



Rulemaking Brief: Key Program Elements

Climate Protection Program 2024 Rulemaking

Flexibility Mechanisms for Regulated Entities

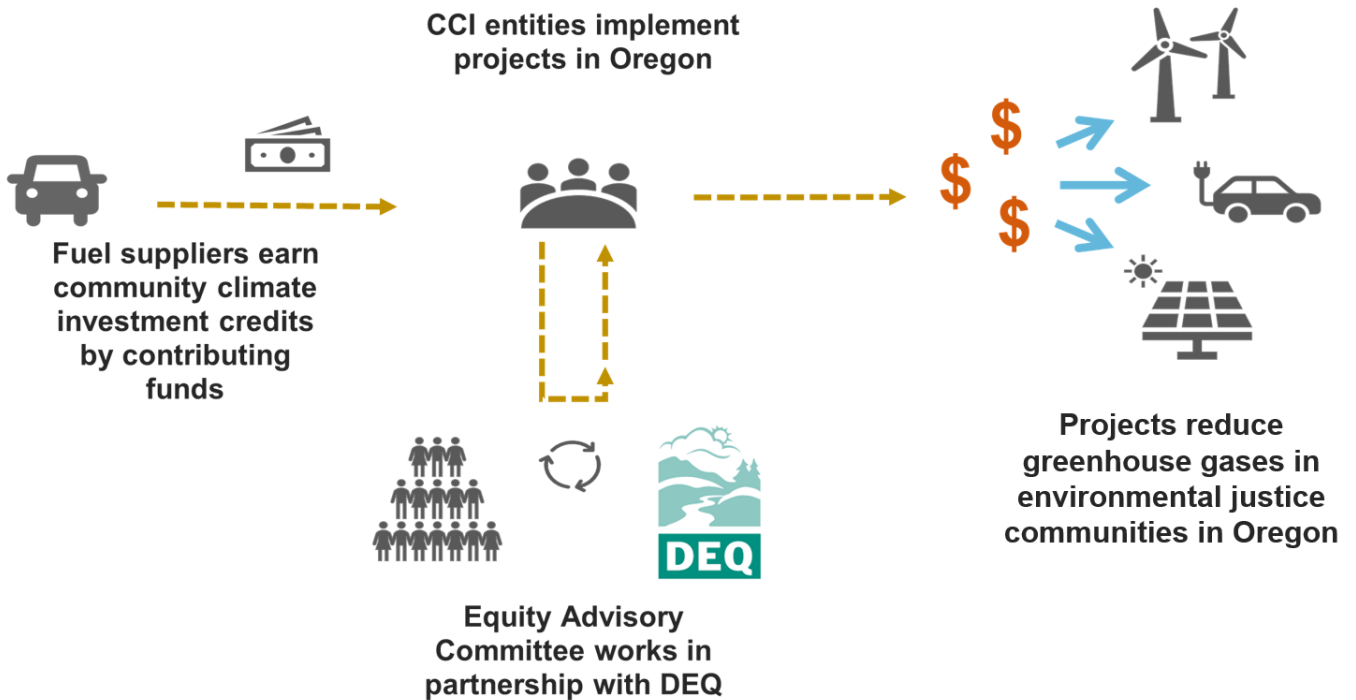
Community Climate Investments

Under the previously adopted Climate Protection Program (CPP), Community Climate Investments (CCI) were an additional way for regulated fuel suppliers to comply with the program, while driving investments and benefits in environmental justice and other impacted communities.

Fuel suppliers could voluntarily choose to earn CCI credits by contributing funds to DEQ-approved CCI entities. The CCI entities would then invest those funds in projects that reduce greenhouse gas emissions in Oregon's environmental justice communities.

The number of CCI credits a covered fuel supplier earned was based on the amount of CCI funds contributed to CCI entities. The CCI credit contribution amount was the dollar amount in a given year that a covered entity could contribute to earn one CCI credit.

The diagram below shows the CCI program structure in the previously adopted rule:



CCI entities

CCI entities had to be 501(c)(3) nonprofits and must have demonstrated appropriate administrative processes and financial controls to hold and spend CCI funds on approved projects. DEQ held a request for applications in 2023 and had selected a provisional CCI entity. Once that entity was in contract with DEQ, covered fuel suppliers could have contributed funds to that entity and in return would have received CCI credits to meet a portion of their compliance obligation under the program.

Purposes of CCIs

- 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 distributed by DEQ.
- Reduce emissions of other air contaminants that are not greenhouse gases, particularly in or 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, energy costs, or any combination of these.
- 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 prices of fossil fuels.

