



State of Oregon Department of Environmental Quality

## **Climate Protection Program – Plain Language Guide to Draft Rules**

Greenhouse Gas Emissions Program 2021 Rulemaking Advisory Committee Meeting 6 (draft rules version 2)

### **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; and
- Prioritize equity by promoting benefits and alleviating burdens for environmental justice and impacted communities.

### **Developing draft 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. 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 draft rules**

The below table provides a plain language explanation of the draft Oregon Administrative Rules that DEQ is developing relating to the Climate Protection Program. Updated rule drafts will be made available in the future as DEQ continues through the rulemaking.

RULE NUMBER	RULE TITLE	EXPLANATION
340-271-0010	Purpose and Scope	<p>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.</p> <p><b>Key updates from version 1:</b> Language added regarding the prioritization of benefits for communities that are disproportionately burdened by the effects of climate change and air contamination; these communities are disproportionately Black, Indigenous, and communities of color, as well as low-income and rural communities.</p>
340-271-0020	Definition	Defines terms relating to this division of rules.
340-271-0030	Acronyms	Defines acronyms relating to this division of rules.
340-271-0100	Oregon Climate Protection Program Requirements	Contains general requirements for covered entities, including 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 as follows:</p> <ul style="list-style-type: none"> <li>• Covered fuel suppliers include: <ul style="list-style-type: none"> <li>○ Non-natural gas fuel suppliers for covered emissions described as anthropogenic greenhouse gas emissions from combustion of liquid fuels and propane that meet or exceed 200,000 MT CO<sub>2</sub>e in any calendar year since 2018.</li> <li>○ Natural gas utilities for covered emissions described as anthropogenic greenhouse gas emissions from combustion of natural gas, excluding natural gas used at large electricity generating facilities.</li> </ul> </li> <li>• Covered stationary sources include: <ul style="list-style-type: none"> <li>○ Stationary sources for covered emissions described as anthropogenic greenhouse gas emissions from processes and fuel combustion that is not otherwise regulated for a covered fuel supplier and that meet or exceed 25,000 MT CO<sub>2</sub>e <ul style="list-style-type: none"> <li>▪ Excludes emissions from landfills and large electricity generating facilities.</li> </ul> </li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ New stationary sources expected to have covered emissions that meet or exceed 25,000 MT CO<sub>2</sub>e.</li> </ul> <p><b>Key updates from version 1:</b></p> <ul style="list-style-type: none"> <li>• Initial applicability determinations for non-natural gas fuel suppliers are made using data from 2018 to present.</li> <li>• New sources are covered stationary sources if emissions are expected to meet or exceed 25,000 MT CO<sub>2</sub>e.</li> </ul>
340-271-0120	Changes in Covered Entity Ownership	Covered entities must notify DEQ of changes in ownership. Covered entities remain covered under the program and covered fuel suppliers continue to hold any compliance instruments or CCI credits.
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"> <li>• When covered emissions are 0 MT CO<sub>2</sub>e for six consecutive years, or</li> <li>• When covered emissions for a non-natural gas fuel supplier are below 200,000 MT CO<sub>2</sub>e for six consecutive years.</li> </ul> <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"> <li>• The source no longer emits greenhouse gases.</li> </ul> <p><b>Key updates from version 1:</b> Includes cessation for covered stationary sources.</p>
340-271-0150	Covered Entity Permit Requirements	Covered entities must obtain permits. A covered fuel supplier must obtain a CPP permit within 30 days of adoption of this division or by the end of January the year after it becomes a covered fuel supplier. A covered stationary source must obtain a CPP permit addendum after receiving a BAER determination from DEQ. For new sources, the CPP conditions will be incorporated in its operating permit if it receives one.
340-271-0310	Best Available Emissions Reduction Assessments for Covered Stationary Sources	<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"> <li>• Identification of sources of greenhouse gas emissions</li> <li>• Identification of strategies that could reduce covered emissions</li> </ul>

		<ul style="list-style-type: none"> <li>• Explanation of technical feasibility</li> <li>• Estimation of covered emissions reductions that could be achieved by implementing each technically feasible strategy</li> <li>• Impacts of implementing each technically feasible strategy, including economic, energy, and environmental and health impacts, such as impacts on other air contaminants</li> <li>• Estimate of time required to implement each technically feasible strategy</li> <li>• Ranking of preferred strategies</li> </ul> <p>Covered stationary sources must submit a five-year review report to identify all strategies to reduce covered emissions available at that time, and DEQ may require a new BAER assessment to be conducted if there are new strategies that have not been evaluated in a BAER assessment.</p> <p>DEQ may separately require a new BAER assessment from a covered stationary source up to once every five years from the date of a BAER determination.</p>
340-271-0320	DEQ Best Available Emissions Reduction Determination	<p>DEQ will make a BAER determination after the submission of each BAER assessment. DEQ's BAER determination will be informed by the BAER assessment and will consider impacts of each strategy, strategies that maximize covered emissions reductions, and actions that are achievable, technically feasible, commercially available, and cost-effective.</p> <p>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	<p>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.</p>
340-271-0390	Recordkeeping requirements related to BAER	<p>A covered stationary source must retain records for 10 years related to BAER.</p>
340-271-0410	Generation of Compliance Instruments	<p>DEQ issues compliance instruments. Each one authorizes covered fuel suppliers to emit one metric ton of carbon dioxide equivalent of greenhouse gas emissions.</p>

