



State of Oregon Department of Environmental Quality

# Draft Rules – Division 271

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

**Department of Environmental Quality  
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 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 communities 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.

(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) Certain communities, such as Black, Indigenous, and communities of color, as well as low-income and rural communities, within 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 those 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 communities

disproportionately burdened by the effects of climate change and air contamination;

(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 community climate investment funds and credits that:

(A) Reduce greenhouse gas emissions;

(B) Support reduction of emissions of other air contaminants; and

(C) Prioritizes reduction of emissions in communities disproportionately burdened by air contamination and climate change.

(4) Notwithstanding Lane Regional Air Pollution Agency authorization in OAR 340-200-0010(3), DEQ administers this division in all areas of the State of Oregon.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**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.

() “Air contamination source” has the meaning given the term in ORS 468A.005.

() “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.

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

() “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.

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

() “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.

() “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 according to OAR 340-271-0920 to implement projects using community climate investment funds.

() “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one MT CO<sub>2</sub>e of greenhouse gases. Compliance instruments may not be divided into fractions.

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

() “Compliance period” means a period of multiple consecutive calendar years, as described in OAR 340-271-0500.

() “Covered emissions” means the greenhouse gas emissions described in OAR 340-271-0110 for which covered entities may be subject to the requirements of this division.

() “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 an air contamination source described in either or both OAR 340-271-0110(3) or (4).

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

() “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).

() “Evaluation period” means a period of multiple consecutive calendar years, as described in

OAR 340-271-0420, used to evaluate the number of compliance instruments to distribute to each covered entity.

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

() “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.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

### **340-271-0030**

#### **Acronyms**

() “BAER” means best available emissions reduction.

() “CCI” means community climate investment.

() “CFR” means Code of Federal Regulations.

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

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

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

() “EQC” means Environmental Quality Commission.

() “EPA” means US Environmental Protection Agency.

() “IRS” means US Internal Revenue Service.

() “Metric tons of CO<sub>2</sub>e” or “MT CO<sub>2</sub>e” means metric tons of carbon dioxide equivalent.

() “US” means United States.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

### **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. A person identified in OAR 340-271-0110 must apply for and hold a permit according to OAR 340-271-0150.

(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 utilize registration and reporting tools approved and issued by DEQ for all certifications, attestations and submissions. If DEQ develops and approves an electronic system for submittal of certifications, attestations and submissions, then the person must register to use the electronic system.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-0110**

**Covered Entity and Covered Emissions Applicability**

(1) For a person required to register and report in OAR chapter 340, division 215, DEQ may base applicability 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.

(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) A person is a covered fuel supplier if the person is described below in subsection (a) and has annual covered emissions described in subsection (b) that equal or exceed 200,000 MTCO<sub>2e</sub> in 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130. All persons that are related entities must aggregate their emissions together to determine applicability.

(a) The person is a non-natural gas fuel supplier or in-state producer that imports, sells, or distributes fuel for use in the state, 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 under 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 under 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 the state and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax under OAR chapter 735, divisions 170 and 176; or

(D) A person that either produces 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 CO<sub>2</sub>e 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 that are fugitive emissions.

(4) A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b), 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 CO<sub>2</sub>e 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 that are fugitive emissions; and

(iii) Emissions from natural gas delivered to an air contamination source that has an applicable code of 221112 in the 2017 North American Industry Classification System.

(5) A person is a covered stationary source if the person meets the requirements of either, or both, paragraphs (a)(A) or (a)(B), 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 or both 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 CO<sub>2</sub>e; or

(B) The person will own or operate a proposed 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 MTCO<sub>2</sub>e.

(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 CO<sub>2</sub>e from emissions that are from processes and emissions that are from combustion of solid or gaseous fuels, including 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 CO<sub>2</sub> 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 accounted for through the regulation of a covered fuel supplier described in section (4);

(v) Emissions that are fugitive emissions;

(vi) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;

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

(viii) Emissions from an air contamination source that is owned or operated by an interstate pipeline; and

(ix) Emissions from an air contamination source that has an applicable code of 221112 in the 2017 North American Industry Classification System.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

### **340-271-0120**

#### **Changes in Covered Entity Ownership**

(1) 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, 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; and
- (d) Name of the designated representative.

(2) A 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.

