



State of Oregon Department of Environmental Quality

Climate Protection Program – Guide to Proposed Rules

Greenhouse Gas Emissions Program 2021 Rulemaking – August 2021

About the Climate Protection Program

The Oregon Department of Environmental Quality is conducting a rulemaking to establish a new Climate Protection Program to reduce greenhouse gas emissions and address the effects of climate change. The objective of the Greenhouse Gas Emissions Program 2021 Rulemaking is to:

- Establish a new program to set limits on greenhouse gas emissions from significant sources in Oregon;
- Define regulatory applicability and program requirements;
- Prioritize equity by promoting benefits and alleviating burdens for environmental justice communities disproportionately burdened by the effects of climate change and air contamination; and
- Achieve co-benefits from reduced emissions of other air contaminants, particularly for environmental justice communities.

Developing proposed rules

DEQ began the rulemaking in January 2021 to develop the Climate Protection Program through a process that adheres to the public process requirements established in the Oregon Administrative Procedures Act, including convening a rulemaking advisory committee. DEQ is developing program rules to propose for the Environmental Quality Commission's consideration. The EQC is a decision-making body that adopts proposed rules into Oregon administrative law.

A guide to the proposed rules

The below table provides a plain language explanation of the proposed Oregon Administrative Rules, chapter 340, division 271 that DEQ is proposing relating to the Climate Protection Program. This explanation is provided for information purposes only, and should not be relied upon or cited as a statement of the legal effect of the rules, if adopted by the EQC.

DEQ rules cannot be appropriately enforced unless they are classified within OAR chapter 340, division 12. Therefore this rulemaking also proposes to amend division 12 to describe the Climate Protection Program violations and enforcement criteria (a guide to these proposed rules is not included in the table below). DEQ will assess civil penalties for such violations according to OAR Chapter 340, Division 12, DEQ may assess a single base penalty and aggregate multiple occurrences of a violation under the "O" factor in the Division 12 penalty assessment formula. DEQ may also assess multiple base penalties for groups of violations.

RULE NUMBER	RULE TITLE	EXPLANATION
340-271-0010	Purpose and Scope	The purposes of the Climate Protection Program are to reduce greenhouse gas emissions that cause climate change from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, and enhance public welfare for Oregon communities, particularly environmental justice communities disproportionately burdened by the effects of climate change and air contamination.
340-271-0020	Definition	Defines terms relating to this division of rules.
340-271-0030	Acronyms	Defines acronyms relating to this division of rules.
340-271-0090	Overview of Program Provisions for Covered Entities and CCI Entities	Provides an outline of the program-related rules of this division.
340-271-0100	Oregon Climate Protection Program Requirements	Describes general requirements for covered entities, including how to comply with the division, obtain a permit from DEQ, report, retain records, and use DEQ-provided forms and tools.
340-271-0110	Covered Entity and Covered Emissions Applicability	<p>The rules apply to certain entities listed below, collectively referred to in the rules as covered entities:</p> <ul style="list-style-type: none"> • Covered fuel suppliers include: <ul style="list-style-type: none"> ○ Suppliers of liquid fuels and propane ○ Covered emissions described as anthropogenic greenhouse gas emissions from combustion of liquid fuels and propane if those covered emissions meet or exceed a threshold in Table 1: <ul style="list-style-type: none"> ▪ Covered beginning with 2022 emissions (first compliance period) if emissions meet or exceed 200,000 metric tons of carbon dioxide equivalent (MT CO₂e) in 2018 or any subsequent year. ▪ Covered beginning with 2025 emissions (second compliance period) if emissions meet or exceed 100,000 MT CO₂e in 2021 or any subsequent year. ▪ Covered beginning with 2028 emissions (third compliance period) if emissions meet or exceed 50,000 MT CO₂e in 2024 or any subsequent year.

