



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

Aug. 5, 2021

Greenhouse Gas Emissions Program 2021 Rulemaking
Climate Protection Program

- Notice of Rulemaking
- Draft Rules:
 - Division 12 – Edits Highlighted
 - Division 12 – Edits Incorporated
 - Division 271 – New Rules

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Introduction

DEQ invites public input on the proposed Climate Protection Program, a new program to limit greenhouse gas emissions from certain sources by adopting new rules and amending other rules that are part of chapter 340 of the Oregon Administrative Rules.

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 other jurisdictions' greenhouse gas programs. In addition, DEQ held technical workshops, public town hall meetings, convened a Rules Advisory Committee and considered comments from committee members. 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 welcomes input on any part of the proposal and is specifically requesting 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 three-year compliance periods
- Deployment of the cost containment and equity measure of 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 340-271-0310 through 340-271-0390)

Overview

Short summary

DEQ is conducting the Greenhouse Gas Emissions Program 2021 Rulemaking, short name known as GHGCR2021, to:

- Establish a new Climate Protection Program to set limits on greenhouse gas emissions from the use of fossil fuels, including transportation fuels and other liquid and gaseous fuels, such as natural gas, as well as certain other emissions at large stationary sources
- Define regulatory applicability, program requirements, and enforcement for affected parties (identified in the next section)
- Prioritize equity by promoting benefits and alleviating burdens for environmental justice communities disproportionately burdened by the effects of climate change and air contamination
- Achieve co-benefits from reduced emissions of other air contaminants particularly for environmental justice communities

The proposed program is informed by discussions and input provided by DEQ’s GHGCR2021 rulemaking advisory committee, including members from the regulated community, environmental justice and community-based organizations, tribes, as well as other interested parties, and the general public.

Affected parties

The following parties are directly affected by the proposed rules:

- Suppliers of liquid fuels and propane that meet a minimum threshold of greenhouse gas emissions for applicability
- Local distribution companies, known as natural gas utilities
- Permitted air contamination sources that meet a minimum threshold of greenhouse gas emissions for applicability
- Nonprofit organizations that choose to participate in the program to implement community climate investment projects to reduce greenhouse gas emissions

Common terms

Terms

- “Best available emissions reduction determination” or “BAER determination” means a DEQ determination of 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.

- “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.

Procedural Summary

More information

Information about this rulemaking can be found on this rulemaking's web page: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rghgcr2021.aspx>.

Public Hearings

DEQ will hold two public hearings remotely on this proposed new program and rulemaking. See the Public Hearings section for details.

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments through an email, by regular mail or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on Oct. 25, 2021.

Submit comment online

Any person can submit comments by emailing: GHGCR2021@deq.state.or.us.

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Nicole Singh
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearings

See page 45 for hearing dates and times.

Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [GovDelivery](#);
- Signing up on the rulemaking web site: [Greenhouse Gas Emissions Program 2021](#).

What will happen next?

DEQ will include a written response to comments in a staff report that DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ's intended action is to present proposed rule changes to the EQC as soon as possible after the earliest date on which the rule changes could take effect. DEQ intends to submit the proposed rule changes to the EQC on or after Oct. 5, 2021.

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 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 in Oregon. 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. Environmental justice communities are disproportionately burdened by the effects of climate change and air contamination.

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 which 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 on 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 review 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?

DEQ 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 for which a covered fuel supplier does not demonstrate compliance is 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 described the covered stationary source requirements for obtaining a CPP permit addendum.
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	Describes the DEQ process for making BAER determinations 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 determination process includes acquiring input from the public and community organizations located near the source.
0330	Compliance with BAER determination	Describes the requirements for covered stationary sources in order to comply with a DEQ BAER determination, including amending DEQ permits, implementing the BAER determination 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 beginning with 2022.
0450	Demonstration of Compliance	Describes how covered fuel suppliers must demonstrate compliance once per compliance period with 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	Notification to DEQ of Compliance Instrument Trades	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 and the maximum number of CCI credits DEQ will distribute to a covered fuel supplier within a compliance period.
0830	Holding Community Climate Investment Credits	Describes how covered fuel suppliers can bank CCI credits that have not yet been used to demonstrate compliance.