(3) 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, following the change in ownership.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

### **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 under 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 MTCO<sub>2e</sub> for six consecutive calendar years; or

(B) The person is a covered fuel supplier according OAR 340-271-0110(3) and its annual



covered emissions are less than 200,000 MTCO<sub>2</sub>e 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) complies with all remaining compliance obligations in this division, DEQ will notify the designated representative of the covered fuel supplier in writing that cessation is met and at that time the person is no longer a covered fuel supplier.

(c) In order for cessation according to paragraph (1)(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 all related entities subject to any Oregon DEQ regulations for each of the six consecutive calendar years, including:

(i) Legal names and full mailing addresses; and

(ii) If known, indicate which related entities may also be a covered entity subject to the rules of this division;

(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) complies with all remaining compliance obligations in this division, DEQ will notify the designated representative of the covered fuel supplier in writing that the application for cessation is approved, that cessation is met and at that time the person is no longer a covered fuel supplier.

(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. When the person ceases to be a covered fuel supplier, the person also ceases to hold any remaining compliance instruments according to OAR 340-271-0430(3) and ceases to hold any remaining community climate investment credits according to OAR 340-271-0830.

(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 any recordkeeping requirements that apply from when the person was a covered stationary source.

(3) Any person that has ceased being 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:**  
**Statutes/Other Implemented:**

**340-271-0150**  
**Covered Entity Permit Requirements**

(1) A covered fuel supplier must apply for and hold a Climate Protection Program permit. A person who is a covered fuel supplier based on its covered emissions from 2018 through 2020 must submit an application to DEQ for a CPP permit according to this rule within 30 days of the date of the adoption of this division. A person who is a covered fuel supplier based on its covered emissions from any other year must submit an application to DEQ for a CPP permit according to this rule by January 31 of the following year.

(a) 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:

(i) Name, 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 all related entities subject to any Oregon DEQ regulations, including legal names and full mailing addresses; 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 receiving such permit subjects [covered entity] to the requirements of Oregon Administrative Rules chapter 340, division 271.

(b) DEQ may issue a CPP permit to a covered fuel supplier that submits a complete and accurate application.

(2) 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 an application electronically to DEQ, on a form approved by DEQ, 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 receiving such permit subjects [covered entity] to the requirements of Oregon Administrative Rules chapter 340, division 271.

(b) DEQ may issue a CPP permit addendum to a covered stationary source that submits a complete application to DEQ. Issuance of a CPP permit addendum requires public notice under 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.

(c) If DEQ approves the application for an Air Contaminant Discharge Permit or Title V Operating Permit submitted by the owner or operator of a proposed new source, then DEQ will incorporate the CPP conditions into the new operating permit and will not issue a separate CPP permit addendum.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**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 under OAR chapter 340, division 216, or its notice of construction submitted under 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 materially contribute to the source's emissions of anthropogenic greenhouse gases.

(A) This must include estimates of current annual average greenhouse gas emissions for existing covered stationary sources, and estimates of reasonably anticipated annual average greenhouse gas emissions for proposed new sources. This must also separately include estimates of covered emissions identified in OAR 340-271-0110(5)(b). Emissions must be identified in MTCO<sub>2e</sub>, following methodologies identified in OAR chapter 340, division 215. This must also include quantities and emissions of each fuel used to control air contaminants that are not greenhouse gases.

(B) This must include estimates of current annual average type and quantity of all fuels used by the source, and reasonably anticipated annual average fuel usage for proposed new sources.

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

(d) A written explanation of any technical reason why a strategy from subsection (c) is infeasible. If the strategy has been implemented by any other source that produces goods of comparable type, quantity and quality, the strategy may only be identified as infeasible if it is not commercially available at the time the BAER assessment is conducted or cannot feasibly be installed or operated at the source. Cost may not be considered as part of this infeasibility determination.

(e) An assessment of each of the following for each strategy identified in subsection (c), excluding any strategies identified as infeasible according to subsection (d):

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

(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 and the broader geographic area;

(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;

(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 an estimate of the strategy's cost in terms of US dollars per MT CO<sub>2</sub>e of covered emissions reduced; and

(E) An estimate of the time needed to fully implement the strategy at the source.

(f) A ranking of the strategies assessed in subsection (e) from most effective at reducing covered emissions to least effective at reducing covered emissions.

(g) Identification of the strategy or strategies preferred by the source, including a written explanation for why each strategy identified may be appropriate for the source at the time the BAER assessment is being conducted. The source may consider remaining useful life as part of this identification.

