# Proposed Updates to Draft Rules

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## Introduction

The Climate Protection Program will limit and reduce greenhouse gas emissions from some of the most significant sources in Oregon. The program aims to:

- Achieve significant emissions reductions,
- Promote benefits and alleviate burdens for environmental justice and impacted communities, and
- Contain costs to households and businesses.

This document describes DEQ's current proposals for the Climate Protection Program. The changes described are relative to version 2 of the draft rules posted on DEQ's rulemaking website and discussed at the sixth rulemaking advisory committee (RAC) meeting on June 17, 2021.

DEQ will discuss these updates at the seventh RAC meeting on July 8, 2021 and plans to include these updates as part of public notice of the proposed rulemaking, currently planned for August 2021. DEQ received extensive comments on the draft rule at both the fifth and sixth rulemaking advisory committee meetings and in written comments. These proposed updates are informed by these comments.

DEQ is planning to propose rules in a new division 271 for the Climate Protection Program in chapter 340 of the Oregon Administrative Rules. Rule numbers referenced in this document are those used in version 2 of the draft rules, but are subject to change.

## Threshold for non-natural gas fuel suppliers

In version 2 of the draft rules, DEQ proposed that non-natural gas fuel suppliers with covered emissions greater than or equal to 200,000 metric tons of carbon dioxide equivalent become covered fuel suppliers in the program. Informed by many comments stating that the threshold for program inclusion was too high, and a policy benefit of covering more emissions and fossil fuels, DEQ is now proposing to use different thresholds that decline over time from 200,000 MT CO2e to 25,000 MT CO2e, as described in Table 1.

Key proposed updates to the draft rules include:

- The applicability rule 0110 will be updated to refer to a table that includes the thresholds each year.
- The applicability rule 0110 in version 2 stated that a non-natural gas fuel supplier is covered if its annual covered emissions equal or exceed the 200,000 MT CO2e threshold in any year since 2018. Now, as the threshold declines, DEQ proposes to rely on updated data to determine who is a covered fuel supplier for each upcoming compliance period described in Table 1 below. Each time the threshold declines, a non-natural gas fuel supplier is covered if its annual covered emissions equal or exceed the new threshold in any of the four preceding calendar years. For example, the 100,000 MT CO2e threshold begins with 2025, therefore non-natural gas fuel suppliers with covered emissions that equal or exceed 100,000 MT CO2e in 2021 or any year thereafter becomes subject to the program requirements beginning with 2025.

- The cessation of applicability rule 0130 in version 2 stated that a covered fuel supplier may exit the program if its covered emissions are below the 200,000 MT CO2e threshold for six consecutive years and it submits an application for cessation to DEQ. Since the threshold is now proposed to decline over time to 25,000 MT CO2e, DEQ is proposing that the covered emissions must now be below a 25,000 MT CO2e threshold for six consecutive years.

**Table 1. Declining thresholds for non-natural gas fuel supplier applicability**

| Calendar year | Threshold |
|---|---|
| 2022 through 2024 | 200,000 MT CO2e |
| 2025 through 2027 | 100,000 MT CO2e |
| 2028 through 2030 | 50,000 MT CO2e |
| 2031 and each calendar year thereafter | 25,000 MT CO2e |

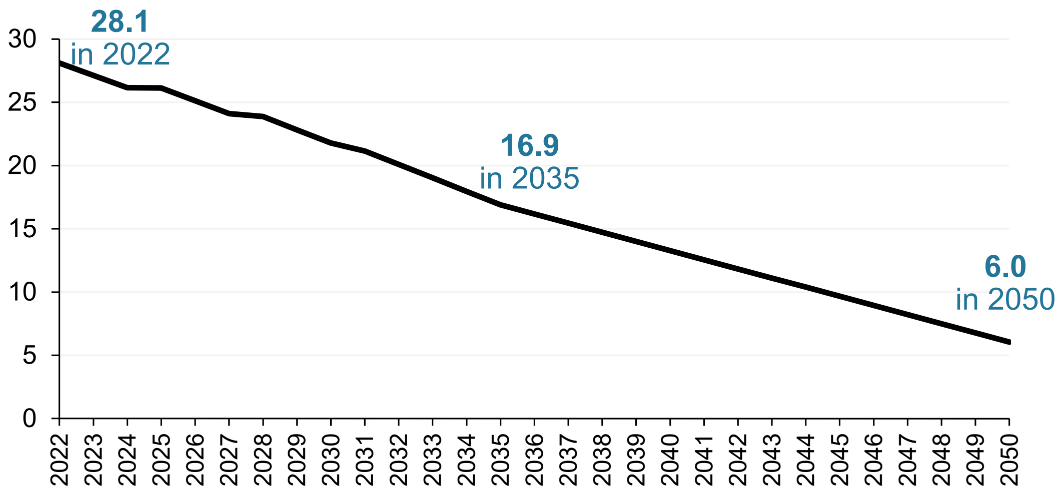
## Emissions caps

DEQ has described its leaning for the program emissions caps to decline by 45 percent from the base cap by 2035 and by 80 percent by 2050. DEQ received several comments that supported these proposed targets. The declining thresholds for program inclusion described above now means that the program scope will include more covered fuel suppliers and covered emissions over time. DEQ proposes to adjust the caps accordingly.