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	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.
0910	Application for DEQ 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	Describes the DEQ process for making CCI entity approvals, including consultation with the equity advisory committee.
0930	Requirements for Community Climate Investment Entities	Describes the requirements for CCI entities, including to submit annual work plans, obtain DEQ approval for substantive changes to operations, and report to DEQ on project outcomes.
0950	Community Climate Investment Projects	Describes the requirements for projects eligible to be supported by CCI funds.
0960	Equity Advisory Committee	Describes the DEQ-appointed equity advisory committee.
0990	Recordkeeping Requirements for Community Climate Investment Entities	Describes the recordkeeping requirements for CCI entities.
8100	Program Review	Describes DEQ's program review and reporting to the EQC.
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
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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	340-271-0310
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	340-271-0960	340-271-0990	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	468.130	468A.025	468A.040	468A.050
468A.135				

Statutes Implemented - ORS				
468.020	468.035	468.130	468A.010	468A.015
468A.025	468A.040	468A.045	468A.050	468A.135

Documents relied on for rulemaking

Document title	Document location
DEQ and ICF 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	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://hdcgcx1.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/HEALTHY_ENVIRONMENTS/CLIMATECHANGE/Documents/2020/Climate%20and%20Health%20in%20Oregon%202020%20-%20Full%20Report.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	https://cdphe.colorado.gov/greenhouse-gas-emissions-and-energy-management-and-audit-program-for-manufacturing-in-colorado

Manufacturing in Colorado: Rulemaking Information	
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/

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 determination. 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. This fiscal impact statement assesses the fiscal and economic impact of the proposed rules. 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 from the covered fuel suppliers. The limit decreases annually, which means that the covered fuel suppliers must collectively reduce emissions over time. DEQ would distribute free compliance instruments directly to each covered fuel supplier in amounts that establish allowable greenhouse gas emissions. As the total limit, or cap, decreases each year, DEQ would distribute fewer compliance instruments annually. A covered fuel supplier could comply by emitting no more greenhouse gases than the amount allowed by the free compliance instruments it receives from DEQ. The covered fuel supplier would submit the compliance instruments once every three years for its emissions during that period, which allows the covered fuel supplier to plan for and respond to annual variability more effectively. Covered fuel suppliers could emit more greenhouse gases if they obtain, or save, compliance instruments necessary to authorize those emissions. Covered fuel suppliers could also voluntarily choose to earn community climate investment (CCI) credits by funding projects that reduce anthropogenic greenhouse gas emissions and benefit Oregon communities, prioritizing investments that will benefit environmental justice communities. Covered fuel suppliers could use the CCI credits to demonstrate compliance for up to a certain percent of their compliance obligations.

The best available emissions reduction (BAER) approach is a site-specific approach to reduce certain remaining 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 RAC 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 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 this 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 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 they must reduce emissions in order to not be in excess of the amount allowed based on the number of DEQ-distributed compliance instruments they receive in a given year.

Program rules include the specific number of compliance instruments that DEQ will distribute annually to local distribution companies (natural gas utilities), 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' proportion of total emissions from that fuels sector. This approach is used because of the high annual variability in covered emissions. Additional aspects of this approach include:

- The proportional calculation incorporates emissions from biofuels. This is important because fuel suppliers may choose to supply biofuels instead of fossil fuels as a way to reduce emissions and compliance obligations. Incorporating 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 distributed instruments for a 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 decline over time will allow covered fuel suppliers time to plan for and implement program compliance strategies.

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. 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. DEQ includes many provisions in the draft program to allow covered entities flexibility. DEQ expects this flexibility in how to achieve compliance will decrease the chances of curtailment or closures in direct response to regulations.

Covered fuel suppliers may achieve compliance by reducing their greenhouse gas emissions 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 opt to supply less fuel overall to reduce emissions. In this case, the cost is the opportunity cost of those fuel 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 would vary over time as technologies emerge, and vary by fuel type, and 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 assumed some cost ranges to reduce emissions 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 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 best 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 purchase CCI credits or purchase compliance instruments in a trade, and may be more likely to do so if these 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. The contribution level to receive one CCI credit begins at \$81 in 2023 (2021\$) and increases by a little more than a dollar per year (2021\$) on average, over time. This is informed by the social cost of carbon developed by the Interagency Working Group on Social Cost of Greenhouse Gases. 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 emissions within its business or acquiring 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. 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 collectively 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 purchase and comply with CCI credits up to the allowable percent limit and also deploy emissions reduction measures, and/or acquire additional compliance instruments through trading. On the other hand, it is possible that directly reducing emissions and compliance obligation is in the best interest of the business. 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.

A covered fuel supplier's baseline emissions for the first few years of the program may be 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 find a way to comply with the remaining 50,000 MT CO₂e of its emissions from that year. The covered fuel supplier could choose to contribute CCI funds to support projects that reduce greenhouse gas emissions, and at \$81 (2021\$) per CCI credit in 2023, the total contribution would be \$4.05 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 has 1,000,000 MT CO₂e of covered emissions, it could choose to earn CCI credits to make up the difference. At \$87 (2021\$) per CCI credit in 2028, the total contribution would be \$17.4 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 or may decide to reduce emissions, likely if the cost is lower compared to the other options.

