IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON BUSINESS & INDUSTRY; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC.; ASSOCIATED OREGON LOGGERS, INC.; ALLIANCE OF WESTERN ENERGY CONSUMERS; ASSOCIATION OF WESTERN PULP & PAPER WORKERS; AVISTA CORPORATION; BLUE STAR GAS – SALEM CO.; CASCADE NATURAL GAS CORPORATION; FRERES ENGINEERED WOOD; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701; MCMINNVILLE GAS COMPANY; MET-TEK INC.; NORTHWEST NATURAL GAS COMPANY; NORTHWEST PULP & PAPER ASSOCIATION; OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 11; OREGON CONCRETE & AGGREGATE PRODUCERS ASSOCIATION; OREGON FARM BUREAU; OREGON FOREST INDUSTRIES COUNCIL; OREGON HEARTH, PATIO & BARBECUE ASSOCIATION; OREGON INDUCTION + THERMAL; PACIFIC PROPANE GAS ASSOCIATION; STACK METALLURGICAL GROUP; THREE-M MINT, INC.; TREE TOP, INC.; TUBE FORGINGS OF AMERICA, INC.; UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY, LOCAL 290; UNITED STATES BAKERY; WOODBURN NURSERY & AZALEAS; ZUBER & SONS LOGGING, LLC;

Petitioners,

v.

OREGON ENVIRONMENTAL QUALITY COMMISSION,

Respondent.

Court of Appeals No. _____

PETITION FOR JUDICIAL REVIEW

1. The Oregon Climate Protection Program (the "Rule," attached as Exhibit 1) imposes steeply declining caps on critical fuel supplies such as natural gas, propane, gasoline, and diesel. The Rule's massive compliance costs directly translate into billions of dollars in higher energy costs for Oregonians. Those costs are already being felt through increased utility bills, higher fuel prices, and reduced business operations in the fragile economies of communities across the State, and the fallout will only get worse as the caps ratchet down. Petitioners—a broad coalition of labor, businesses, trade associations, and utilities—seek to stop this unauthorized and unaffordable regulatory program before it does further irreversible damage to the State's economy and the financial well-being of millions of Oregonians.

2. Accordingly, pursuant to ORS 183.400, the Petitioners in the above case caption seek judicial review of the Rule that was adopted by Respondent Oregon Environmental Quality Commission (the "EQC") on November 21, 2024, and filed with the Oregon Secretary of State on November 22, 2024. The Rule is a revised iteration of the program the EQC previously adopted in 2021 but that was invalidated by this Court in *Northwest Natural Gas Company v. Environmental Quality Commission*, 329 Or. App. 648 (2023).

3. The parties to this review are:

Petitioners[1]

Alliance of Western Energy Consumers
3519 NE 15th Avenue, #249
Portland, OR 97212

Associated Oregon Loggers, Inc.
2015 Madrona Avenue SE
Salem, OR 97309

Association of Western Pulp & Paper Workers
315 W Mill Plain Blvd., Suite 200
Vancouver, WA 98660

Avista Corporation
1411 E. Mission Avenue
P.O. Box 3727
Spokane, WA 99220

Blue Star Gas – Salem Co.
3837 Portland Road NE
Salem, OR 97301

Cascade Natural Gas Corporation
8113 W. Grandridge Blvd.
Kennewick, WA 99336

Freres Engineered Wood
141 14th Street
Lyons, OR 97358

International Union of Operating Engineers, Local 701
555 E 1st Street
Gladstone, OR 97027

[1] A more detailed description of each Petitioner is included within Declarations attached to the "Other Motion – Petitioners' Motion to Expedite" filed contemporaneously with this Petition.

McMinnville Gas Company
1384 OR-99W
McMinnville, OR 97128

Met-Tek Inc.
15651 SE 125th Court
Clackamas, OR 97015

National Federation of Independent Business, Inc.
53 Century Boulevard, Suite 300
Nashville, TN 37214

Northwest Natural Gas Company
250 SW Taylor Street
Portland, OR 97209

Northwest Pulp & Paper Association
300 Deschutes Way SW, Suite 201
Tumwater, WA 98501

Office and Professional Employees International Union, Local 11
3815 Columbia Street
Vancouver, WA 98660

Oregon Business & Industry
1149 Court Street NE
Salem, OR 97301

Oregon Concrete & Aggregate Producers Association
737 13th Street SE
Salem, OR 97301

Oregon Farm Bureau
1320 Capitol Street NE
Salem, OR 97301

Oregon Forest Industries Council
1149 Court Street NE
Salem, OR 97301

Oregon Hearth, Patio & Barbeque Association
3340 Commercial Street NE, Suite 210
Salem, OR 97302

Oregon Induction + Thermal
911 NW Eastwind Drive
Troutdale, OR 97060

Pacific Propane Gas Association
629 W. Hillsdale Street
Lansing, MI 48933

Stack Metallurgical Group
5938 N Basin Avenue
Portland OR 97217

Three-M Mint, Inc.
24731 Hwy 39
Merrill, OR 97633

Tree Top, Inc.
220 E. 2nd Avenue
Selah, WA 98942

Tube Forgings of America, Inc.
5200 NW Front Avenue
Portland, OR 97210

United Association of Journeymen and Apprentices of the
Plumbing and Pipe Fitting Industry, Local 290
20210 SW Teton Avenue
Tualatin OR 97062

United States Bakery
315 NE 10th Avenue
Portland, OR 97232

Woodburn Nursery & Azaleas
13009 McKee School Road NE
Woodburn, OR 97071

Zuber & Sons Logging, LLC
27794A Hunter Creek Rd.
Gold Beach, OR 97444

Respondent

Oregon Environmental Quality Commission
Department of Environmental Quality
4026 Fairview Industrial Drive S.E.
Salem, OR 97302

4. The Petitioners are jointly represented by:

BAKER BOTTS L.L.P.