A CCI entity could have used funds for projects in Oregon that reduce anthropogenic greenhouse gas emissions. A CCI entity could have also used funds for administering CCI funds and eligible projects, including costs of reporting, and costs of capacity building for implementing projects. Eligible projects could include reducing emissions in:

- Transportation of people, freight, or both;
- Existing or new residential, commercial, or industrial buildings (such as appliances); and/or
- Existing or new industrial processes or energy inputs in industrial buildings.

Through outreach, engagement, and ideas presented through the CCI entity application process, DEQ heard about projects of interest to many community-based organizations. There was growing enthusiasm around the program and the prioritization of environmental justice communities. These projects were at varying levels of readiness, potential challenges, and cost estimates. DEQ heard that many projects of greatest interest and benefits to some environmental justice communities were projects that could be more costly to implement. DEQ is considering ways to clarify what costs may fall under administration and capacity building for eligible projects.

Equity and environmental justice

Environmental justice community engagement and representation was crucial for ensuring that CCI funds would have been invested as intended and meeting program goals. For the CPP environmental justice communities were 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 considering making minor changes to the definition of environmental justice communities to align with the definition currently used by Oregon's Environmental Justice Council. Environmental justice communities include communities of color, communities experiencing lower incomes, communities experiencing health inequities, tribal communities, rural communities, remote 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.

Equity Advisory Committee

The Equity Advisory Committee was a key partner for the CCI program. The committee would have played an important role in determining what types of emission reduction projects would have been supported by community climate investments and where the projects were located.

The committee provided recommendations to DEQ on the approval of an application from a non-profit organization to become a CCI entity. Once that organization had completed a written agreement with DEQ, the committee would have reviewed their proposed plans for the distribution of any funds for projects in Oregon's communities. The committee would have also reviewed and provided recommendations on other submittals, such as annual reports.

Ten individuals from around the state had been selected for the Equity Advisory Committee and six meetings were held before the CPP rules were invalidated.

Using CCI Credits to Demonstrate Compliance

As stated in the previously adopted rule the maximum allowable usage of CCI credits by covered fuel suppliers were as follows:

Compliance Period	Allowable percentage of total compliance obligation(s) for which compliance maybe 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%

DEQ is considering using a 15% allowable use of CCIs to demonstrate compliance during the first compliance period of a new program. This would allow covered entities to choose at any point during the first compliance period (after a CCI entity is in contract with DEQ) to make CCI contributions to meet a portion of their total emissions compliance (total reported covered emission to the GHG reporting program for which they would need to have a compliance instrument or CCI credit), instead of directly reducing their emissions.

CCI credit contribution amount

As stated in the previously adopted rule:

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

Annually on March 1 through 2050	Increase annually by \$1 and adjusted for inflation
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DEQ is considering using the CCI credit contribution amount in 2024 dollars due to the shift in the program start date. The March 1, 2025, CCI price in 2024 dollars would be \$129 and each year increase by \$1 and adjusted for inflation.

Offsets

DEQ has heard interest from some RAC members in offsets as an additional optional tool to demonstrate compliance. Emissions offsets are a tool featured in other climate programs such as Washington and California that would allow a CPP regulated entity to pay for a reduction in GHG emissions in areas outside of their own covered emissions and claim these emissions reductions as a credit to “offset” an equivalent amount of their own covered emissions. Offset projects featured in programs in those other states are expressly required to address emissions not covered by those jurisdictions’ caps. These can include projects such as those that invest in longer harvest rotations in industrial forests so that more carbon remains captured and stored in trees.

Some types of emission reduction offset projects may be more cost-effective than those available to regulated entities to reduce their own emissions directly, potentially reducing compliance costs.

Some types of emission reduction offset projects may be more cost-effective than those available to regulated entities to reduce their own emissions directly. Offsets could allow resources dedicated to reducing emissions to flow to the more efficient carbon reduction projects, which can decrease the negative economic impacts of complying with the CPP.

How are emissions offsets different from Community Climate Investments?

Emissions offsets allow regulated entities to receive credit for reducing GHG emissions in areas outside of their own operations in lieu of making those emissions reductions themselves. For example, a natural gas supplier might reduce their own covered emissions by investing in energy efficiency projects that reduce natural gas use on their system. With emissions offsets, they might instead pay to plant and maintain a reforested area; this could decrease GHG emissions by an equivalent amount, but not reduce their own emissions or any other emissions directly covered by the program cap. CCIs, in contrast, were designed to be invested in projects that directly reduce emissions from the sectors covered by the CPP cap and could not be used in unrelated projects such as forestry.