For a different example scenario, a covered fuel supplier with baseline emissions of 100,000 MT CO₂e would not be covered until 2025. Assume the number of compliance instruments it receives from DEQ is 95,000 compliance instruments for 2026. It would need to find a way to comply with the remaining 5,000 MT CO₂e of emissions. The covered fuel supplier could choose to contribute CCI funds to support projects that reduce greenhouse gas emissions, and at \$85 (2021\$) per CCI credit in 2026, the total contribution would be \$425,000 to earn 5,000 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 80,000 compliance instruments for 2031. If the covered fuel supplier still has 100,000 MT CO₂e of covered emissions, it could choose to earn CCI credits, and at \$91 (2021\$) per CCI credit in 2031, the total contribution would be \$1.82 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 reduce emissions, likely if the cost is lower compared to the other options.

As the cap continues to decline over time, the covered fuel supplier would receive fewer compliance instruments. If, for example, in the third compliance period, it 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 or acquire additional compliance instruments through a trade. The contribution to earn CCI credits is no longer the highest compliance cost the covered fuel supplier might face. However, the complete design of the proposed program aims to provide incentives and options for covered fuel suppliers to adapt their operations over time in order to significantly reduce greenhouse emissions, potentially in a way that they would not need any additional compliance instruments, beyond those issued by DEQ at no cost, in order to meet their compliance obligations.

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 BAER determination has been fully implemented. Sources must also apply for a CPP permit addendum following each BAER determination 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 makes a BAER determination (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 determination 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. 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.

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 mitigate costs by allowing sources a full year 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. DEQ estimated the cost to conduct a complex BAER assessment might require approximately 150 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	
Cost of completing a BAER assessment	
Facility Professional Resources	Consultant Fee
\$5,000 - \$30,000	\$5,000 - \$30,000

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 BAER determination in order to 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 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.

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 of a DEQ BAER determination. Therefore, the cost of compliance for a covered stationary source will depend on the actions and strategies required by the BAER determination. There may be instances where a DEQ BAER determination 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 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 56 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 44 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 three 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.

a. 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

b. 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.

c. 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 demonstrate 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 an 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 are indirect impacts, both potential costs and benefits, to consumers and businesses throughout Oregon. These impacts could also change over time. While DEQ is unable to quantify these indirect impacts, DEQ recognizes that some of these could disproportionately impact some business and industries that face out-of-state competition and have higher energy costs, as well as environmental justice communities disproportionately burdened by the effects of climate change and air contamination. 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 welfare of Oregon 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 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.

Potential impacts to consumers

Members of the public purchase fuels and goods for their personal use. The proposed program could affect the public if businesses alter the price of goods and services in response to the cost to comply with the Climate Protection Program. Consumers could experience both positive and negative indirect fiscal impacts as covered entities pass their savings and costs to the public through the retail price of fuels and goods. Consumers may include members of the public, other governments, businesses, such as non-directly

regulated businesses that are large or small, and others. Impacts will vary for the residential and commercial sectors.

Examples of potential impacts may include:

- If clean alternative fuels that reduce emissions are more cost-effective than the fossil fuels they would replace, then the retail fuel price could decrease. If covered entities are able to pass on cost savings to consumers, then commercial businesses and households may see a change in their energy cost. Indirectly impacted commercial businesses may also pass on savings to their customers.
- If a covered fuel supplier acquires compliance instruments beyond those distributed freely by DEQ or contributes funds to receive CCI credits, then the price for consumers could increase. 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, such as the cost to install cleaner or more efficient technology or to weatherize a building. As a result, there may also be long-term savings on energy costs. CCI funds are prioritized for environmental justice communities disproportionately burdened by climate change, air contamination, and energy costs. 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 acknowledges the importance of the potential economic impacts to consumers, although these impacts are difficult to quantify and DEQ does not have additional information to estimate the potential impacts. See the following sections for more discussion of the potential positive and negative impacts.

Potential impacts to Oregon's economy

Potential price increases could affect the general economy as businesses adjust to changes in the costs of fuels or goods, as discussed above. Businesses that realize savings through investment in lower-cost clean fuels or technologies are likely to grow. Conversely, businesses with higher costs could have increased difficulty managing their profitability. As part of program development, DEQ contracted with ICF to analyze the macroeconomic impact of an emissions cap program 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. 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 by some advisory committee members, while the cost to acquire CCI credits were used to estimate potential costs for regulated entities, the reinvestment of CCI funds in the state's economy was not estimated nor included in the macroeconomic modeling. The same is true of the monetized health benefits, meaning these results are a conservative estimate. 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 committee member 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 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. DEQ did not have sufficient information to estimate impacts to the public on the costs of goods or fuels. 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.