(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 in order to make the BAER determination, 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 under 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 the information described in subsections (2)(a) through (d).

(b) If a source identifies one or more new strategies in the five year review report required under subsection (c) 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 all of the following:

(a) DEQ may not require a source to complete an updated BAER assessment within five years of the date that DEQ issued a BAER determination for the source;

(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:**

**Statutes/Other Implemented:**

**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.

(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 the BAER assessment;

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

(c) The fuels, processes, equipment, technology, systems, actions, and other 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) Environmental, public health, and energy impacts of each strategy to reduce covered emissions that is under consideration, 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;

(e) Economic impacts of each strategy to reduce covered emissions that is under consideration including, but not limited to, costs so great that a new source could not be built or operated because it is rendered economically infeasible, and cost-effectiveness of different strategies that would achieve similar covered emissions reductions; and

(f) Processes and operations currently in use by the source and the remaining useful life of the source.

(3) A BAER determination will establish the actions that a covered stationary source must take to reduce covered emissions. In making a BAER determination, DEQ must consider whether the actions it requires are achievable, technically feasible, commercially available, and cost-effective.

(4) DEQ may independently verify information submitted in a BAER assessment that is being considered before making a BAER determination.

(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 under 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 340 division 11.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-0330**

**Compliance with BAER determination**

(1) The owner or operator of a covered stationary source for which DEQ has made a BEAR determination according to OAR 340-271-0320 must electronically submit to DEQ a complete application for a CPP permit addendum according to OAR 340-271-0150(2) 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 progress reports are due to DEQ on or before July 31 of each year following the date that the notice of DEQ BAER determination is final and effective. The 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:**

**Statutes/Other Implemented:**

**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:**

**Statutes/Other Implemented:**

**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 1 in OAR 340-271-1300.

(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:**

**Statutes/Other Implemented:**

## 340-271-0420

### Distribution of Compliance Instruments to Covered Fuel Suppliers

(1) DEQ will distribute compliance instruments according to this rule.

(2) DEQ will establish a compliance instrument reserve according to subsection (3)(a) to hold a subset of compliance instruments from the caps identified in Table 1 in OAR 340-271-1300. Once a compliance instrument is placed in the reserve, it remains in the reserve until it is distributed according to section (4).

(3) Annual distribution of compliance instruments. DEQ will annually distribute compliance instruments as follows:

(a) If at the time of the annual distribution the compliance instrument reserve has a balance of less than 1 million compliance instruments, then from the annual distribution DEQ will hold in the reserve the number of compliance instruments necessary to attain a reserve balance of 1 million compliance instruments. If the compliance instrument reserve has a balance of 1 million compliance instruments or greater, DEQ will not hold any additional compliance instruments in the reserve.

(b) Except for compliance instruments held in the reserve, DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier as provided in paragraphs (A) through (D), based on available emissions data and information from the evaluation period described in Table 2 in OAR 340-271-1300. If any covered fuel supplier has no emissions data for the evaluation period described in Table 2, 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 (4).

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

$$\text{Number of Compliance Instruments} = \text{Total compliance instruments to distribute} * (\text{Covered fuel supplier emissions} / \text{Total emissions})$$

(B) As used in the formula in paragraph (A), “Total compliance instruments to distribute” means the cap for the calendar year, according to Table 1 in OAR 340-271-1300, minus any compliance instruments placed into the compliance instrument reserve; “Covered fuel supplier emissions” means the covered fuel supplier’s covered emissions during the evaluation period; and “Total emissions” means the total covered emissions during the evaluation period from all covered fuel suppliers.

(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.

(4) Distribution from compliance instrument reserve.

(a) A covered fuel supplier is eligible for a distribution from the compliance instrument reserve if:

(A) The covered fuel supplier was excluded from the distribution in section (3) due to a lack of sufficient data; or

(B) The person becomes a covered fuel supplier after DEQ has already distributed the compliance instruments for that year according to section (3).

(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 application must be submitted after the covered fuel supplier has reported emissions to DEQ according to OAR chapter 340, division 215, for the calendar year for which it requests compliance instruments.

(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 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, DEQ may consider:

(A) The information in the application;

(B) The covered fuel supplier's covered emissions;

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

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

(E) A maximum distribution amount of no more than 300,000 compliance instruments per covered fuel supplier per year.