Geography is another key distinction between CCIs and Offsets programs seen in other jurisdictions. Whereas CCI projects were expressly restricted to investments reducing GHG emissions in Oregon, other programs with Offsets allow for investments in much broader geographies making projects eligible throughout the United States.

One reason for that narrower geography for CCI projects was the intent to realize secondary benefits from investments for Oregonians, including the reduction of other air contaminants and promotion of health and economic benefits for environmental justice communities. To achieve these goals, the selection of CCI entities and review of workplans was to be guided by an Equity Advisory Committee that would ensure these community-led projects benefitted environmental justice communities across the state. In contrast, for emissions offsets these decisions are typically made by the regulated entities.

Compliance Periods

As originally stated in the adopted rule, compliance periods covered three years with a demonstration of compliance to DEQ in November of the year following the end of the compliance period. For example, the compliance period would cover all of 2025, 2026, and 2027, with a demonstration of how the covered entity is complying in November 2028. Covered entities would be allowed to make CCI contributions to meet a portion of their compliance up until demonstration.

DEQ has heard a range of perspectives on the value, or not, for multi-year compliance periods. Some have suggested a shorter timeframe, at least at the outset, so that a compliance event happens sooner, while others have shared appreciation for longer periods for their businesses to build and implement compliance strategies that fit their needs best.

Discussion questions on Flexibility Mechanisms

- As the CCI program was being implemented was it being setup for promoting equitable outcomes for environmental justice communities?
- Should DEQ consider including percentage limitations on how much any CCI entity can allocate on administrative costs or other costs such as capacity building?
- Should DEQ include more specificity about how CCI funds should be invested, for example minimum percentages for different emission reduction project types?
- With the program now planned to restart in 2025, what is the appropriate maximum allowable CCI percentages to demonstrate compliance? Should DEQ be considering other changes to the allowable CCI percentage?
- Should other compliance options for regulated entities, such as Offsets, be added to the new program?
- Should DEQ consider changes to the previously adopted 3-year compliance periods?

Stationary sources and EITEs

Stationary Sources

The Climate Protection Program regulated emissions from natural gas and liquid fuels under a declining emissions cap with the point of regulation on the suppliers of these fuels. Stationary sources that received natural gas directly from an interstate pipeline and/or had industrial emissions from sources other than natural gas were regulated directly but not under the program's emissions cap. Rather, those few stationary sources were to be regulated under the Best Available Emissions Reduction (BAER) program if those emissions (from interstate pipeline gas and/or industrial processes) were 25,000 metric tons of carbon dioxide equivalent (MT CO₂e) or greater per year. Since emissions from natural gas supplied by gas utilities (rather than directly from an interstate pipeline) and liquid fuels represent a large portion of overall emissions at stationary facilities, only a small number of stationary sources were directly regulated by BAER.

Since these industrial manufacturing emissions are industry specific (as opposed to emissions for energy or power) with potentially less feasible decarbonization options, BAER used a site-specific approach rather than a mandatory emission limit or reduction trajectory. Stationary sources were required to complete a site-specific assessment of available options for reducing greenhouse gas emissions, including technical and economic feasibility of these options. DEQ would then review this assessment, as well as internal assessments and public input, and would determine what specific actions the facility would be required to take to reduce onsite emissions.

Emissions-intensive trade-exposed industries

Generally, emissions-intensive, trade-exposed industries (EITEs) are understood to be those that have high energy use that increases their exposure to elevated compliance or energy costs and that also face significant competition for their products from external markets. For EITEs in Oregon this could also include competition from markets without greenhouse gas emission reduction policies or carbon pricing mechanisms. Regulations can increase operational costs for these facilities and potentially the ability for them to competitively produce goods. This could have an economic impact and cause leakage, meaning that businesses and their emissions relocate out of state.

DEQ is considering identifying the following sectors as EITE sectors, based on their North American Industry Classification System (NAICS) codes:

- Aerospace Product and Parts Manufacturing, code 3364.
- Basic Chemical Manufacturing, code 3251.
- Cement and Concrete Product Manufacturing, code 3273.
- Foundries, code 3315.
- Fruit and Vegetable Preserving and Specialty Food Manufacturing, code 3114.
- Glass and Glass Product Manufacturing, code 3272.
- Iron and Steel Mills and Ferroalloy Manufacturing, code 3311.
- Lime and Gypsum Product Manufacturing, code 3274.
- Nonmetallic Mineral Mining and Quarrying, code 2123.
- Other Nonmetallic Mineral Product Manufacturing, code 3279.
- Plastics Product Manufacturing, code 3261.
- Pulp, Paper, and Paperboard Mills, code 3221.
- Sawmills and Wood Preservation, code 3211.
- Semiconductor and Other Electronic Component Manufacturing, code 3344.
- Veneer, Plywood, and Engineered Wood Product Manufacturing, code 3212.