		<ul style="list-style-type: none"> ▪ Covered beginning with 2031 emissions (fourth compliance period and thereafter) if emissions meet or exceed 25,000 MT CO₂e in 2027 or any subsequent year. ○ Local distribution companies, known as natural gas utilities ○ Covered emissions described as anthropogenic greenhouse gas emissions from combustion of natural gas, excluding natural gas used at large electricity generating facilities. • Covered stationary sources include: <ul style="list-style-type: none"> ○ Stationary sources for covered emissions described as anthropogenic greenhouse gas emissions from industrial processes and fuel combustion not otherwise regulated from a covered fuel supplier and that meet or exceed 25,000 MT CO₂e. <ul style="list-style-type: none"> ▪ Does not include emissions from landfills, electric power plants, and natural gas compressor stations on and owned by interstate pipelines. ○ New stationary sources expected to have covered emissions that meet or exceed 25,000 MT CO₂e.
340-271-0120	Changes in Covered Entity Ownership and Changes to Related Entities	<p>Covered entities must notify DEQ of changes in ownership or operational control. Covered entities remain covered under the program and covered fuel suppliers continue to hold any compliance instruments or CCI credits.</p> <p>Covered fuel suppliers must notify DEQ of any new related entities due to changes in ownership or operational control. New related entities become covered fuel suppliers and must apply for a CPP permit.</p>
340-271-0130	Cessation of Covered Entity Applicability	<p>Describes the conditions under which a covered fuel supplier is no longer subject to the requirements of this division:</p> <ul style="list-style-type: none"> • When covered emissions are 0 MT CO₂e for six consecutive years, or • When covered emissions for a supplier of liquid fuels and/or propane are below 25,000 MT CO₂e for six consecutive years, the covered fuel supplier can submit an application to DEQ to request cessation of requirements. <p>Describes the conditions under which a covered stationary source is no longer subject to the requirements of this division:</p> <ul style="list-style-type: none"> • The source no longer emits greenhouse gases.
340-271-0150	Covered Entity Permit Requirements	Covered entities must obtain permits.

		<p>A covered fuel supplier must apply for a CPP permit within 30 days of DEQ notifying the covered fuel supplier to obtain the permit. If DEQ does not provide a notification, then the covered fuel supplier must apply for the permit by January 31 of the first year the entity becomes covered or by March 31 of the first year after its emissions cross the applicable threshold, whichever is later. A new related entity that becomes covered due to a change in ownership or operational control must apply within 45 days of the date of the change.</p> <p>A covered stationary source must obtain a CPP permit addendum after receiving a Best Available Emissions Reduction (BAER) determination from DEQ. For new sources, the CPP conditions will be incorporated in its operating permit if it receives one.</p>
340-271-0310	Best Available Emissions Reduction Assessments for Covered Stationary Sources	<p>Covered stationary sources will be required to conduct best available emissions reduction (BAER) assessments and implement any applicable BAER determinations.</p> <p>Covered stationary sources that are not new sources must complete a BAER assessment within one year of receiving a notification from DEQ. Covered stationary sources that are new sources must submit a BAER assessment at the time of applying for permits.</p> <p>A BAER assessment includes:</p> <ul style="list-style-type: none"> • Identification of sources of covered emissions. • Identification of strategies that could reduce covered emissions. • Estimation of covered emissions reductions that could be achieved by implementing each strategy. • Impacts of implementing each strategy, including positive and negative economic, energy, environmental and health impacts, such as impacts on other air contaminants. • Estimate of time required to implement each strategy. • Identification of information, resources, and documents used to inform the BAER assessment. <p>Covered stationary sources must submit a five-year review report to identify all strategies to reduce covered emissions available at that time. DEQ may require a</p>

		<p>new BAER assessment to be conducted if new covered emission reduction strategies are identified as part of the five-year review process.</p> <p>DEQ may separately require an updated BAER assessment from a covered stationary source no more than once every five years. If DEQ determines the source submitted information to DEQ that it knew or should have known was false, inaccurate, or incomplete, DEQ may require the source to conduct an updated BAER assessment within five years.</p>
340-271-0320	DEQ Best Available Emissions Reduction Determination	<p>DEQ will make a BAER determination for each source required to submit a BAER assessment. A BAER determination establishes the required actions that a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken.</p> <p>DEQ's BAER determination will be informed by the BAER assessment and any other information DEQ finds to be informative. DEQ will consider:</p> <ul style="list-style-type: none"> • Strategies that maximize covered emissions reductions and strategies that are achievable, technically feasible, commercially available, and cost-effective. • Positive and negative environmental and public health impacts of each strategy under consideration by DEQ, such as impacts on other air contaminants. • Economic impacts of each strategy under consideration by DEQ, including costs so great that a new source could not be built or an existing source could not be operated. • Impacts of the strategy on the type or quality of good(s) produced, if applicable. • Amount of time needed to implement each strategy under consideration and the remaining useful life of the source. • Input from the public and community organizations located near the source. <p>DEQ may consult with industry experts, third parties, and other communities before making a BAER determination. DEQ will notify a covered stationary source of a BAER determination in writing and the determination is effective 30 days following the date of the notification, unless the source requests a contested case hearing to challenge DEQ's BAER determination.</p>

