capital investments. As these facilities have already taken action to reduce energy needs and reduce air contaminants through other regulatory programs, the “low-hanging fruit” has been addressed and sources will have to implement more aggressive actions to achieve further reductions. BAER assessments will require complex, multi-year plans to carry out. Five-year reassessments will place facilities in a cycle of ongoing planning and major capital investments and it is conceivable that a source will have just completed these actions when a reassessment is required. The short BAER reassessment cycle is untenable given the regulatory uncertainty it creates and impractical, since the availability of new, achievable, technically feasible, commercially available, and cost-effective technologies rarely move at this pace. Businesses (and regulators) are unlikely to withstand this unreasonably rapid schedule, leading to closures, relocations or production shifts outside Oregon.

Quality of Goods Provision Is Important to Business Viability 340-271-0320

The quality of goods is a critical consideration and OBI supports the inclusion of this provision. As the cost of manufactured goods is expected to increase in response to increases in CPP compliance costs, businesses ability to maintain customers based on the quality of products is of utmost importance. In the absence of this provision, we fear that maximizing GHG reduction alone could impact product quality or safety, resulting in negative impacts to markets that threaten the viability of businesses.

Conclusion

OBI understands that action is needed to address global climate change and the important role the business community plays in leading a lower-carbon economy, and we support a state climate policy that is guided by our policy principles. OBI has been engaged in this rulemaking throughout the process, constructively offering feedback in the hope that DEQ would advance a thoughtfully crafted proposed rule balancing the critical need for real global GHG reduction with reasonable compliance mechanisms that support a robust economy and future business investment.

DEQ’s proposal fails to provide the framework and tools necessary to ensure that we can do both. We strongly urge DEQ to address these grave deficiencies in the program before the rule is finalized. As always, we are willing to engage with the agency to find a better path forward.

Sincerely,



Sharla Moffett
Director
Energy, Environment, Natural Resources & Infrastructure

Attachment F: Macroeconomic Impact Analysis Report
Dec. 16, 2021, EQC special meeting

Due to formatting limitations, the report referenced as part of Attachment F must be posted a separate document and will have neither the EQC meeting header nor page numbering on the bottom-left.

Please visit the EQC special meeting agenda page for the report included with Attachment F.

<https://www.oregon.gov/deq/about-us/eqc/Pages/121621.aspx>