Using this definition of an EITE, DEQ estimates there are approximately 26 facilities listed under at least one of these NAICS codes with emissions above 25,000 MT CO₂e, representing a total of roughly 3.5 million MT CO₂e of emissions in 2022. About 50% of these emissions come from the use of natural gas, with the remaining 50% of emissions coming from other types of industrial manufacturing processes at these facilities. All but two former BAER sources are included in this total.

DEQ has received feedback requesting we explore options to mitigate the effects of a reinstated CPP on EITEs, including shifting the point of regulation to these facilities instead of gas utilities (or in a couple rare instances the onsite combustion of solid fuels) and allowing for a slower emissions reduction decline. DEQ is seeking additional input from the RAC on this topic and has included some potential examples to provide context for this discussion.

Potential EITE regulation examples

Example 1 – BAER for all EITE emissions

Instead of regulating emissions from natural gas and solid fuel use at EITE facilities under the cap, a renewed CPP could extend the previous BAER program to cover all emissions at EITE facilities. In this option, gas utilities would no longer be responsible for the portion of emissions associated with fuel deliveries to EITE facilities and each EITE facility would be required to complete a site-specific BAER assessment to consider all options for emissions reductions related to their solid & gas fuel uses as well as any process emissions. DEQ estimates that this change would reduce the emissions regulated under the cap via natural gas utilities by nearly 25%.

Example 2 – Emissions cap for all EITE emissions

Emissions from EITEs could be regulated under a declining emissions cap, either by separately regulating these facilities under an emissions cap spanning both the EITEs and fuel suppliers, or through the creation of a new emissions cap specific for EITEs with a different rate of decline. An EITE emissions cap would most likely be based on a carbon intensity benchmark, meaning overall GHG emissions could rise if a facility expanded its production, even as the GHG emissions per unit of product declined over time. As an example, Washington's Cap and Invest program provides free allowances to EITEs that cover 100% of their benchmark emissions during the first compliance period, 97% during the second compliance period, and 94% during the third compliance period.

Example 3 – Emissions cap for natural gas and solid fuels from EITEs, BAER for process emissions

DEQ could also maintain separate treatment of natural gas emissions and process emissions by directly regulating emissions from fuel use under an emissions cap with the point of regulation at the EITE facilities,

while continuing to implement BAER for process emissions above 25,000 MT CO₂e at all stationary sources. This approach would bring approximately 20 EITE facilities under a declining cap for their natural gas and solid fuels use. Ten EITE facilities would be subject to a BAER approach for their process emissions, and of these, four would be included under both approaches.

Additional EITE flexibility mechanisms/cost containment options

1. DEQ could allow EITEs to use CCI credits at a higher rate than other regulated entities. For example, if CCI use was limited to 15% of a fuel supplier's total emissions obligation during a compliance period, an EITE might be allowed to meet 25% of their emissions obligation using CCIs.
2. A defined proportion of CCI funds could be directed towards decarbonization at regulated EITE facilities. These funds could be made available through a CCI entity to help lower the capital costs of emissions reductions, and thus lower their long-term compliance obligations under the CPP.

Discussion questions for EITE Regulation:

- Should DEQ consider directly regulating all EITEs, instead of regulating their emissions from fuel use at the fuel supplier level? Should this direct regulation also be extended to non-EITE stationary sources?
- Should DEQ allow for special consideration of EITE emissions by regulating them under a cap with a different decline? If so, how could DEQ accommodate or adjust for that relative increase under the overall cap?
 - Would a more gradual cap decline regulating EITE emissions need to reduce distribution of instruments to non-EITE entities regulated under the cap?
- Should DEQ bring all EITEs under the BAER program and assess possible emissions reductions on a site-specific basis?
- Are there other ways DEQ could support emissions reductions at EITE facilities? How might DEQ leverage other federal funding opportunities and emerging technologies to support industrial emissions reductions?

More Information

Please visit the [Climate 2024 Rulemaking website](#) for more information on this rulemaking. Additional information is also available on the [CPP 2021 Rulemaking](#) and the [Climate Protection Program website](#).

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