340-271-0330	Compliance with BAER determination	Within 30 days of the BAER determination effective date, the covered stationary source must submit an application for a CPP permit addendum and submit an implementation plan. The covered stationary source must report annually to DEQ by July 31 on progress toward implementing the BAER determination.
340-271-0390	Recordkeeping requirements related to BAER	A covered stationary source must retain records for 10 years related to BAER.
340-271-0410	Generation of Compliance Instruments	<p>Covered fuels suppliers will be required to demonstrate compliance with greenhouse gas emissions limits through the use of compliance instruments and community climate investments (CCI) credits.</p> <p>DEQ generates compliance instruments. Each one authorizes a covered fuel supplier to emit one metric ton of carbon dioxide equivalent of greenhouse gas emissions. DEQ will generate compliance instruments in amounts equal to annual emissions caps in Table 2.</p>
340-271-0420	Distribution of Compliance Instruments to Covered Fuel Suppliers	<p>DEQ will distribute compliance instruments to covered fuel suppliers as follows:</p> <p>Covered fuel suppliers that are natural gas utilities will receive an annual distribution of compliance instruments described in Table 4.</p> <p>A covered fuel supplier that supplies liquid fuels and/or propane will receive an annual distribution of compliance instruments that is proportional to its share of historic covered emissions out of all these types of covered fuel suppliers' total historic covered emissions.</p> <p>DEQ will calculate each entity's proportion using a three-year evaluation period and schedule described in Table 5.</p> <ul style="list-style-type: none"> • Annual proportional calculation of compliance instrument distribution is based on each liquid fuels and propane covered fuel supplier's covered emissions and biofuel emissions as a proportion of the total covered emissions and biofuel emissions from all these types of covered fuel suppliers. • DEQ will establish a reserve of compliance instruments for liquid fuels and propane covered fuel suppliers that do not have sufficient data to calculate a proportion, or that become covered after DEQ has distributed compliance instruments for that year.

		<ul style="list-style-type: none"> ○ Each year, DEQ will add compliance instruments to the reserve to attain a reserve size described in Table 3. The compliance instruments in the reserve roll over from year to year such that compliance instruments are only added, as needed, to attain the size described in Table 3. ○ Liquid fuels and propane covered fuel suppliers that are unable to receive a proportional distribution may apply for a distribution from the reserve. The distribution will not exceed 300,000 compliance instruments per covered fuel supplier per year and will not exceed the covered fuel supplier's covered emissions for the year for which compliance instruments requested. ○ The reserve decreases in size over time. When the decrease occurs, DEQ may retire compliance instruments or may distribute them proportionally to liquid fuels and propane covered fuel suppliers. <p>DEQ will track distributed compliance instruments.</p>
340-271-0430	Holding Compliance Instruments	<p>Describes banking of compliance instruments. A covered fuel supplier holds compliance instruments indefinitely until:</p> <ul style="list-style-type: none"> • They are used to demonstrate compliance; • They are traded to another covered for supplier; or • The entity ceases to be a covered fuel supplier. In this case, DEQ may retire the compliance instruments or, if the entity is a supplier of liquid fuels and/or propane, DEQ may hold the compliance instruments in the reserve or distribute them proportionally to other remaining liquid fuels and propane covered fuel suppliers.
340-271-0440	Compliance Periods	<p>A compliance period is three years. This first compliance period begins with 2022.</p>
340-271-0450	Demonstration of Compliance	<p>DEQ will determine compliance obligations informed by covered emissions required to be reported to the Greenhouse Gas Reporting Program (Oregon Administrative Rules chapter 340, divisions 215). One compliance obligation is associated with one calendar year of covered emissions. Demonstration of compliance is only required after a three-year compliance period. Covered fuel suppliers may be demonstrating compliance for up to three annual compliance obligations at one time at the end of a compliance period.</p> <p>Covered fuel supplier demonstration of compliance include the following:</p>