Kent Mayo (DC Bar No. 452842)
Motion to admit out-of-state counsel to be filed.
Scott Novak (DC Bar No. 1736274)
Motion to admit out-of-state counsel to be filed.
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SNELL & WILMER L.L.P.

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The Respondent is represented by:

Dan Rayfield, OSB No. 064790
Attorney General
Oregon Department of Justice
400 Justice Building
1162 Court St. N.E.
Salem, OR 97301-4096
503-378-6002
Attorney.General@doj.oregon.gov

There are no self-represented parties in this matter.

5. The Petitioners do not stipulate that the agency record may be shortened.

6. The Petitioners are entitled to their attorneys' fees and costs pursuant to ORS 183.497.

DATED: April 16, 2026

Respectfully submitted,

BAKER BOTTS L.L.P.

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COUNSEL FOR PETITIONERS

EXHIBIT 1

OFFICE OF THE SECRETARY OF STATE
LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

DEQ 18-2024

CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED
11/22/2024 9:09 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Climate Protection Program 2024

EFFECTIVE DATE: 11/22/2024

AGENCY APPROVED DATE: 11/21/2024

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Rules Coordinator

RULES:
340-012-0054, 340-012-0135, 340-012-0140, 340-215-0040, 340-215-0130, 340-216-8010, 340-253-0600, 340-253-1020, 340-272-0120, 340-273-0010, 340-273-0020, 340-273-0030, 340-273-0090, 340-273-0100, 340-273-0110, 340-273-0120, 340-273-0130, 340-273-0150, 340-273-0400, 340-273-0410, 340-273-0420, 340-273-0430, 340-273-0440, 340-273-0450, 340-273-0490, 340-273-0500, 340-273-0510, 340-273-0590, 340-273-0810, 340-273-0820, 340-273-0830, 340-273-0890, 340-273-0900, 340-273-0910, 340-273-0920, 340-273-0930, 340-273-0950, 340-273-0960, 340-273-0990, 340-273-8100, 340-273-8110, 340-273-8120, 340-273-9000

AMEND: 340-012-0054

RULE TITLE: Air Quality Classification of Violations

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Establishes classifications of violations of division 273 requirements, as part of adopting a schedule of civil penalties.

RULE TEXT:
(1) Class I:
(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
(b) Constructing a new source, as defined in OAR 340-245-0020, without first obtaining a required Air Contaminant Discharge Permit that includes permit conditions required under OAR 340-245-0005 through 340-245-8050 or without complying with Cleaner Air Oregon rules under OAR 340-245-0005 through 340-245-8050;
(c) Failing to conduct a source risk assessment, as required under OAR 340-245-0050;
(d) Modifying a source in such a way as to require a permit modification under OAR 340-245-0005 through 340-245-8050, that would increase risk above permitted levels under OAR 340-245-0005 through 340-245-8050 without first obtaining such approval from DEQ;
(e) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;
(f) Operating an existing source, as defined in OAR 340-245-0020, after a submittal deadline under OAR 340-245-0030 without having submitted a complete application for a Toxic Air Contaminant Permit Addendum required under OAR

340-245-0005 through 340-245-8050;
(g) Exceeding a Plant Site Emission Limit (PSEL);
(h) Exceeding a risk limit, including a Source Risk Limit, applicable to a source under OAR 340-245-0100;
(i) Failing to install control equipment or meet emission limits, operating limits, work practice requirements, or performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
(j) Exceeding a hazardous air pollutant emission limitation;
(k) Failing to comply with an Emergency Action Plan;
(l) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established under New Source Review/Prevention of Significant Deterioration (NSR/PSD);
(m) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;
(n) Exceeding an emission limit or violating an operational limit, process limit, or work practice requirement that was established to limit risk or emissions to avoid exceeding an applicable Risk Action Level or other requirement under OAR 340-245-0005 through 340-245-8050;
(o) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;
(p) Failing to perform testing or monitoring, required by a permit, permit attachment, rule or order, that results in failure to show compliance with a Plant Site Emission Limit or with an emission limitation or a performance standard established under New Source Review/Prevention of Significant Deterioration, National Emission Standards for Hazardous Air Pollutants, New Source Performance Standards, Reasonably Available Control Technology, Best Available Control Technology, Maximum Achievable Control Technology, Typically Achievable Control Technology, Lowest Achievable Emission Rate, Toxics Best Available Control Technology, Toxics Lowest Achievable Emission Rate, or adopted under section 111(d) of the Federal Clean Air Act;
(q) Causing emissions that are a hazard to public safety;
(r) Violating a work practice requirement for asbestos abatement projects;
(s) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;
(t) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;
(u) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
(v) Failing to hire a licensed contractor to conduct an asbestos abatement project;
(w) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);
(x) Failing to install certified vapor recovery equipment;
(y) Delivering for sale a noncompliant vehicle by a vehicle manufacturer in violation of Oregon Low Emission and Zero Emission Vehicle rules set forth in OAR 340 division 257;
(z) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;
(aa) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements, or to meet credit retirement and/or deficit requirements, under OAR 340 division 257;
(bb) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257;
(cc) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;
(dd) Violating any of the clean fuel standards set forth in OAR 340-253-0100(6) and in Tables 1 and 2 of OAR 340-253-8010;
(ee) Committing any action related to a credit transfer that is prohibited in OAR 340-253-1005(8);
(ff) Inaccurate reporting that causes illegitimate credits to be generated in the Oregon Clean Fuels Program, OAR chapter 340, division 253, or that understates a registered party's true compliance obligation in deficits under such