CCI funds could 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.

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. DEQ did not have specific information to quantify all costs or benefits associated with public welfare. 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.

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 cause by climate change.

Oregon Department of Environmental Quality

DEQ staff will implement the program and provide assistance to covered entities about how to comply with program rules. 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, unless they bring liquid or gaseous fuels into Oregon for use in the state or own or operate a large permitted facility. If so, see the discussions on covered entities above.

INDIRECT IMPACTS

Federal, state, and local agencies and tribal governments are consumers of fuels and goods. 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/eq/programs/Pages/GHG-Emissions.aspx
DEQ and ICF 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 data	Employment Department 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
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

Advisory committee fiscal review

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

As ORS 183.33 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 above fiscal impact statement.

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 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.

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 above fiscal impact statement, DEQ incorporated additional cost estimates provided by committee members.

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 options for the mitigation of costs for small businesses, including:

- Point of direct regulation
- Tiered implementation of the program through application of declining thresholds for fuel suppliers over time, which would delay regulatory costs for most smaller businesses with none of the identified four directly regulated small businesses having compliance obligations before 2025
- Minimum threshold for inclusion in the program of 25,000 MT CO₂e of covered emissions annually for covered stationary sources
- Multi-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 and will not impact the cost of labor or administration related to such development, but could have an effect on the development costs because it 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.

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 DEQ BAER determinations. 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 DEQ BAER determination 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

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 proposed amendments 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 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.

EQC Prior Involvement

DEQ shares general rulemaking information with EQC through the monthly Director's Report.

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, and July 2021 meetings.

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 (replaed 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](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments through an online web page, by regular mail or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on October 25, 2021.

Submit comment online

Any person can submit comments by emailing: GHGCR2021@deq.state.or.us.

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an

Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Nicole Singh
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearings

See information in the next section.

Public Hearings

DEQ plans to hold two public hearings, the second of which will be hosted by the EQC. The details are listed below. Anyone can attend a hearing by webinar or by phone. **The hearings will be online and by teleconference only.**

Hearing #1 hosted by DEQ

Date: Sept. 22, 2021

Time: 4 p.m. – 7 p.m. PT

Location: Meeting to be held remotely. Visit the rulemaking website [Greenhouse Gas Emissions Program 2021](#) for information on how to join the meeting, which will be available by Sept. 8, 2021.

Hearing #2 hosted by the EQC

Date: Sept. 30, 2021

Time: 4 p.m. – 7 p.m. PT

Location: Meeting to be held remotely. Visit the [Environmental Quality Commission](#) website for information on how to join the meeting, which will be available by September 16, 2021.

DEQ will consider all comments and testimony received before the closing date. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

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

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

Supporting documents

[Attachment A: Reader's guide to the proposed rules](#)

[Attachment B: Potentially covered entities in the Climate Protection Program](#)

[Attachment C: Greenhouse gas emissions calculations to supplement the notice of proposed rulemaking GHGCR2021](#)



State of Oregon Department of Environmental Quality

Draft Rules – Division 12

Edits Highlighted

Key to identifying changed text:

~~Deleted Text~~

New/inserted text

~~Text deleted from one location~~ - and moved to another location

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 an automobile manufacturer in violation of Oregon Low 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 set forth in 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 notify DEQ of changes in ownership or operational control or changes to related entities under OAR 340-271-0120.

(oo) 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.

(pp) 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 determination under OAR 340-271-0320 and a permit issued under OAR 340-271-0150(3)(c).

(qq) Failing to submit a BAER assessment or an updated BAER assessment according to OAR 340-271-0310.

(rr) Failing to comply with a BAER determination issued under OAR 340-271-0320.

(ss) 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.

(tt) Failing to demonstrate compliance according to OAR 340-271-0450.

(uu) Failing to comply with the requirements for trading of compliance instruments under OAR 340-271-0500 or 340-271-0510.

(vv) 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; or

[\(w\) Violating any requirement under the Climate Protection Program, OAR Chapter 340, division 271, unless otherwise classified.](#)

[\(x\) 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 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

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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) Oregon Greenhouse Gas Reporting Program violations:~~

(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.

~~(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 determination 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 determination 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](#)

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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

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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 Vehicle rules (OAR 340-257) by an automobile 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 person 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 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.