		DEQ will generate compliance instruments in amounts equal to annual emissions caps.
340-271-0420	Distribution of Compliance Instruments to Covered Fuel Suppliers	DEQ will establish a reserve of 1 million compliance instruments for new entrants from within the cap. Aside from compliance instruments held in the reserve, compliance instruments are distributed annually based on the upcoming year's cap in an amount proportional to each entities' covered emissions from the most recent three years of available data. Covered fuel suppliers obtain compliance instruments from the reserve if they do not have sufficient data for the proportional calculation or if they become covered after DEQ has already distributed compliance instruments for the year. DEQ will track distributed compliance instruments.
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"> <li>• They are used to demonstrate compliance;</li> <li>• They are traded; or</li> <li>• The fuel supplier ceases to be a covered fuel supplier. In this case, DEQ may retire, hold in the reserve, or distribute the compliance instruments to other remaining covered fuel suppliers.</li> </ul> <p><b>Key updates from version 1:</b> Describes how DEQ will handle compliance instruments held by fuel suppliers who cease to be covered.</p>
340-271-0500	Compliance Periods	A compliance period is three years. This first compliance period begins with 2022.
340-271-0510	Demonstration of Compliance	<ul style="list-style-type: none"> <li>• DEQ will determine compliance obligations based on verified covered emissions reported to the Greenhouse Gas Reporting Program (Oregon Administrative Rules chapter 340, divisions 215 and 272).</li> <li>• Requirements for covered fuel suppliers in order to demonstrate compliance: <ul style="list-style-type: none"> <li>○ Demonstration of compliance is required at the end of each compliance period by September 30 of the year following the last year of a compliance period.</li> <li>○ The demonstration of compliance is for covered emissions from each year within the compliance period.</li> <li>○ Each MT CO<sub>2</sub>e of covered emissions has a compliance obligation. Demonstration of compliance for these emissions is met by submittal to DEQ, for each MT CO<sub>2</sub>e, one compliance instrument or community climate investment credit (CCI credit).</li> <li>○ The number of CCI credits that can be used toward compliance is limited to 20 percent of a total compliance obligation for a compliance period.</li> </ul> </li> </ul>

		<p><b>Key updates from version 1:</b> Limit on the use of CCI credits set at 20 percent. A new section requires that if a covered fuel supplier changes ownership, the new owner is responsible for submitting the demonstration of compliance.</p>
340-271-0590	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.
340-271-0600	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.
340-271-0610	Notification to DEQ of Compliance Instrument Trades	All trades must be reported to DEQ, including number of compliance instruments traded and price.
		<p><b>Key updates from version 1:</b> Trade reports must include a price.</p>
340-271-0690	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	Covered fuel suppliers who pay funds to a CCI entity may apply for CCI credits. The covered fuel supplier must attach a receipt.
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 price. The CCI credit price is listed in Table 3 in 2020 dollars. DEQ will adjust the prices annually for inflation. The maximum number of CCI credits a covered fuel supplier can receive in a compliance period is equal to half the number of compliance instruments DEQ distributed to the covered fuel supplier that compliance period. 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"> <li>• They are used to demonstrate compliance; or</li> <li>• The fuel supplier ceases to be a covered fuel supplier.</li> </ul>

340-271-0890	Recordkeeping Requirements Related to Community Climate Investment Funds	Covered fuel suppliers must retain records after making a payment of CCI funds until seven years after using any resulting CCI credit.
340-271-0910	Application for DEQ Approval as a Community Climate Investment Entity	<p>Nonprofit entities that meet eligibility criteria may apply for DEQ approval as a CCI entity. Nonprofits must describe one or more proposed projects that would be implemented with CCI funds. The application must include:</p> <ul style="list-style-type: none"> <li>• Information about the organization, its eligibility, mission, and key personnel;</li> <li>• Information about any project partners or contractors;</li> <li>• Information about any violations of federal or state labor laws;</li> <li>• A description of the proposed project(s) and how they meet the eligibility described in Rule 0950, including identification of communities who would benefit from the project(s);</li> <li>• A description of how the project(s) outcomes would be tracked; and</li> <li>• A description of financial controls in place to ensure CCI funds are spent appropriately.</li> </ul>
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 will benefit communities that are disproportionately burdened by climate change, air contamination, and energy costs. DEQ will also prioritize projects that will benefit various communities in different regions in Oregon.</p> <p>When an application is approved, 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.</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.</p> <p>CCI entities must submit annual work plans for DEQ approval and obtain DEQ approval of any changes to approved projects (DEQ will review according to the application review process in Rule 0920, in consultation with the equity advisory committee). CCI entities must report to DEQ annually.</p>

		If a CCI entity is no longer approved, DEQ may require that any remaining CCI funds be rolled over to another CCI entity.
340-271-0950	Community Climate Investment Projects	CCI funds must be spent on projects located in Oregon that reduce greenhouse gas emissions. DEQ will prioritize projects that also reduce air contamination and benefit communities that are disproportionately impacted by climate change, air contamination, and energy costs.
340-271-0960	Equity Advisory Committee	DEQ will establish an equity advisory committee. DEQ will seek representatives with expertise and lived experience related to environmental justice, air contamination, and climate change.
340-271-0990	Recordkeeping Requirements for Community Climate Investment Entities	CCI entities must retain records while approved and for seven years following approval.
340-271-1000	Program Review	DEQ will conduct a program review and report to the EQC after five years of program implementation and every five years thereafter.
340-271-1300	Tables	Table 1: Oregon Climate Protection Program Caps Table 2: Compliance Instrument Distribution Evaluation Periods Table 3: Price per CCI Credit

### 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](mailto:deqinfo@deq.state.or.us).