program;
(gg) Misstating material information or providing false information when submitting an application for a carbon intensity score under OAR 340-253-0450, OAR 340-253-0460, or OAR 340-253-0470, or when submitting an application for advance credits under OAR 340-253-1100;
(hh) Failing to timely submit a complete and accurate annual compliance report under OAR 340-253-0650;
(ii) Failing to timely submit a complete and accurate emissions data report under OAR 340-215-0044 and OAR 340-215-0046;
(jj) Submitting a verification statement to DEQ prepared by a person not approved by DEQ under OAR 340-272-0220 to perform verification services;
(kk) Failing to timely submit a verification statement that meets the verification requirements under OAR 340-272-0100 and OAR 340-272-0495;
(ll) Failing to submit a revised application or report to DEQ according to OAR 340-272-0435;
(mm) Failing to complete re-verification according to OAR 340-272-0350(2);
(nn) Failing to timely submit a Methane Generation Rate Report or Instantaneous Surface Monitoring Report according to OAR 340-239-0100;
(oo) Failing to timely submit a Design Plan or Amended Design Plan in accordance with OAR 340-239-0110(1);
(pp) Failing to timely install and operate a landfill gas collection and control system according to OAR 340-239-0110(1);
(qq) Failing to operate a landfill gas collection and control system or conduct performance testing of a landfill gas control device according to the requirements in OAR 340-239-0110(2);
(rr) Failing to conduct landfill wellhead sampling under OAR 340-239-0110(3);
(ss) Failing to comply with a landfill compliance standard in OAR 340-239-0200;
(tt) Failing to conduct monitoring or remonitoring in accordance with OAR 340-239-0600 that results in a failure to demonstrate compliance with a landfill compliance standard in OAR 340-239-0200 or the 200 ppmv threshold in OAR 340-239-0100(6)(b) or OAR 340-239-0400(2)(c);
(uu) Failure to take corrective actions in accordance with OAR 340-239-0600(1);
(vv) Failing to comply with a landfill gas collection and control system permanent shutdown and removal requirement in OAR 340-239-0400(1);
(ww) Delivering for sale a new noncompliant on highway heavy duty engine, truck or trailer in violation of rules set forth under OAR 340 division 261;
(xx) Failing to notify DEQ of changes in ownership or operational control or changes to related entities under OAR 340-273-0120;
(yy) Owning or operating a covered entity, identified in OAR 340-273-0110, after a submittal deadline under OAR 340-273-0150(1)(a) or OAR 340-273-0150(2)(a) without having submitted a complete application for a Climate Protection Program permit required under OAR 340-273-0150;

(zz) Failing to comply with a condition in a Climate Protection Program permit, issued according to OAR 340-273-0150;
(aaa) Failing to demonstrate compliance according to OAR 340-273-0450;
(bbb) Failing to comply with the requirements for trading of compliance instruments under OAR 340-273-0500 or 340-273-0510;
(ccc) Submitting false or inaccurate information on any application or submittal required under OAR chapter 340, division 273;
(ddd) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4); or
(eee) Failing by a fuel producer to inform DEQ if its operational carbon intensity exceeds its certified carbon intensity as described in OAR 340-253-0450(9)(e)(D) when credits generated from those certified carbon intensity values generated illegitimate credits as described in OAR 340-253-1005(7). .
(2) Class II:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP), ACDP attachment, or registration without first obtaining such permit or registration, unless otherwise classified;
(b) Violating the terms or conditions of a permit, permit attachment or license, unless otherwise classified;
(c) Modifying a source in such a way as to require a permit or permit attachment modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;
(d) Exceeding an opacity limit, unless otherwise classified;
(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;
(f) Failing to timely submit a complete ACDP annual report or permit attachment annual report;
(g) Failing to timely submit a certification, report, or plan as required by rule, permit or permit attachment, unless otherwise classified;
(h) Failing to timely submit a complete permit application, ACDP attachment application, or permit renewal application;
(i) Failing to submit a timely and complete toxic air contaminant emissions inventory as required under OAR 340-245-0005 through 340-245-8050;
(j) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;
(k) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).
(l) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;
(m) Failing to provide timely, accurate or complete notification of an asbestos abatement project;
(n) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;
(o) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620;
(p) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257;
(q) Failing to receive Green-e certification for Renewable Energy Certificates used to generate incremental credits when required by OAR 340-253-0470;
(r) Failing to register as an aggregator or submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c);
(s) Failing to keep complete and accurate records under OAR 340-253-0600;
(t) Failing to ensure that a registered party has the exclusive right to the environmental attributes that it has claimed for biomethane, biogas, or renewable electricity either directly as a fuel or indirectly as a feedstock under OAR chapter 340, division 253 by either the registered party, the fuel producer, and/or fuel pathway holder;
(u) Failing to timely submit a complete and accurate quarterly report under OAR 340-253-0630;
(v) Violating any requirement under OAR chapter 340, division 272, unless otherwise classified;
(w) Violating any requirement under OAR chapter 340, division 239, unless otherwise classified;
(x) Failing to comply with the reporting notification or warranty requirements for new engines, trucks, and trailers set forth in OAR chapter 340, division 261;
(y) Violating any requirement under the Climate Protection Program, OAR chapter 340, division 273, unless otherwise classified;
(z) Failing to notify DEQ of a change of ownership or control of a registered party under OAR chapter 340, division 253; or
(3) Class III:
(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
(c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;
(d) Failing to revise a notification of an asbestos abatement project, when necessary, unless otherwise classified;
(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project;
(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR Chapter 340, division 257;
(g) Making changes to a submitted quarterly or annual report under OAR Chapter 340, division 253 without DEQ approval under OAR 340-253-0650(4); or
(h) Failing to upload transactions to a quarterly report by the 45-day deadline under OAR 340-253-0630.
[Note: Tables and Publications referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.045

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025

AMEND: 340-012-0135

RULE TITLE: Selected Magnitude Categories

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Determines the magnitudes of violations of division 273 requirements, as part of adopting a schedule of civil penalties.