(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 conditionally exempt 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 conditionally exempt 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 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

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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 an automobile manufacturer in violation of Oregon Low 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 set forth in 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 notify DEQ of changes in ownership or operational control or changes to related entities under OAR 340-271-0120.
- (oo) 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.
- (pp) 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 determination under OAR 340-271-0320 and a permit issued under OAR 340-271-0150(3)(c).
- (qq) Failing to submit a BAER assessment or an updated BAER assessment according to OAR 340-271-0310.
- (rr) Failing to comply with a BAER determination issued under OAR 340-271-0320.
- (ss) 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.
- (tt) Failing to demonstrate compliance according to OAR 340-271-0450.
- (uu) Failing to comply with the requirements for trading of compliance instruments under OAR 340-271-0500 or 340-271-0510.
- (vv) 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; or (w) Violating any requirement under the Climate Protection Program, OAR Chapter 340, division 271, unless otherwise classified.

(x) 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

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DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

DEQ 6-2006, f. & cert. ef. 6-29-06

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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 determination 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 determination 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 Vehicle rules (OAR 340-257) by an automobile 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 person 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 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.

(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 conditionally exempt 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 conditionally exempt 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 14-2020, amend filed 05/07/2020, effective 05/07/2020](#)

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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



Note: These are all new rules so there are no changes to highlight.

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.

(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.

(2) “Best available emissions reduction determination” or “BAER determination” means a DEQ determination of the required actions to limit covered emissions from a covered stationary source. The BAER determination may include conditions, requirements, or a combination of conditions and requirements.

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

(4) “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.

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

(6) “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.

(7) “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.

(8) “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.

(9) “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.

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

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

(12) “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.

(13) “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.

(14) “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).

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

(16) “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) “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) “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.

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

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

(21) “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) “Related entity” means any direct parent company, direct subsidiary, or company under 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 and related entities, cessation of applicability, and permits, respectively.

(4) OAR 340-271-0310 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 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 covered entity of the obligation to comply with any other provisions of OAR chapter 340, as applicable.

(2) Permit or permit addendum. A person identified in OAR 340-271-0110 must apply for and hold a permit or 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 and reporting tools approved and issued by DEQ for all certifications, attestations and submissions.

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 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 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 or 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 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 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 that is reasonably anticipated to have annual covered emissions described in subsection (b) that equal or exceed 25,000 MT CO₂e.

(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 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 a covered fuel supplier until the person receives written notification from DEQ after either or both:

(A) The person's covered emissions are 0 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 recordkeeping requirements that apply from when 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 a covered stationary source if the source'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.

(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 applicable recordkeeping requirements from when 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 permit as provided in this section.

(a) The person must apply for a Climate Protection Program 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. If DEQ does not provide a notification, then the person must apply to DEQ for a CPP permit by whichever is later of January 31 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

(B) If there was a change in ownership or operations 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.

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

(A) 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 and such other conditions as DEQ determines are necessary to implement, monitor and enforce compliance with this rule.

(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 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 includes information identified in this section.

(a) The application must include the following:

(A) Identifying information, including the name of the person that owns or operates the source, mailing address, the source address, 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 source;

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

(C) The date DEQ notified the source of the BAER determination made according to OAR 340-271-0320;

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

(i) Identification of the actions that the source will take to comply with the BAER determination; and

(ii) The schedule for implementing the BAER determination requirements, consistent with any deadlines provided by DEQ in the BAER determination, if applicable, and including an estimate of when all BAER determination requirements 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 a covered stationary source that submits a complete and accurate application. Issuance of a CPP permit addendum requires public notice in OAR 340 division 209 as a Category I permit action. A CPP permit addendum will amend the 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 and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and enforce compliance with the permit and this rule.

(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 and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and enforce compliance with the permit and this rule.

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.

340-271-0310

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 BAER assessment according to this rule. The covered stationary source must submit a complete BAER assessment to DEQ not later than one year 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 covered stationary source described in OAR 340-271-0110(5)(a)(B) must submit a BAER assessment completed according to this rule with its application submitted according to OAR chapter 340, division 216, or its notice of construction 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.

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

(b) Identification of all fuels, processes, equipment, and operations that contribute to the 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 CO_{2e}, 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 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 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 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 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 covered stationary source with a written request to provide such information by a certain date or DEQ may proceed to make its BAER determination based on the information it has available. If DEQ requests the source to revise its BAER assessment according to this section, the source must provide such information no later than the deadline provided by DEQ.

(4) Five year review reports.

(a) Not later than five years following the date that DEQ issued a BAER determination, a covered stationary source must submit to DEQ a five-year review report that includes an updated analysis of the information described in subsections (2)(a) through (c).

(b) If a source identifies one or more new strategies in the five-year review report required in subsection (a) that it has not previously evaluated in a BAER assessment, DEQ may notify the 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 any prior DEQ BAER determination.