		<ul style="list-style-type: none"> • Compliance demonstration is required for each three-year compliance period by November 15 of the year following the last year of the compliance period. • Compliance demonstration is for the total covered emissions within the compliance period. • Demonstration of compliance for these emissions is met by submittal to DEQ, for each MT CO₂e, one compliance instrument or one community climate investment credit (CCI credit). <ul style="list-style-type: none"> ○ The number of CCI credits that can be used for compliance is limited to 10 percent of the total compliance obligation during the first compliance period, 15 percent during the second compliance period, and 20 percent for each compliance period thereafter. ○ Compliance instruments must have been distributed from the cap years within the compliance period or from earlier years. <p>If there is a change in ownership, the new owner is responsible for submitting the demonstration of compliance.</p> <p>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.</p>
340-271-0490	Recordkeeping Requirements Related to Demonstration of Compliance	A covered fuel supplier must retain records for seven years related to determining compliance obligations or demonstrating compliance.
340-271-0500	Trading of Compliance Instruments	Covered fuel suppliers may trade compliance instruments that have not already been used. Fraudulent and anti-competitive behavior are prohibited. DEQ will track traded compliance instruments.
340-271-0510	Notification to DEQ of Compliance Instrument Trades	All trades must be reported to DEQ, including number of compliance instruments traded and price.
340-271-0590	Recordkeeping Requirements Related to Trading	A covered fuel supplier involved in a trade must retain relevant records for seven years.

340-271-0810	Covered Fuel Supplier Application for Community Climate Investment Credits	<p>Covered fuel suppliers that contribute funds to any DEQ-approved CCI entities must contribute equal funds to all CCI entities approved at that time and may apply to DEQ for CCI credits. The covered fuel supplier must attach a receipt with details of the contributions to the application to DEQ.</p> <p>DEQ's generation and distribution of CCI credits to a covered fuel supplier will be based on the CCI credit contribution amount in Table 8 that is in effect on the date the contribution was made.</p>
340-271-0820	Generation and Distribution of Community Climate Investment Credits	<p>Covered fuel suppliers must apply to DEQ to receive CCI credits. DEQ will review and approve complete and accurate applications.</p> <p>DEQ will distribute CCI credits to covered fuel suppliers as one CCI credit for each payment of the CCI credit contribution amount. The CCI credit contribution amount is listed in Table 8 in 2021 dollars. DEQ will adjust the contribution amount annually for inflation.</p> <p>This rule also describes how DEQ will calculate the maximum number of CCI credits a covered fuel supplier can receive in a compliance period, which is based on the number of compliance instruments DEQ distributed or will distribute to the covered fuel supplier across that compliance period. DEQ will distribute a maximum number of CCI credits to a covered fuel supplier that is up to 12 percent of the compliance instruments distributed by DEQ to that covered fuel supplier during the first compliance period (calculated using an average), 18 percent for the second compliance period, and 25 percent for each compliance period thereafter.</p> <p>DEQ will track distributed CCI credits.</p>
340-271-0830	Holding Community Climate Investment Credits	<p>Describes banking of CCI credits. A covered fuel supplier holds CCI credits indefinitely until:</p> <ul style="list-style-type: none"> • They are used to demonstrate compliance; or • The fuel supplier ceases to be a covered fuel supplier. <p>CCI credits cannot be traded.</p>
340-271-0890	Recordkeeping Requirements Related to Community Climate Investment Funds	<p>Covered fuel suppliers must retain records after making a payment of CCI funds until seven years after using any resulting CCI credit.</p>

340-270-0900	Purposes of Community Climate Investments	<p>The purposes of community climate investments are to:</p> <ul style="list-style-type: none"> • Reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO₂e per CCI credit. • Reduce emissions of other air contaminants that are not greenhouse gases, particularly in and near environmental justice communities in Oregon. • Promote public health, environmental, and economic benefits for environmental justice communities in Oregon to mitigate impacts from climate change, air contamination, and energy costs. • Accelerate the transition of 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.
340-271-0910	Application for DEQ Approval as a Community Climate Investment Entity	<p>501(c)(3) nonprofit organizations that meet eligibility criteria may apply for DEQ approval as a CCI entity. Applicants must have staff capable of conducting work associated with being a CCI entity and must have staff or subcontractors capable of implementing approved CCI projects.</p> <p>Applicants must describe one or more proposed projects that would be implemented with CCI funds. These may be implemented by the applicant or by subcontractors. Subcontractors do not need to be 501(c)(3) nonprofit organizations, but cannot be covered entities or their related entities.</p> <p>The application must include:</p> <ul style="list-style-type: none"> • Information about the organization, its eligibility, mission, and key personnel; • Information about any known project subcontractors; • Information about any violations of federal or state labor laws by the applicant or any subcontractors; • Relevant prior experience of the applicant and its subcontractors; • A description of the proposed project(s), including: <ul style="list-style-type: none"> ○ A description of how the project(s) meet(s) the criteria for CCI projects as described in Rule 0950. ○ Identification of the Oregon communities that will benefit, including a description of how the project(s) will benefit environmental justice communities