RULE TEXT:
(1) Magnitudes for selected Air Quality violations will be determined as follows:
(a) Opacity limit violations:
(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;
(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or
(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.
(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.
(c) Exceeding an emission limit established under New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.
(d) Exceeding an emission limit established under federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.
(e) Exceeding a cancer or noncancer risk limit that is equivalent to a Risk Action Level or a Source Risk Limit if the limit is a Risk Action Level established under OAR 340-245-0005 through 340-245-8050: Major, otherwise apply OAR 340-012-0130.
(f) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection will be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020.
(A) Major:
(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or
(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.
(B) Moderate:
(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or
(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.
(C) Minor:
(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or
(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.
(g) Violations of Emergency Action Plans: Major — Major magnitude in all cases.
(h) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.
(i) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;
(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or
(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.
(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.
(j) Open burning violations:
(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;
(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or
(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.
(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:
(i) The burning took place in an open burning control area;
(ii) The burning took place in an area where open burning is prohibited;
(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or
(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.
(k) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:
(A) Major — Exceeding the limit by more than 10 percent; or
(B) Moderate — Exceeding the limit by 10 percent or less.
(l) Oregon Clean Fuels Program violations:
(A) Violating the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of OAR 340-253-8010: Major
(B) Failing to register under OAR 340-253-0100(1) and (4): Major;
(C) Failing to timely submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340, division 253: Major;
(D) Generating an illegitimate credit under OAR chapter 340, division 253: Major;
(E) Committing any action related to a credit transfer that is prohibited under OAR 340-253-1005(8): Major.
(m) Failing to timely submit a complete and accurate emissions data report under the Oregon Greenhouse Gas Reporting Program, OAR chapter 340, division 215, where the untimely, incomplete or inaccurate reporting impacts applicability, distribution of compliance instruments, or any compliance obligation under the Climate Protection Program, OAR chapter 340, division 273: Major.
(n) Oregon Climate Protection Program violations:
(A) Failing to demonstrate compliance according to OAR 340-273-0450: Major.
(B) Failing to comply with a condition in a Climate Protection Program permit issued according to OAR 340-273-0150: Major.
(C) Failing to obtain a permit issued under OAR 340-273-0150, for a covered entity, as identified in OAR 340-273-0110: Major.

(2) Magnitudes for selected Water Quality violations will be determined as follows:
(a) Violating wastewater discharge permit effluent limitations:
(A) Major:
(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: D = ((QR /4) + QI)/ QI, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;
(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or
(iii) The resulting water quality from the spill or discharge was as follows:
(I) For discharges of toxic pollutants: CS/D was more than CAcute, where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CAcute is the concentration for acute toxicity (as defined by the applicable water quality standard);
(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or
(III) For BOD5 discharges: (BOD5)/D is more than 10, where BOD5 is the concentration of the five-day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).
(B) Moderate:
(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: D = ((QR /4)+ QI)/ QI, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or
(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.
(C) Minor:
(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: D = ((QR/4) + QI)/ QI, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or
(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.
(b) Violating numeric water quality standards:
(A) Major:
(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;
(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;
(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;
(iv) Increased or decreased pH by one or more pH units from the standard; or
(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.
(B) Moderate:
(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;
(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;
(iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;
(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or
(v) Increased turbidity by more than 20 but less than 50 NTU over background.
(C) Minor:

(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;
(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;
(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;
(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or
(v) Increased turbidity by 20 NTU or less over background.
(c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:
(A) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;
(B) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;
(C) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or
(D) Resulted in a documented fish or wildlife kill.
(3) Magnitudes for selected Solid Waste violations will be determined as follows:
(a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:
(A) Major — The volume of material disposed of exceeds 400 cubic yards;
(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or
(C) Minor — The volume of materials disposed of is less than 40 cubic yards.
(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.
(b) Failing to accurately report the amount of solid waste disposed:
(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;
(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or
(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.
(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:
(a) Failure to make a hazardous waste determination;
(A) Major — Failure to make the determination on five or more waste streams;
(B) Moderate — Failure to make the determination on three or four waste streams; or
(C) Minor — Failure to make the determination on one or two waste streams.
(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):
(A) Major:
(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or
(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.
(B) Moderate:
(i) Treatment, storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or
(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.
(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):
(A) Major:
(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or
(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.
(B) Moderate:
(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000

gallons or 6,000 pounds of hazardous waste; or
(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.
(C) Minor: Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.
(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:
(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):
(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;
(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or
(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.
(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).
(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;
(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or
(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.
[NOTE: Tables & Publications referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 468.065, 468A.045

STATUTES/OTHER IMPLEMENTED: ORS 468.090 - 468.140, 468A.060

AMEND: 340-012-0140

RULE TITLE: Determination of Base Penalty

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Establishes the base penalty amounts for violations of division 273 requirements, as part of adopting a schedule of civil penalties.