(5) When notified in writing by DEQ, 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 a 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 a covered stationary source submitted information that it knew or should have known was false, inaccurate, or incomplete to DEQ, then DEQ may require a 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 of new strategies and previously identified strategies and any new information available at the time the assessment is being conducted;

(c) The source must include current status and analysis of the source's implementation of any prior DEQ BAER determination; and

(d) The source must submit the updated BAER assessment to DEQ not later than one year 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 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 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 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

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

(2) In making a BAER determination 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 source and the remaining useful life of the 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 at the source, if applicable; and
- (j) Input from the public and community organizations from nearby the source.

(3) For covered stationary sources 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 the source when making a BAER determination or for determining when to notify 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, third-party organizations, and communities in Oregon before making a BAER determination.

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

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 BAER determination

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

(a) Comply with the conditions, requirements, or both, of the BAER determination; and

(b) Electronically 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 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 must submit an annual progress report to DEQ describing the source's progress in implementing the BAER determination requirements. The annual progress reports are due to DEQ on or before February 15 of each year following the date that the notice of DEQ BAER determination is final and effective. The annual progress report must include:

(A) A description of the source's progress achieved in implementing the requirements in any BAER determinations;

(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 source since the submission date of the most recently conducted complete BAER assessment; and

(D) An estimate of when the source will complete all BAER determination requirements.

(b) The owner or operator of a covered stationary source must submit a BAER determination completion report to DEQ no later than 60 days after the source completes implementation of all required actions described in a BAER determination, except for items related to 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 and the date the final increments of progress were achieved;

(B) A summary of the actions taken to implement the BAER determination; and

(C) An estimate of the resulting covered emissions reductions that will be achieved now that the requirements in the BAER determination 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 review reports.

(a) The owner or operator of a source that submits any information to DEQ related to a complete BAER assessment or five year review 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 with any independent third-parties 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 source must make available to DEQ upon request all of the records it is required to retain according to this section.

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

(a) The owner or operator of a source that receives a BAER determination 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 BAER determination including but not limited to a copy of the most recently submitted complete BAER assessment and a copy of DEQ's written BAER determination from the effective date of the BAER determination;

(B) A copy of 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 BAER determination from the effective date of the BAER determination.

(b) The owner or operator of a source that receives a BAER determination must make available to DEQ upon request all of the records it is required to retain according to this section.

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.

(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 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. 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 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 the annual distribution DEQ will hold in the reserve, from that year’s annual distribution, 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.

(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), 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 not have available information for one or more of the years of the evaluation period, the covered fuel supplier and its emissions will be excluded from this calculation and 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 distribution companies.

(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 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 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 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) A covered fuel supplier must demonstrate compliance according to this rule by November 15 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 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.

(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 the total compliance obligations for a compliance period, submit either a compliance instrument or a CCI credit according to the following:

(A) The covered fuel supplier must only submit compliance instruments that DEQ distributed from the cap years of the compliance period for which the covered fuel supplier is demonstrating compliance or from earlier cap years; and

(B) The percent of total compliance obligations for which the covered fuel supplier submits CCI credits must not exceed the allowable percentage for that compliance period according to 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;

(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 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 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 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.

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

(1) When covered fuel suppliers intend to trade one or more compliance instruments, 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, 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 after the transferring covered fuel supplier signs the form.

(2) 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 cap year from which DEQ distributed the compliance instruments.
- (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 may be provided.
- (d) The following information about the covered fuel supplier transferring the compliance instrument(s):
 - (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) 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.

- (e) The following information about the covered fuel supplier acquiring the compliance instrument(s):
 - (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) 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.

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.

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 only contribute CCI funds 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) has been approved by DEQ, contributions of CCI funds may occur on or after March 1, 2023.

(c) The covered fuel supplier must contribute equal CCI funds to each CCI entity that is approved at the time of the contribution, except 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 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)(b) 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 340-271-0950.

(3) A covered fuel supplier that submits an application according to this rule may receive CCI credits from DEQ according to OAR 340-271-0820.

(a) The calculation of the number of CCI credits generated and distributed by DEQ is based on the total CCI funds the covered fuel supplier included in the application and the CCI credit contribution amount described in Table 8 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) Upon approval of an application for CCI credits, DEQ will:

(a) Generate and distribute to the covered fuel supplier one or more CCI credits as follows:

(A) Except as limited by paragraphs (B) through (E), for every allowable 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 on the date a contribution is made is described in Table 7 in OAR 340-271-9000, and will be 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. 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 credit to a covered fuel supplier according to OAR 340-271-0820, the covered fuel supplier may continue to hold the credit until either of the following apply:

(a) The covered fuel supplier uses the CCI credit toward demonstrating compliance with a compliance obligation according to OAR 340-271-0510; or

(b) The person has ceased being a covered fuel supplier according to OAR 340-271-0130. When the person ceases to be a covered fuel supplier, DEQ will cancel all CCI credits held by the covered fuel supplier at the time of such cessation. A cancelled CCI credit may not be used to demonstrate 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.