(5) Upon distribution of compliance instruments according to sections (3) and (4), DEQ will notify the designated representative of each covered fuel supplier in writing of the availability of compliance instruments.

(6) DEQ will track distributed compliance instruments.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**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 340-271-0600, 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 340-271-0510;

(2) The covered fuel supplier transfers the compliance instrument to another covered fuel supplier according to OAR 340-271-0600; or

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

(a) Retire the compliance instrument;

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

(c) Redistribute the compliance instrument to a covered fuel supplier as described in paragraphs (A) and (B).

(A) DEQ will only redistribute the compliance instrument if the person held at least 10,000 compliance instruments when the person ceased being a covered fuel supplier and if there are sufficient compliance instruments to redistribute at least one compliance instrument to each covered fuel supplier according to (B).

(B) If DEQ redistributes compliance instruments, DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier as provided in subparagraphs (i) through (iv), based on available compliance instruments and available emissions data and information from the relevant evaluation period described in Table 2 in OAR 340-271-1300.

(i) DEQ may distribute compliance instruments using the following formula:

*Number of Compliance Instruments = Number for redistribution \* (Covered fuel supplier emissions / Total emissions)*

(ii) As used in the formula in subparagraph (i), “Number for redistribution” means the number of compliance instruments DEQ is redistributing; “Covered fuel supplier emissions” means the covered fuel supplier’s covered emissions during the evaluation period; and “Total emissions” means the total covered emissions during the evaluation period from all covered fuel suppliers.

(iii) DEQ may distribute compliance instruments to each covered fuel supplier using the formula in subparagraph (i) and rounded down to the nearest whole number.

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

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-0500**

**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:**

**Statutes/Other Implemented:**

**340-271-0510**

**Demonstration of Compliance**

(1) A covered fuel supplier must demonstrate compliance by September 30 of the year following the end of each compliance period. Such demonstration must be made concurrently for each calendar year within the compliance period for which the covered fuel supplier had a compliance obligation.

(2) DEQ may determine annual compliance obligations for a covered fuel supplier based on emissions data and information in emissions data reports required according to OAR chapter 340, division 215 and required to be verified according to OAR chapter 340, division 272.

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

(a) For each metric ton of a compliance obligation, submit either a compliance instrument or a CCI credit, provided that the covered fuel supplier may not submit more CCI credits than twenty percent of the compliance obligation;

(b) A demonstration of compliance form 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 obligation in metric tons of CO<sub>2</sub>e 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;

(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 credits. If any portion of this compliance obligation remains unmet after this submission, I understand that [covered fuel supplier] must still demonstrate compliance with the remaining portion of the compliance obligation and may be subject to enforcement action.

(4) If a change in ownership of a covered fuel supplier occurs according to OAR 340-271-0120, 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 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.

(5) DEQ may extend the deadline established in section (1) as DEQ deems necessary and DEQ will issue written notice of any extension.

(6) DEQ will track all covered fuel suppliers' compliance obligations and demonstration of compliance submissions.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-0590**

**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, division 215, 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 340-271-0510, in paper or electronic format for a period of at least seven years following the deadline for demonstrating compliance in OAR 340-271-0510:

(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:**

**Statutes/Other Implemented:**

**340-271-0600**

**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 trade involving, related to, in service of, or associated with any of the following is prohibited:

(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 340-271-0610, 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 340-271-0610 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. 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:**  
**Statutes/Other Implemented:**

### **340-271-0610**

#### **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.

(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 transaction value 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 transaction value described in this form.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

**340-271-0690**  
**Recordkeeping Requirements Related to Trading**

(1) A person who transfers one or more compliance instruments in a trade according to OAR 340-271-0610 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 340-271-0610 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:**  
**Statutes/Other Implemented:**

### **340-271-0810**

#### **Covered Fuel Supplier Application for Community Climate Investment Credits**

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

(2) The application to request CCI credits from DEQ 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 the community climate investment entity that received CCI funds from the covered fuel supplier;

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

(d) The total dollar amount of CCI funds contributed to the 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 [community climate investment entity] for the purposes of funding eligible projects as described in OAR 340-271-0950.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

### **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, 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 has determined that the application is accurate and complete.