RULE TEXT:

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) $12,000 Penalty Matrix:

(a) The $12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.
(M) Any violation of a hazardous waste statute, rule, permit or related order by:
(i) A person that is a large quantity generator or hazardous waste transporter.
(ii) A person that has or should have a treatment, storage or disposal facility permit.
(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.
(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.
(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.
(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:
(i) A person that has or should have a solid waste disposal permit.
(ii) A city with a population of 25,000 or more, as determined by the most recent national census.
(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,
(S) Any violation classified under OAR 340-012-0054 (1) (dd), (ee), (ff), or (gg).
(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.
(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.
(V) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.
(W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.
(X) Any violation of the Climate Protection Program rules under OAR chapter 340, division 273.
(Y) Any violation of the Fuel Tank Seismic Stability Program rules under OAR chapter 340, division 300.
(b) The base penalty values for the $12,000 penalty matrix are as follows:
(A) Class I:
(i) Major — $12,000;
(ii) Moderate — $6,000;
(iii) Minor — $3,000.
(B) Class II:
(i) Major — $6,000;
(ii) Moderate — $3,000;
(iii) Minor — $1,500.
(C) Class III: $1,000.
(3) $8,000 Penalty Matrix:
(a) The $8,000 penalty matrix applies to the following:
(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.
(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.
(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.
(E) Any violation of a water quality statute, rule, permit or related order committed by:
(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.
(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.
(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.
(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.
(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.
(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.
(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.
(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.
(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:
(i) A person that has or should have a waste tire permit; or
(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.
(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.
(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.
(L) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 unless the violation is otherwise classified in this rule.
(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.
(N) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.
(O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.
(b) The base penalty values for the $8,000 penalty matrix are as follows:
(A) Class I:
(i) Major — $8,000.
(ii) Moderate — $4,000.
(iii) Minor — $2,000.
(B) Class II:
(i) Major — $4,000.

(ii) Moderate — $2,000.
(iii) Minor — $1,000.
(C) Class III: $ 700.
(4) $3,000 Penalty Matrix:
(a) The $3,000 penalty matrix applies to the following:
(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.
(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.
(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.
(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.
(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.
(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:
(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.
(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.
(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.
(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.
(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.
(vi) A person that has or should have a WPCF individual stormwater UIC system permit.
(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.
(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.
(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.
(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.
(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.
(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.
(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.
(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.
(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.
(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.
(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person

not listed under another matrix.
(Q) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.
(b) The base penalty values for the $3,000 penalty matrix are as follows:
(A) Class I:
(i) Major — $3,000;
(ii) Moderate — $1,500;
(iii) Minor — $750.
(B) Class II:
(i) Major — $1,500;
(ii) Moderate — $750;
(iii) Minor — $375.
(C) Class III: $250.
(5) $1,000 Penalty Matrix:
(a) The $1,000 penalty matrix applies to the following:
(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.
(B) Any violation of visible emissions standards by operation of a vehicle.
(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.
(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.
(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.
(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.
(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.
(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.
(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.
(J) Any violation of a statute, rule or order relating to the opportunity to recycle.
(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.
(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.
(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.
(b) The base penalty values for the $1,000 penalty matrix are as follows:
(A) Class I:
(i) Major — $1,000;
(ii) Moderate — $500;
(iii) Minor — $250.
(B) Class II:
(i) Major — $500;
(ii) Moderate — $250;
(iii) Minor — $125.

(C) Class III: $100.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.090 - 468.140, 459A.962

STATUTES/OTHER IMPLEMENTED: ORS 459.995, 459A.655, 459A.660, 459A.860 - 459A.975, 468.035

AMEND: 340-215-0040

RULE TITLE: Greenhouse Gas Registration and Reporting Requirements

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Corrects cross-references to OAR chapter 340, division 273.

RULE TEXT:

(1) Each registration or emissions data report submitted by a regulated entity according to this division must contain certification by a designated representative of the truth, accuracy, and completeness of the submission. This certification and any other certification required under this division must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The certification must contain the following statement: “Based on information and belief formed after reasonable inquiry, I certify under penalty of perjury that the statements and information submitted are true, accurate and complete.”

(2) DEQ may require a regulated entity to submit or make available additional information if the materials submitted with the emissions data report are not sufficient to determine or verify greenhouse gas emissions and related information. Regulated entities must provide within 14 calendar days of notification, unless a different schedule is approved by DEQ, any and all information that DEQ requires for the purposes of assessing applicability, verifying or investigating either or both actual and suspected sources of greenhouse gas emissions, and to ascertain compliance and noncompliance with rules in this division.

(3) Calculating total greenhouse gas emissions. Total carbon dioxide equivalent emissions (CO2e) must be calculated as the sum of the CO2, CO2 from biomass-derived fuels, CH4, N2O, and each fluorinated GHG required to be reported in an emissions data report in compliance with this division using equation A-1 in 40 C.F.R. 98.2.

(4) Alternative calculation methods. Regulated entities may petition DEQ to use calculation methods other than those specified in this division. Regulated entities must receive written DEQ approval to use alternative calculation methods prior to reporting.

(5) Third-party verification of emissions data reports. Regulated entities must comply with the requirements of OAR chapter 340, division 272 for third-party verification of emissions data reports, as applicable.

(6) Fuel suppliers and in-state producers must report legal names and addresses of all related entities subject to this division annually by the reporting deadline specified in OAR 340-215-0046(1)(c).

(7) A regulated entity may only use book and claim accounting to report contractual deliveries of biomethane or hydrogen injected into a pipeline when:

(a) The pipeline is part of the natural gas transmission and distribution network connected to Oregon that allows for the transport of biomethane or hydrogen, as applicable; and

(b) No person has used or claimed the environmental attributes of such biomethane or hydrogen in any other program or jurisdiction with the exception of:

(A) The federal Renewable Fuel Standard Program, any reporting required under OAR chapter 340, division 253, or the program under OAR chapter 340, division 273; or

(B) With DEQ written approval, any other program or jurisdiction where DEQ has confirmed that the claim on the environmental attributes can be made for the same use and volume of biomethane or its derivatives as is being claimed under this division.