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 of Community Climate Investments

The purposes of community climate investments are to:

- (1) Reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit distributed by DEQ;
- (2) Reduce emissions of other air contaminants that are not greenhouse gases, particularly in and near environmental justice communities in Oregon;
- (3) Promote public health, environmental, and economic benefits for environmental justice communities in Oregon to mitigate impacts from climate change, air contamination, energy costs, or any combination of these; and
- (4) Accelerate the transition of residential, commercial, industrial and transportation-related uses of fossil fuels to lower carbon sources of energy in order to protect people, communities and businesses from increases in the prices of fossil fuels.

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 Approval as a Community Climate Investment Entity

- (1) To be eligible for DEQ approval as a community climate investment entity, a person must:
 - (a) Be an organization 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;
 - (c) Have staff capable of conducting work associated with being a CCI entity according to this division; and
 - (d) Have staff or subcontractors capable of implementing approved projects, as applicable.

(2) An eligible person described in section (1) may apply to be approved as a CCI entity to implement one or more eligible projects or project types independently, with one or more subcontractors, or both.

(a) Subcontractors are not CCI entities and do not need to meet the eligibility requirements of subsections (1)(a) through (c).

(b) A covered entity or any of its related entities may not be a subcontractor and may not receive CCI funds.

(3) An applicant 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, 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) Information to describe how the applicant meets the eligibility criteria in section (1);

(D) A description of the mission of the applicant and how being a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals who would be 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 projects or project types similar to those 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);

(G) Information regarding any violation related to federal or state labor laws within the preceding five years;

(H) The applicant's independent financial audits and IRS Form 990 for each of the three most recent years; and

(I) Proof that the IRS has certified the applicant 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 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) A description of the experience and expertise of key individuals who would be assigned work associated with the requirements of a CCI entity described in OAR 340-271-0930;
 - (E) A description of prior experience implementing or supporting implementation of project(s) or project type(s) similar to those described in subsection (d) and a description of prior experience serving the communities that will benefit from the project(s) or project type(s) described in subsection (d); and
 - (F) Information regarding any violation 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 expects to select one or more additional subcontractors during project implementation;
 - (d) Information on one or more projects or project types that the applicant will implement as supported by CCI funds, including:
 - (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 communities in Oregon that would benefit from each project or project type, including description of 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;
 - (e) Description of the administrative processes and financial controls the applicant will use to ensure all community climate investment funds received from any covered fuel supplier are held separately from the applicant's other funds;
 - (f) A proposal of the annual total amount of CCI funds the applicant would be able to spend on the proposed project(s) or project type(s), including a description of why that annual amount is proposed; and

(g) The following attestation, signed by the applicant'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. [Applicant] 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

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

(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 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.

(b) When evaluating complete applications submitted according to OAR 340-271-0910, DEQ will consult with the equity advisory committee described in OAR 340-271-0960 and may consult with any other relevant experts, as selected by DEQ.

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

(A) Whether the applicant 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 other applicants and submitted by previously approved CCI entities;

(D) 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 provisional approval as a CCI entity is granted or denied. If provisional approval 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 entity from the application that are approved 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 written agreement with the CCI entity will include, but is not limited to:

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

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

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

(D) Provisions for extension or renewal of the agreement and approval; and

(E) Other conditions that DEQ determines are necessary to include in the agreement in order to meet the purposes of OAR 340-271-0900.

(2) 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 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).

(3) 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 funds.

(a) A CCI entity must accept CCI funds from a covered fuel supplier. 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.

(b) A CCI entity must accept CCI funds transferred to it from another CCI entity according to section (9).

(2) Holding CCI funds. A CCI entity must hold all CCI funds in an account separate from any other funds. 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.

(3) Use of CCI funds. A CCI entity must spend CCI funds according to a DEQ-approved work plan submitted by the CCI entity according to section (4), and may not spend CCI funds on any other work.

(4) Annual work plan.

(a) A CCI entity must submit to DEQ an annual work plan. The CCI entity must obtain DEQ approval prior to beginning work according to that work plan. The first work plan must be submitted within 30 days of the date on which the CCI entity entered into a written agreement with DEQ described in OAR 340-271-0920(1)(f). Each subsequent work plan must be submitted by December 1 of the year prior to the year of activities described in the work plan.