Key proposed updates to the draft rules include:

- The proposed base cap for 2022 of 28.1 million MT CO2e, based on the average 2017-2019 covered emissions for natural gas utilities and non-natural gas fuel suppliers at or above the 200,000 MT threshold, remains unchanged.
- DEQ proposes that the cap should increase in years where the threshold declines (2025, 2028, 2031), to account for the greater scope of emissions within the program beginning that year. The increases are based on average 2017-2019 emissions and slight annual emission reductions prior to the effective date of each new threshold.
- The proposed 2050 target is still an 80 percent reduction, although the target is now based on average 2017-2019 covered emissions for natural gas utilities and for non-natural gas fuel suppliers at or above the 25,000 MT CO2e threshold. The proposed 2050 cap is now 6 million MT CO2e. This cap is a slight increase from the 5.6 million MT CO2e cap discussed at the sixth RAC meeting when DEQ suggested using a 200,000 MT CO2e threshold for non-natural gas fuel suppliers.
- The proposed interim target for 2035 is 16.9 million MT CO2e. This would represent a 44 percent reduction from 2022 if the 2022 base cap included a 25,000 MT CO2e threshold. This is slightly less than the 45 percent interim target DEQ previously proposed due to the schedule for the declining threshold.

**Figure 1. Proposed cap trajectory (millions)**




## Compliance instrument reserve

In version 2 of the draft rules, DEQ proposed to create a compliance instrument reserve to distribute compliance instruments to new entrants to the program. The reserve is to account for these new entrants that may not have sufficient data to receive a proportional distribution of compliance instruments or that become covered after DEQ's distribution occurs. In version 2, the size of the compliance instrument reserve was proposed to be 1 million compliance instruments, with the balance rolling over from year to year.

Informed by comments that the initial reserve may be unnecessarily large, DEQ proposes to decrease the initial reserve. DEQ also expects that with the declining thresholds for inclusion described above, over time a new entrant in the program will have lower covered emissions compared to new entrants in previous years when thresholds were higher. DEQ expects to distribute fewer compliance instruments from the reserve as the cap and thresholds decline. Therefore, DEQ is also proposing to decrease the reserve size over time. Any balance in the reserve would still roll over from year to year, and additional compliance instruments would only be held in the reserve as necessary to maintain the reserve size described in Table 2.

With the decreasing reserve size, DEQ also proposes that compliance instruments could be distributed or retired from the reserve when the reserve is larger than the specified size for that year and exceeds what DEQ expects is necessary to account for new entrants.

Key proposed updates to the draft rules include:

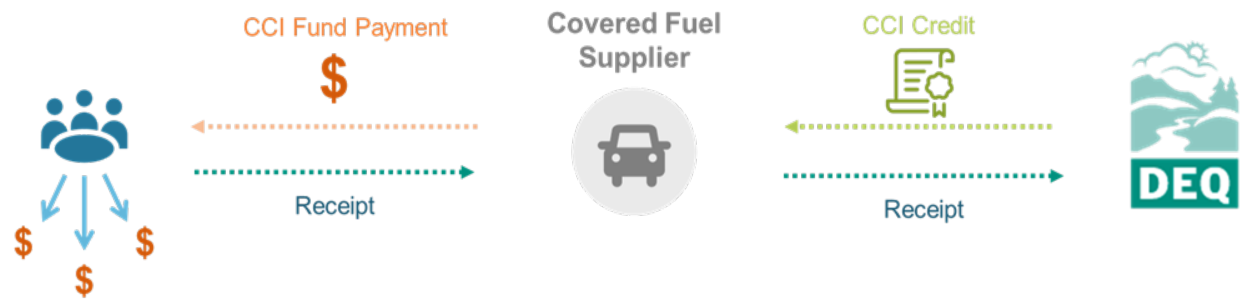
- The reserve size for each year will be set in a table in the rules.
- DEQ proposes a reserve size of 400,000 compliance instruments at program start and 800,000 the following year. This builds the reserve over the first two years of program implementation. The reserve will remain at 800,000 for each year the threshold is 50,000 MT $CO_2e$ or higher.
- DEQ proposes to reduce the reserve size to 500,000 compliance instruments when the threshold declines to 25,000 MT $CO_2e$ in 2031. As program caps continue to decline, the reserve size further decreases to 250,000 MT $CO_2e$ ten years later.
- DEQ may retire or distribute compliance instruments from the reserve when the reserve size exceeds the size specified in the rules.