STATUTORY/OTHER AUTHORITY: ORS 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468, 468A

AMEND: 340-215-0130

RULE TITLE: Separate Violations

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Corrects cross-references and updates for consistency with OAR chapter 340, division 273.

RULE TEXT:

Each metric ton of greenhouse gas emissions not reported according to the requirements of this division by a covered entity, as defined in OAR 340-273-0020, that affects applicability determinations, compliance instrument distribution, or compliance obligations under the Oregon Climate Protection Program, OAR Chapter 340 Division 273, is a separate violation of this division.

STATUTORY/OTHER AUTHORITY: ORS 468A.050, 468A.280

STATUTES/OTHER IMPLEMENTED: ORS 468, 468A

AMEND: 340-216-8010

RULE TITLE: Table 1 — Activities and Sources

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Updates table for consistency with OAR chapter 340, division 273.

RULE TEXT:

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040.]

[NOTE: For the history of these tables prior to 2014 see the history under OAR 340-216-0020]

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.310

STATUTES/OTHER IMPLEMENTED: ORS 468A

Table 1
Activities and Sources

The following source categories must obtain a permit as required by OAR 340-216-0020 Applicability and Jurisdiction.

Part A: Basic ACDP

1 Autobody repair or painting shops painting more than 25 automobiles in a year and that are located inside the Portland AQMA.

2 Concrete manufacturing including redi-mix and CTB, both stationary and portable, more than 5,000 but less than 25,000 cubic yards per year output.

3 Crematory incinerators with less than 20 tons/year material input.

4 Individual natural gas or propane-fired boilers with heat input rating between 9.9 and 29.9 MMBTU/hour, constructed after June 9, 1989, that do not use more than 9,999 gallons per year of #2 diesel oil as a backup fuel.

5 Prepared feeds for animals and fowl and associated grain elevators more than 1,000 tons/year but less than 10,000 tons per year throughput.

6 Rock, concrete or asphalt crushing, both stationary and portable, more than 5,000 tons/year but less than 25,000 tons/year crushed.

7 Surface coating operations whose actual or expected usage of coating materials is greater than 250 gallons per month but does not exceed 3,500 gallons per year, excluding sources that exclusively use non-VOC and non-HAP containing coatings, e.g., powder coating operations.

8 Sources subject to permitting under Part B of this table, number 85 if all of the following criteria are met:

a. The source is not subject to any category listed on this table other than Part B number 85;
b. The source has requested an enforceable limit on their actual emissions, if the source were to operate uncontrolled, to below Part B number 85 of this table as applicable depending on the source's location through one or both of the following:

i. A limit on hours of operation;
ii. A limit on production;

c. Control devices are not required to be used or otherwise accounted for to maintain emissions levels compliant with 8.b above;
d. The source is not subject to and does not have any affected emissions units subject to a 40 C.F.R. part 60, part 61, or part 63 standard (NSPS or NESHAP);
e. The source is not subject to any specific industry or operation standard in OAR chapter 340, divisions 232, 234, or 236.
f. DEQ has determined that the source is not required to conduct source testing and source testing for emission factor verification will not be required.

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Part B: General, Simple or Standard ACDP

1 Aerospace or aerospace parts manufacturing subject to RACT under OAR chapter 340, division 232.

2 Aluminum, copper, and other nonferrous foundries subject to an area source NESHAP under OAR chapter 340, division 244.

3 Aluminum production – primary.

4 Ammonia manufacturing.

5 Animal rendering and animal reduction facilities.

6 Asphalt blowing plants.

7 Asphalt felts or coating manufacturing.

8 Asphaltic concrete paving plants, both stationary and portable.

9 Bakeries, commercial over 10 tons of VOC emissions per year.

10 Battery separator manufacturing.

11 Lead-acid battery manufacturing and re-manufacturing.

12 Beet sugar manufacturing.

13 Oil-fired boilers and other fuel burning equipment whose total heat input rating at the source is over 10 MMBTU/hour; or individual natural gas, propane, or butane-fired boilers and other fuel burning equipment 30 MMBTU/hour or greater heat input rating.

14 Building paper and building board mills.

15 Calcium carbide manufacturing.

16 Can or drum coating subject to RACT under OAR chapter 340, division 232.[2]

17 Cement manufacturing.

18 Cereal preparations and associated grain elevators 10,000 or more tons/year throughput.[1]

19 Charcoal manufacturing.

20 Chlorine and alkali manufacturing.

21 Chrome plating and anodizing subject to a NESHAP under OAR chapter 340, division 244.

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22 Clay ceramics manufacturing subject to an area source NESHAP under OAR chapter 340, division 244.

23 Coffee roasting, roasting 30 or more green tons per year.

24 Concrete manufacturing including redi-mix and CTB, both stationary and portable, 25,000 or more cubic yards per year output.

25 Crematory incinerators 20 or more tons/year material input.

26 Degreasing operations, halogenated solvent cleanings subject to a NESHAP under OAR chapter 340, division 244.

27 Electrical power generation from combustion, excluding units used exclusively as emergency generators and units less than 500 kW.

28 Commercial ethylene oxide sterilization, excluding facilities using less than 1 ton of ethylene oxide within all consecutive 12-month periods after December 6, 1996.