(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 paragraph (B), for every allowable payment of the CCI credit price that the covered fuel supplier provides to an approved CCI entity, DEQ will generate and distribute one CCI credit rounded down to the nearest whole number. The CCI credit price is the price in Table 3 in OAR 340-271-1300 on the date a payment is made, adjusted annually for inflation using the inflation rate since January 2020 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 price on its website. The formula for the adjustment is as follows:

*CCI Credit Price = Price in Table 3 in OAR 340-271-1300 \* (CPI-U West for January of the calendar year for the price in Table 3 in OAR 340-271-1300 that is currently in effect / CPI-U West for January 2020)*

(B) In a compliance period, DEQ will not generate nor distribute more CCI credits to a covered fuel supplier than half the number of compliance instruments DEQ has distributed to the covered fuel supplier in that same compliance period according to OAR 340-271-0420; 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 credit is a regulatory instrument and does not constitute personal property, a security or any other form of property.

(5) DEQ will track distributed credits.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

### **340-271-0830**

#### **Holding Community Climate Investment Credits**

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:

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

(2) 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.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

### **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 that begins the date it provides the funds and lasts seven years after using 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:**  
**Statutes/Other Implemented:**

**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 nonprofit organization 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); and
  - (b) Complete annual independent financial audits.
- (2) A nonprofit organization that seeks DEQ approval as a community climate investment entity must submit an application to DEQ, on a form approved by DEQ, that includes the following:
- (a) Information about the nonprofit organization, 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 nonprofit organization meets the eligibility criteria in section (1);

(D) A description of the mission of the nonprofit organization and how being a community climate investment 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 community climate investment entity described in OAR 340-271-0930;

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

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

(H) Proof that the IRS has certified the nonprofit organization 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) If known, information about any potential project partners or subcontractors, including as available:

(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) A description of the experience and expertise of key individuals who would be assigned work associated with the requirements of a community climate investment entity described in OAR 340-271-0930; and

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

(c) A description of each of the types of projects that the nonprofit organization will implement and how those projects meet the requirements of OAR 340-271-0950. The description must identify the communities that would benefit from the project(s), including description of the potential locations of communities in which projects may be implemented. The description must also describe any ways the project(s) would benefit communities that are disproportionately burdened by climate change, air contamination, energy costs, or any combination of these;

(d) A description of the outcome(s) the nonprofit organization will track as part of project implementation to demonstrate how projects meet the requirements of OAR 340-271-0950;



(e) A description of the administrative processes and financial controls the nonprofit organizations will use to ensure all community climate investment funds received from any covered fuel supplier are held separately from the nonprofit organization's other funds; and

(f) The following attestation, signed by the nonprofit organization'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. [Nonprofit organization] seeks to become a community climate investment entity and, if approved, will comply with Oregon Administrative Rules chapter 340, division 271.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-0920**

**DEQ Review and Approval of Community Climate Investment Entities**

(1) DEQ will review and may approve applications from nonprofit organizations to be community climate investment entities as provided in 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 criteria in OAR 340-271-0910;

(B) The overall ability of the applicant to successfully implement project(s) described in the application;

(C) The strength of the application under review compared to applications submitted by other nonprofit organizations and submitted by previously approved CCI entities;

(D) Whether the applicant or any proposed project partners or subcontractors have violated any federal or state labor laws in the preceding five years;

(E) Whether the project(s) described in the application meet(s) the requirements of OAR 340-271-0950; and

(F) Whether the project(s) proposed in the application address DEQ priorities for community climate investments by:

(i) Benefitting communities in Oregon that are disproportionately burdened by climate change, air contamination, energy costs, or any combination of these;

(ii) Benefitting multiple communities, including communities in different regions in Oregon;

(iii) Benefitting communities that do not already benefit from a previously approved community climate investment entity's project(s).

(d) DEQ may approve nonprofit organizations as CCI entities that apply and meet DEQ's criteria and based on DEQ's considerations, with preference for nonprofit organizations who propose projects that address DEQ priorities described in paragraph (1)(c)(F). If an applicant proposes multiple projects, DEQ's approval must identify the individual projects that DEQ approves, consistent with the requirements in OAR 340-271-0950, and DEQ may decide to approve fewer than all of the projects proposed.

(e) DEQ will notify the applicant in writing when it has decided to grant or deny approval as a CCI entity.