(b) The work plan described in subsection (a) must include:

(A) A description of each known DEQ-approved project or project type with anticipated activities that will occur in that year including but not limited to plans for initiation, implementation, and completion, and the anticipated date of project completion, whether it is anticipated for that calendar year or a future calendar year;

(B) The name and contact person's contact information of any subcontractors that will be involved in any project activities for that year;

(C) The estimated total budget for the year for each project or for an example project within each project type. This must separately include the following:

(i) All costs related to project implementation, 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 to a DEQ-approved work plan described in subsection (a) by providing the information described in subsection (b).

(5) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year that includes:

(a) The following information related to activities in the previous calendar year:

(A) The total CCI funds contributed by covered fuel suppliers to the CCI entity;

(B) The date, amount of CCI funds accepted, and 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) 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 personnel costs;

(ii) Personnel costs for each project type;

(iii) Administrative costs related to implementation of each project or project type; and

- (iv) Administrative costs related to meeting requirements of this rule.
 - (H) The known amount of non-CCI funds spent on implementation of each project or project type, as applicable;
 - (I) 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;
 - (J) 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 achieved by each project described in paragraph (I) that was completed in the previous calendar year, using the calculation methodologies most recently approved by DEQ. 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 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), the CCI entity must describe the reason for delay and must describe any steps that may be taken to work to remedy the delay; 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) 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 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.

(9) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require an 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.

340-271-0960

Equity Advisory Committee

(1) Equity advisory committee. DEQ will appoint and convene an advisory committee to assist DEQ with review of:

- (a) Applications for DEQ approval as a CCI entity;
- (b) Work plans and reports submitted by CCI entities; and
- (c) Review of requests by CCI entities to modify projects or work plans.

(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.

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.

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

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 will 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 will 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 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 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 and the required actions that must be taken by a source that has received a DEQ BAER determination;
 - (iv) A brief summary of the status of any covered stationary source activities regarding BAER determination implementation; and
 - (v) Review of any changes in annual covered emissions from current covered stationary sources;
- (E) A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and
- (F) Description of any enforcement actions taken that involved civil penalties, if applicable; and
- (b) DEQ's recommendations regarding any potential changes to the CPP.

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.

340-271-8110

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 provision of this division is severable, and in the event that any provision is found to be invalid, the remainder 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).

 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

2023	27,237,202
2024	26,260,569
2025	26,162,986
2026	25,152,398
2027	24,141,811
2028	23,851,600
2029	22,809,540
2030	21,767,480
2031	21,135,777
2032	20,073,084
2033	19,010,391
2034	17,947,699
2035	16,885,006
2036	16,162,321
2037	15,439,635
2038	14,716,950
2039	13,994,264
2040	13,271,579
2041	12,548,893
2042	11,826,208
2043	11,103,522
2044	10,380,837
2045	9,658,151
2046	8,935,466
2047	8,212,780
2048	7,490,095
2049	6,767,409
2050 and each calendar year thereafter	6,044,724

(3) Table 3. Compliance instrument reserve size.



OAR 340-271-9000
Table 3
Compliance instrument reserve size

Calendar year(s)	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

(4) Table 4. Compliance instrument distribution to covered fuel suppliers that are local distribution companies.



OAR 340-271-9000
Table 4
Compliance instrument distribution to covered fuel suppliers
that are local distribution companies

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

(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.

 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	\$ 81.00
March 1, 2024	\$ 82.00

March 1, 2025	\$ 83.00
March 1, 2026	\$ 85.00
March 1, 2027	\$ 86.00
March 1, 2028	\$ 87.00
March 1, 2029	\$ 89.00
March 1, 2030	\$ 90.00
March 1, 2031	\$ 91.00
March 1, 2032	\$ 93.00
March 1, 2033	\$ 94.00
March 1, 2034	\$ 95.00
March 1, 2035	\$ 97.00
March 1, 2036	\$ 98.00
March 1, 2037	\$ 100.00
March 1, 2038	\$ 101.00
March 1, 2039	\$ 102.00
March 1, 2040	\$ 104.00
March 1, 2041	\$ 105.00
March 1, 2042	\$ 106.00
March 1, 2043	\$ 108.00
March 1, 2044	\$ 109.00
March 1, 2045	\$ 110.00
March 1, 2046	\$ 112.00
March 1, 2047	\$ 113.00
March 1, 2048	\$ 114.00
March 1, 2049	\$ 116.00
March 1, 2050	\$ 117.00

(8) Table 8. Percentages for DEQ generation and distribution of community climate investment credits as described in OAR 340-271-0820(3).



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)

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.