29 Ferroalloy production facilities subject to an area source NESHAP under OAR chapter 340, division 244.

30 Flatwood coating subject to RACT under OAR chapter 340, division 232.[2]

31 Flexographic or rotogravure printing subject to RACT under OAR chapter 340, division 232.[2]

32 Flour, blended and/or prepared and associated grain elevators 10,000 or more tons/year throughput.[1]

33 Galvanizing and pipe coating, except galvanizing operations that use less than 100 tons of zinc/year.

34 Bulk gasoline plants, bulk gasoline terminals, and pipeline facilities.

35 Gasoline dispensing facilities, excluding gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline per month[3].

36 Glass and glass container manufacturing subject to a NSPS under OAR chapter 340, division 238 or a NESHAP under OAR chapter 340, division 244.

37 Grain elevators used for intermediate storage 10,000 or more tons/year throughput.[1]

38 Reserved.

39 Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/year metal charged, not elsewhere identified.

40 Gypsum products manufacturing.

41 Hardboard manufacturing, including fiberboard.

42 Hospital sterilization operations subject to an area source NESHAP under OAR chapter 340, division 244.

43 Incinerators with two or more tons per day capacity.

44 Lime manufacturing.

45 Liquid storage tanks subject to RACT under OAR chapter 340, division 232.[2]

46 Magnetic tape manufacturing.

47 Manufactured home, mobile home and recreational vehicle manufacturing.

48 Marine vessel petroleum loading and unloading subject to RACT under OAR chapter 340, division 232.

49 Metal fabrication and finishing operations subject to an area source NESHAP under OAR chapter 340, division 244, excluding facilities that meet all the following:

a. Do not perform any of the operations listed in OAR 340-216-0060(3)(b)(V)(i) through (iii);

b. Do not perform shielded metal arc welding (SMAW) using metal fabrication and finishing hazardous air pollutant (MFHAP) containing wire or rod; and

c. Use less than 100 pounds of MFHAP containing welding wire and rod per year.

50 Millwork manufacturing, including kitchen cabinets and structural wood members, 25,000 or more board feet/maximum 8 hour input.

51 Molded plastic container manufacturing, using extrusion, molding, lamination, and foam processing and molded fiberglass container manufacturing, excluding injection molding.

52 Motor coach, travel trailer, and camper manufacturing.

53 Motor vehicle and mobile equipment surface coating operations subject to an area source NESHAP under OAR chapter 340, division 244, excluding motor vehicle surface coating operations painting less than 10 vehicles per year or using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year, mobile equipment surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year, and motor vehicle surface coating operations registered pursuant to OAR 340-210-0100(2).

54 Natural gas and oil production and processing and associated fuel burning equipment.

55 Nitric acid manufacturing.

56 Nonferrous metal foundries 100 or more tons/year of metal charged.

57 Organic or inorganic chemical manufacturing and distribution with ½ or more tons per year emissions of any one criteria pollutant, sources in this category with less than ½ ton/year of each criteria pollutant are not required to have an ACDP.

58 Paint and allied products manufacturing subject to an area source NESHAP under OAR chapter 340, division 244.

59 Paint stripping and miscellaneous surface coating operations subject to an area source NESHAP under OAR chapter 340, division 244, excluding paint stripping and miscellaneous surface coating operations using less than 20 gallons of coating and also using less than 20 gallons of methylene chloride containing paint stripper per year.

60 Paper or other substrate coating subject to RACT under OAR chapter 340, division 232.[2]

61 Particleboard manufacturing, including strandboard, flakeboard, and waferboard.

62 Perchloroethylene dry cleaning operations subject to an area source NESHAP under OAR chapter 340, division 244, excluding perchloroethylene dry cleaning operations registered pursuant to OAR 340-210-0100(2).

63 Pesticide manufacturing 5,000 or more tons/year annual production.

64 Petroleum refining and re-refining of lubricating oils and greases including asphalt production by distillation and the reprocessing of oils and/or solvents for fuels.

65 Plating and polishing operations subject to an area source NESHAP under OAR chapter 340, division 244.

66 Plywood manufacturing and/or veneer drying.

67 Prepared feeds manufacturing for animals and fowl and associated grain elevators 10,000 or more tons per year throughput.

68 Primary smelting and/or refining of ferrous and non-ferrous metals.

69 Pulp, paper and paperboard mills.

70 Rock, concrete or asphalt crushing, both stationary and portable, 25,000 or more tons/year crushed.

71 Sawmills and/or planing mills 25,000 or more board feet/maximum 8 hour finished product.

72 Secondary nonferrous metals processing subject to an Area Source NESHAP

under OAR chapter 340, division 244.

73 Secondary smelting and/or refining of ferrous and nonferrous metals.

74 Seed cleaning and associated grain elevators 5,000 or more tons/year throughput.[1]

75 Sewage treatment facilities employing internal combustion engines for digester gasses.

76 Soil remediation facilities, both stationary and portable.

77 Steel works, rolling and finishing mills.

78 Surface coating in manufacturing subject to RACT under OAR chapter 340, division 232.[2]

79 Surface coating operations with actual emissions of VOCs, if the source were to operate uncontrolled, of 10 or more tons/year.

80 Synthetic resin manufacturing.

81 Tire manufacturing.

82 Wood furniture and fixtures 25,000 or more board feet/maximum 8 hour input.

83 Wood preserving (excluding waterborne).

84 All other sources, both stationary and portable, not listed herein that DEQ determines an air quality concern exists or one which would emit significant malodorous emissions.