(f) If DEQ grants approval, DEQ will enter into a written agreement with the CCI entity. The agreement will specify:

(A) The projects from the application that are approved to be funded by CCI funds;

(B) The duration of approval and any requirements to reapply; and

(C) The maximum amount of CCI funds the CCI entity is approved to accept, if applicable.

(2) Suspension or revocation of DEQ approval. DEQ may suspend or revoke its approval of a CCI entity at any time if DEQ determines that the CCI entity is in violation of any applicable provisions of this division or any agreement between the CCI entity and DEQ.

(3) DEQ will maintain a current list of approved CCI entities on DEQ's website.

**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**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, unless accepting the

funds would exceed the maximum approved CCI funding amount allowed in a written agreement between the CCI entity and DEQ;

(b) A CCI entity that accepts CCI funds must provide a receipt to 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.

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

(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).

(4) Annual work plan. The CCI entity must submit to DEQ an annual work plan by January 1 each year and obtain DEQ approval of the annual work plan. The annual work plan 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 estimated total budget for the year for each project or for an example project within each project type. This must separately include the following:

(A) All costs related to project implementation, including but not limited to personnel costs and materials costs; and

(B) Administrative costs related to the project implementation meeting the requirements of this rule; and

(c) An estimate of anticipated total spending of CCI funds for that year.

(5) CCI entity request for changes to approved projects, work plans, or operations.

(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 requirements for approval in OAR 340-271-0910, or if it is in violation of any of the requirements of this rule.

(b) A CCI entity must notify DEQ in writing of any of the following changes not later than 30 days after such change:

(A) Changes to the CCI entity's administrative processes or financial controls that keep CCI funds separate from other funds; or

(B) Staffing changes at the CCI entity related to key individuals assigned work associated with projects it undertakes using CCI funds.

(c) A CCI entity must obtain DEQ approval prior to spending any CCI funds on any project(s) that DEQ has not approved for the entity. The CCI entity must submit a written request to DEQ that includes all of the information required in OAR 340-271-0910(2).

(d) 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 the purpose of 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.

(6) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year related to its activities in the previous calendar year. The annual report must include, for the previous calendar year:

(a) The total CCI funds accepted from all covered fuel suppliers;

(b) The date, amount of CCI funds accepted, and covered fuel supplier for each separate payment received;

(c) A copy of each receipt provided by the CCI entity to a covered fuel supplier;

(e) One or more financial statements that show each payment was deposited into the CCI entity's account designated solely for CCI funds;

(e) A list of each disbursement of CCI funds for DEQ-approved projects;

(f) One or more financial statements that show each disbursement;

(g) Total CCI funds spent on each project;

(h) Total of any of the CCI entity's matching or other funds spent on each project;

(i) Total CCI funds in the CCI entity's account that remain unspent;

(j) Documentation of work completed or progress made on each project described in the work plan and regarding any new projects that were initiated or completed since the most recent work plan was submitted to DEQ;

- (k) A summary of project outcomes achieved;
  - (l) The results of the CCI entity's most recent independent financial audit;
  - (m) A copy of the CCI entity's most recent IRS form 990; and
  - (n) Proof that the community climate investment entity remains exempt in Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3).
- (7) Voluntary withdrawal from DEQ approval. An approved CCI entity may request to voluntarily withdraw its approval by providing a written notice to DEQ requesting such withdrawal.
- (8) For any notification or submission described in sections (4) or (5) that require DEQ approval, DEQ may review and make a determination regarding approval according to the review process and considerations in OAR 340-271-0920.
- (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:**  
**Statutes/Other Implemented:**

**340-271-0950**  
**Community Climate Investment Projects**

DEQ may approve community climate investment projects that are eligible to be funded with CCI funds.

- (1) To be eligible for DEQ approval, projects must:
- (a) Be located in Oregon; and
  - (b) Reduce greenhouse gas emissions.
- (2) Of the projects that meet the eligibility requirements in section (1), DEQ will prioritize approval for the following types of projects:
- (a) Projects that also reduce emissions of other air contaminants that are not greenhouse gases; and
  - (b) Projects that benefit communities in Oregon that are disproportionately burdened by climate change, air contamination, energy costs, or any combination of these.

**Statutory/Other Authority:  
Statutes/Other Implemented:**

**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 community climate investment entities; and
- (c) Review of requests by community climate investment 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. DEQ may solicit applications beginning in 2022 and may solicit additional applications annually or in the event of a vacancy on the committee.

(b) DEQ may seek committee members with 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 gases and climate change.

