



State of Oregon Department of Environmental Quality

Draft Rules – Division 271

Greenhouse Gas Emissions Program 2021 Rulemaking
Advisory Committee Meeting 5 (draft rules version 1)

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 will improve the overall public welfare of Oregon.

(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 within Oregon are disproportionately affected 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. 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) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements; and

(d) 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) Support investments to reduce emissions in communities disproportionately impacted 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.

- (1) “Air contamination source” has the meaning given the term in ORS 468A.005.
- (2) “Cap” means the total number of compliance instruments generated by DEQ for each calendar year.
- (3) “Carbon dioxide equivalent” or “CO2 equivalent” or “CO2e” means the number of metric tons of CO2 emissions with the same global warming potential as one metric ton of another greenhouse gas.
- (4) “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.
- (5) “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.
- (6) “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one metric ton of carbon dioxide equivalent. Compliance instruments may not be divided into fractions.
- (7) “Compliance obligation” means the quantity of covered emissions from a covered fuel supplier rounded to the nearest metric ton.

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

(9) “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.

(10) “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.

(11) “Covered fuel supplier” means an air contamination source described in either or both OAR 340-271-0110(4) or (5).

(12) “Covered stationary source” means an air contamination source described in OAR 340-271-0110(6).

(13) “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).

Statutory/Other Authority:
Statutes/Other Implemented:

340-271-0030
Acronyms

(1) “CFR” means Code of Federal Regulations.

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

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

(4) “EQC” means Environmental Quality Commission

(5) “EPA” means US Environmental Protection Agency.

(6) “Metric ton of CO₂e” or “MT CO₂e” means metric tons of carbon dioxide equivalent.

Statutory/Other Authority:
Statutes/Other Implemented:

340-271-0100
[Reserved]

[Reserved for an overview of the requirements for covered entities subject to the Climate Protection Program]

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 submitted according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340 division 272.

(2) Emissions must be calculated using global warming potentials specified in 40 CFR part 98, subpart A, Table A-1 Global Warming Potentials, as promulgated by EPA and published in the Federal Register on December 9, 2016.

(3) A covered entity is subject to the requirements of this division for their covered emissions described in this rule. A person remains a covered entity until cessation is met according to OAR 340-271-0130.

(4) A person is a covered fuel supplier if the person is described below in subsection (a) and has covered emissions described in subsection (b) that equal or exceed 200,000 MTCO_{2e}. 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_{2e} 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.

(5) A person is a covered fuel supplier if the person is described in subsection (a) and has covered emissions described in subsection (b).

(a) The person is a local distribution company that either produces natural gas, compressed natural gas, or liquefied natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that would result from the complete combustion or oxidation of the annual quantity of natural gas imported, sold, or distributed for use in this state.

(B) Covered emissions do not include:

- (i) Emissions that are from the combustion of biomass-derived fuels including biomethane;
- (ii) Emissions 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.

(6) A person is a covered stationary source if the person is described in subsection (a) and has covered emissions described in subsection (b) that equal or exceed 25,000 MTCO₂e.

(a) The person that owns or operates a source required to obtain either or both a Title V Operating Permit or an Air Contaminant Discharge Permit.

(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e from emissions that are from processes and emissions that are from combustion of

liquid, 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 CO₂ emissions from solid fuels including, for example and without limitation, tires and municipal solid waste;
- (iii) Emissions that are from the combustion of liquid fuels or propane;
- (iv) Emissions accounted for through the regulation of a covered fuel supplier;
- (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:

340-271-0130

Cessation of Covered Entity Applicability

(1) A person ceases to be a covered fuel supplier if either or both:

- (a) The person's covered emissions are 0 MTCO₂e for six consecutive calendar years; or
- (b) The person is a covered entity according OAR 340-271-0110(4) and their annual covered emissions are less than 200,000 MTCO₂e for six consecutive calendar years, and the person applies 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] will meet the eligibility for cessation as a covered fuel supplier according to Oregon Administrative Rules chapter 240, division 271.

(2) After the covered fuel supplier complies with all remaining requirements in this division, DEQ will notify the designated representative of the covered fuel supplier in writing when cessation is met and at that time the person is no longer considered a covered fuel supplier. However, the person must continue to comply with any recordkeeping requirements that apply from when the person was considered a covered fuel supplier.

(3) Any person identified in OAR 340-271-0110 that has ceased being a covered fuel supplier 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:**

**340-271-0200s and -0300s
[Reserved]**

[Reserved for provisions relating to covered stationary sources]

**340-271-0410
Generation of Compliance Instruments**

(1) Each year, DEQ will generate the number of compliance instruments equal to the cap for a calendar year identified in Table 2 in OAR 340-271-1300.

(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
[Reserved]

[Reserved for compliance instrument distribution methodology]

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.

Statutory/Other Authority:
Statutes/Other Implemented:

340-271-0440
[Reserved]

[Reserved for provisions relating to compliance instruments held by a person that has ceased to be a covered fuel supplier]

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 for each calendar year within the compliance period for which the covered fuel supplier had a compliance obligation.

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

(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 the allowable percentage listed in Table 4 in OAR 340-271-1300;

(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 CO₂e for the compliance period and listed separately for each calendar year in the compliance period;

(E) The total number of compliance instruments the covered fuel supplier is submitting to DEQ to demonstrate compliance;

(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) DEQ may extend deadlines or effective dates as DEQ deems necessary and will issue notice of any extensions.

(5) DEQ will track 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 relating to determination of compliance obligations, 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.

(2) A person must retain the following records necessary for supporting demonstration of compliance, 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 relating 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) 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.

(b) 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 request to trade 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 the form is incomplete, DEQ will not track the requested trade unless and until the applicant provides the additional information requested by DEQ.

Statutory/Other Authority:
Statutes/Other Implemented:

340-271-0610

Notification to DEQ of Compliance Instrument Trades

(1) When covered fuel suppliers trade one or more compliance instruments, designated representatives of both the covered fuel supplier transferring the compliance instrument and the covered fuel supplier receiving 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 and submit the form 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 of the trade or equivalent value (in US dollars), excluding any fees. If the covered fuel suppliers cannot calculate a dollar value of the transaction, a qualitative description of the transaction's valuation must be included.

(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 must retain the following records relating 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 relating 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 relating to the trade; and

(e) A copy of all other data, reports, or other information relating to the trade.

(2) A person who acquires one or more compliance instruments in a trade must retain the following records relating 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 relating 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 relating to the trade; and
 - (e) A copy of all other data, reports, or other information relating 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:

340-271-0800s and -0900s
[Reserved]

[Reserved for provisions relating to community climate investments]

340-271-1300
[Reserved] Tables

[Reserved for tables, e.g. as mentioned above: Table 2 with annual caps; Table 4 with allowable percent usage of CCI credits toward a compliance obligation]