		<ul style="list-style-type: none"> ○ Calculation methodology for estimating reductions of greenhouse gas emissions and other air contaminant emissions achieved if proposed project(s) is (are) implemented. ● A proposal of the total CCI funds the applicant would be able to accept annually to implement projects.
340-271-0920	DEQ Review and Approval of Community Climate Investment Entities	<p>DEQ will review applications in consultation with the equity advisory committee described in Rule 0960 and may consult with other relevant experts. DEQ will prioritize approval of CCI entity applications and projects that meet the criteria for CCI projects as described in Rule 0950.</p> <p>When an application is approved, DEQ will notify the applicant in writing that they are approved as a CCI entity and will also identify:</p> <ul style="list-style-type: none"> ● The subcontractors that are approved. ● The projects that are approved. ● The emissions reduction calculation methodologies that are approved. <p>DEQ will enter into a written agreement with the CCI entity and will maintain a current list of approved CCI entities on DEQ's website. The initial term of the agreement and approval will not exceed ten years.</p> <p>DEQ may revoke or suspend approval if DEQ determines there is fraud, a violation of this division or any written agreement between DEQ and the CCI entity, or if the CCI entity no longer meets eligibility criteria.</p>
340-271-0930	Requirement for Community Climate Investment Entities	<p>CCI entities must accept funds from covered fuel suppliers and provide a receipt. CCI entities must keep all CCI fund separate from the entities' other funds and may only spend CCI funds according to a DEQ-approved work plan.</p> <p>CCI entities must submit annual work plans for DEQ approval and obtain DEQ approval prior to beginning work. CCI entities must also submit annual reports to DEQ that include details on the work conducted and projects completed during the previous year.</p> <p>DEQ can revoke approval of a CCI entity, as necessary and as described in this rule. If a CCI entity is no longer approved, DEQ may require that any remaining CCI funds be rolled over to another CCI entity.</p>

340-271-0950	Community Climate Investment Projects	DEQ may approve CCI entity's proposed projects that are eligible to be supported by CCI funds if the projects are located in Oregon and if the completion of the projects is reasonably likely to reduce anthropogenic greenhouse gas emissions by an average of at least one MT CO ₂ e per CCI credit distributed by DEQ. DEQ may prioritize approval for projects that will best achieve the purposes of CCIs described in Rule 0900.
340-271-0960	Equity Advisory Committee	DEQ will appoint an equity advisory committee with members that can serve a term of up to three years. DEQ's priorities for appointing the committee are: <ul style="list-style-type: none"> • Selecting members with expertise, interest, or lived experience related to environmental justice, impacts of climate change on communities in Oregon, impacts of air contamination on communities in Oregon, and greenhouse gas emissions reductions and climate change. • Representation of multiple regions across Oregon.
340-271-0990	Recordkeeping Requirements for Community Climate Investment Entities	CCI entities must retain records while approved and for seven years following approval.
340-271-8100	Program Review	DEQ will conduct a program review on community climate investments and report to the EQC every two years. This will include a summary of CCI-related activities, including whether reductions of one MT CO ₂ e or more of anthropogenic greenhouse gas emissions was achieved for the average CCI credit distributed by DEQ. The report will also include DEQ recommendations for the EQC, such as changes to the CCI credit contribution amount or recommendations on how to best achieve the purposes of CCIs. DEQ will also share this CCI report with the equity advisory committee. DEQ will conduct a broader program review on the Climate Protection Program and report to the EQC every five years. This review will include summaries of activities relating to both covered fuel suppliers and covered stationary sources.
340-271-8110	Deferrals	DEQ may extend deadlines.
340-271-8120	Severability	Describes how each provision of this division is severable and that any remaining provisions will continue in full force and effect.
340-271-9000	Tables	Table 1: Thresholds for applicability described in OAR 340-271-0110(3). Table 2: Oregon Climate Protection Program caps. Table 3: Compliance instrument reserve size.

		<p>Table 4: Compliance instrument distribution to covered fuel suppliers that are local distribution companies.</p> <p>Table 5: Compliance instrument distribution evaluation periods.</p> <p>Table 6: Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3).</p> <p>Table 7: CCI credit contribution amount.</p> <p>Table 8. Percentages for DEQ generation and distribution of community climate investment credits as described in OAR 340-271-0820(3).</p>
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Alternative formats

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