(c) DEQ may prioritize convening an advisory committee that represents multiple regions across Oregon and multiple areas of expertise, interest, and lived experience.

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

**Statutory/Other Authority:  
Statutes/Other Implemented:**

**340-271-0990**

**Recordkeeping Requirements for Community Climate Investment Entities**

(1) A community climate investment 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 submitted to DEQ by the CCI entity; and
  - (f) All other information and documentation related to CCI funds.
- (2) CCI entities must make records required to be retained in this rule available to DEQ upon request.

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**

**340-271-1000**  
**Program Review**

- (1) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report within five years of the date of the adoption of this division and will submit a subsequent report at least once every five years.
- (2) Each program review report submitted to the EQC will include:
- (a) An evaluation of:
    - (A) Cap trajectory and emission reductions achieved;
    - (B) Program applicability, including the threshold for regulation, types of covered emissions, and types of covered entities;
    - (C) BAER assessments, determinations, and implementation;
    - (D) Proportional compliance instrument distribution methodology and use of the compliance instrument reserve;
    - (E) Compliance with program requirements;
    - (F) Trading and banking of compliance instruments;

(G) Community climate investments, including:

(i) CCI credits issued to covered fuel suppliers;

(ii) Credits used by covered fuel suppliers;

(iii) Estimates of greenhouse gas emissions reduced, sequestered, or both as a result of funded projects;

(iv) Estimates of reduced emissions of other non-greenhouse gas air contaminants as a result of funded projects; and

(v) Other community benefits achieved; and

(b) DEQ’s recommendations regarding:

(A) Potential rule amendments; and

(B) Other potential changes that could improve program outcomes.


**Statutory/Other Authority:**

**Statutes/Other Implemented:**

**340-271-1300**

**Tables**


(1) Table 1. Oregon Climate Protection Program Caps.

 <b>OAR 340-271-1300</b> <b>Table 1</b> <b>Oregon Climate Protection Program Caps</b>	
<b>Calendar year</b>	<b>Cap</b>
2022	
2023	
2024	
2025	
2026	
2027	
2028	




2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
2040	
2041	
2042	
2043	
2044	
2045	
2046	
2047	
2048	
2049	
2050 and each calendar year thereafter	

(2) Table 2. Compliance instrument distribution evaluation periods

 <b>OAR 340-271-1300</b> <b>Table 2</b> <b>Compliance instrument distribution evaluation periods</b>		
<b>Emissions years for evaluation period</b>	<b>Year in which evaluation occurs to determine distribution of</b>	<b>Year for distribution of compliance instruments</b>

	<b>compliance instruments</b>	
2018-2020	2021	2022
2019-2021	2022	2023
2020-2022	2023	2024
Each subsequent three year period	Each subsequent year	Each subsequent year

(3) Table 3. Price per CCI Credit

 <b>OAR 340-271-1300</b> <b>Table 3</b> <b>Price per CCI Credit</b>	
<b>Effective Date</b>	<b>Price in 2020 dollars (to be adjusted according to OAR 340-271-0820(3))</b>
Date of the adoption of this division	\$ 78.00
March 1, 2022	\$ 79.00
March 1, 2023	\$ 80.00
March 1, 2024	\$ 82.00
March 1, 2025	\$ 83.00
March 1, 2026	\$ 84.00
March 1, 2027	\$ 86.00
March 1, 2028	\$ 87.00
March 1, 2029	\$ 88.00
March 1, 2030	\$ 89.00
March 1, 2031	\$ 91.00
March 1, 2032	\$ 92.00
March 1, 2033	\$ 94.00
March 1, 2034	\$ 95.00
March 1, 2035	\$ 96.00
March 1, 2036	\$ 98.00

March 1, 2037	\$ 99.00
March 1, 2038	\$ 100.00
March 1, 2039	\$ 102.00
March 1, 2040	\$ 103.00
March 1, 2041	\$ 104.00
March 1, 2042	\$ 106.00
March 1, 2043	\$ 107.00
March 1, 2044	\$ 108.00
March 1, 2045	\$ 110.00
March 1, 2046	\$ 111.00
March 1, 2047	\$ 112.00
March 1, 2048	\$ 114.00
March 1, 2049	\$ 115.00
March 1, 2050	\$ 116.00

**Statutory/Other Authority:**  
**Statutes/Other Implemented:**