**Table 2. Compliance instrument reserve size**

| Calendar year | Reserve size |
|---|---|
| 2022 | 400,000 compliance instruments |
| 2023 through 2030 | 800,000 compliance instruments |
| 2031 through 2040 | 500,000 compliance instruments |
| 2041 and each calendar year thereafter | 250,000 compliance instruments |

## Community climate investments

Program rules allow covered fuel suppliers to contribute funds to a DEQ-approved CCI entity to earn CCI credits, which the covered fuel supplier could then use to demonstrate compliance.




DEQ received multiple comments offering suggestions for how community climate investments (CCIs) should be structured and for further clarification on program priorities. Based on these comments, DEQ proposes to further clarify how this aspect of the program would work and to emphasize program priorities.

Key proposed updates to the draft rules include:

- DEQ will clarify which communities are disproportionately burdened by climate change, air contamination, energy costs, or any combination of these include communities. These communities are disproportionately Black, Indigenous, and communities of color, as well as low-income and rural communities.
- Updates to the CCI entity application rule 0910 will state that:
    - A CCI entity must be a 501(c)(3) nonprofit organization. However it may partner with or subcontract with other organizations that are not 501(c)(3) organizations; examples could include for-profit businesses or tribal governments. The project partners or subcontractors may receive funds from the CCI entity to use to implement projects.
    - A covered entity may not be a project partner or subcontractor to a CCI entity and may not receive CCI funds.
    - A CCI entity may implement projects itself or in partnership with others, such as through subcontracting. DEQ will accept applications for both approaches.
    - A nonprofit organization applying for approval as a CCI entity must describe any history implementing or supporting projects similar to those proposed in the

application or a history serving communities similar to those described in the application.
  - An applicant must propose a method to calculate and track greenhouse gas emissions reductions and other air contaminant emissions reductions from projects implemented with CCI funds. The calculation may use estimation.
- The CCI entity requirements rule 0930 will require reporting of the greenhouse gas and any other air contaminant emissions reductions achieved by projects implemented with CCI funds.
- The CCI project rule 0950 will clarify that DEQ's priorities for CCI projects are to achieve significant emissions reductions, reduce other air contaminant emissions reductions, and benefit communities that are disproportionately burdened by climate change, air contamination, and energy costs. In version 2 of the draft rules, DEQ required that all projects reduce greenhouse gas emissions, but did not explicitly prioritize projects with greater greenhouse gas emission reductions.
- The equity advisory committee rule 0960 will clarify that DEQ will prioritize convening a committee that represents multiple regions of Oregon and multiple areas of expertise, interest, and lived experience.
- The program review rule 1000 will set a DEQ reporting requirement to the EQC at least once every two years on the aspects of CCIs, such as emissions reductions achieved, total CCI credits distributed and total CCI credits used for compliance. DEQ will use this information on total emissions and total CCIs to assess the emission reductions achieved for the average CCI credit.

## Best Available Emissions Reduction

DEQ received multiple comments offering suggestions for best available emissions reductions assessments for covered stationary sources and for further clarifications on how DEQ would make best available emissions reduction determinations.

Key proposed updates to the draft rules include:

- The best available emissions reduction assessment rule 0310 will include the following clarifications and updates:
  - When DEQ requests a BAER assessment, the assessment analyzes strategies for reducing covered emissions for that source and not emissions covered under the cap. For example, natural gas combustion emissions regulated at the utility would not be included in the assessment.
  - While sources will continue to provide information on identification of all available fuels, processes, equipment, technology systems, actions, and other methods for reducing covered emissions, stationary sources will not be asked to rank strategies based on their preferences.
  - While sources can provide information on limitations to implement emission reduction strategies assessments, stationary sources are not asked to identify which strategies are infeasible. DEQ will determine feasibility as part of any BAER determination.
  - DEQ may request additional information from the source in order to make the BAER determination. DEQ will provided a deadline for providing this information or make its determination with available information provided by the source or any other information that DEQ may have.

- The best available emissions reduction determination rule 320 will include the following clarifications and updates
    - In making a BAER determination, DEQ will consider cost effectiveness, achievability, commercial availability, technical feasibility and impacts on the type or quality of good produced.
    - DEQ may consider any information it deems relevant to its determination, including the items listed in paragraphs (2)(a) through (f). These changes help clarify that DEQ is not required to make its determination based on any or all of the listed items, but may consider any or all of these items in making a determination.

## Alternative formats

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