85 All other sources, both stationary and portable, not listed herein which would have the capacity of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant .[4]

86 Chemical manufacturing facilities subject to 40 C.F.R. part 63 subpart VVVVVV.

87 Stationary internal combustion engines if:

a. For emergency generators and firewater pumps, the aggregate engine horsepower rating is greater than 30,000 horsepower; or

b. For any individual non-emergency or non-fire pump engine, the engine is subject to 40 CFR part 63, subpart ZZZZ and is rated at 500 horsepower or more, excluding two stroke lean burn engines, engines burning exclusively landfill or digester gas, and four stroke engines located in remote areas; or

c. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart IIII and:

A. The engine has a displacement of 30 liters or more per cylinder; or

B. The engine has a displacement of less than 30 liters per cylinder and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions; or

d. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart JJJJ and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions.

88 All sources subject to RACT under OAR chapter 340, division 232, BACT or LAER under OAR chapter 340, division 224, a NESHAP under OAR chapter 340, division 244, a NSPS under OAR chapter 340, division 238, or State MACT under OAR 340-244-0200(2), except sources:

a. Exempted in any of the categories above;

b. For which a Basic ACDP is available; or

c. Registered pursuant to OAR 340-210-0100(2).

89 Pathological waste incinerators.

90 Landfills with more than 200,000 tons of waste in place and calculated methane generation rate is less than 664 metric tons per year which are subject to the requirements in OAR 340 division 239.

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1 Applies only to Special Control Areas

2 Portland AQMA, Medford-Ashland AQMA or Salem-Keizer in the SKATS only

3 "monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during the month, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during the previous 11 months, and then dividing that sum by 12

4 A source subject to permitting from this category may be able to obtain a Basic ACDP under Part A number 8 of this table. For sources that meet the criteria of Part A number 8 of this table, the enforceable production or hours limitation in an issued ACDP may be used to demonstrate a permit is not required by Part B number 85 of this table irrespective of the term 'uncontrolled'.

Part C: Standard ACDP

1 Incinerators for PCBs, other hazardous wastes, or both.

2 All sources that DEQ determines have emissions that constitute a nuisance.

3 All sources electing to maintain the source's netting basis.

4 All sources that request a PSEL equal to or greater than the SER for a regulated pollutant.

5 All sources having the potential to emit 100 tons or more of any regulated pollutant, except GHG, in a year.

6 All sources having the potential to emit 10 tons or more of a single hazardous air pollutant in a year.

7 All sources having the potential to emit 25 tons or more of all hazardous air pollutants combined in a year.

8 Landfills with more than 200,000 tons of waste in place and calculated methane generation rate is greater than or equal to 664 metric tons per year which are subject to the requirements in OAR 340 division 239.

NOTE: For the history of these tables prior to 2014 see the history under OAR 340-216-0020. This history is also shown below:

DEQ 9-2013(Temp), f. & cert. ef. 10-24-13 thru 4-22-14
DEQ 4-2013, f. & cert. ef. 3-27-13
DEQ 14-2011, f, & cert. ef. 7-21-11
DEQ 13-2011, f. & cert. ef. 7-21-11
DEQ 11-2011, f. & cert. ef. 7-21-11
DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11
DEQ 1-2011, f. & cert. ef. 2-24-11
DEQ 12-2010, f. & cert. ef. 10-27-10
DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11
DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10
DEQ 8-2009, f. & cert. ef. 12-16-09
DEQ 15-2008, f. & cert. ef 12-31-08
DEQ 8-2007, f. & cert. ef. 11-8-07
DEQ 7-2007, f. & cert. ef. 10-18-07
DEQ 4-2002, f. & cert. ef. 3-14-02
DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720
DEQ 22-1996, f. & cert. ef. 10-22-96
DEQ 19-1996, f. & cert. ef. 9-24-96
DEQ 22-1995, f. & cert. ef. 10-6-95
DEQ 22-1994, f. & cert. ef. 10-4-94
DEQ 19-1993, f. & cert. ef. 11-4-93
DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155
DEQ 4-1993, f. & cert. ef. 3-10-93

DEQ 27-1991, f. & cert. ef. 11-29-91
DEQ 12-1987, f. & cert. ef. 6-15-87
DEQ 3-1986, f. & cert. ef. 2-12-86
DEQ 11-1983, f. & cert. ef. 5-31-83
DEQ 23-1980, f. & cert. ef. 9-26-80
DEQ 20-1979, f. & cert. ef. 6-29-79
DEQ 125, f. & cert. ef. 12-16-76
DEQ 107, f. & cert. ef. 1-6-76, Renumbered from 340-020-0033
DEQ 63, f. 12-20-73, cert. ef. 1-11-74
DEQ 47, f. 8-31-72, cert. ef. 9-15-72

AMEND: 340-253-0600

RULE TITLE: Records

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Corrects cross-references to OAR chapter 340, division 273.

RULE TEXT:

(1) Records Retention. Registered parties must retain the following records for at least seven years:

(a) Product transfer documents as described in section (2);

(b) Records related to obtaining a carbon intensity or other value described in OAR 340-253-0450, OAR 340-253-0460, and OAR 340-253-0470;

(c) Copies of all data and reports submitted to DEQ;

(d) Records related to each fuel transaction;

(e) Records used for compliance or credit calculations;

(f) Records used to establish that feedstocks are specified source feedstocks; and

(g) Records related to third-party verification, if required under OAR 340-253-0700.

(2) Documenting Fuel Transactions.

(a) Except as provided in subsection (b), fuel transactions must be documented through a product transfer document and include the information specified below:

(A) Transferor company name, address, and contact information;

(B) Recipient company name, address, and contact information;

(C) Transaction date;

(D) Fuel pathway code;

(E) Carbon intensity;

(F) Volume/amount;

(G) A statement identifying whether the transferor or the recipient has the compliance obligation;

(H) The EPA fuel production company identification number and facility identification number as registered with the RFS program; and

(I) The state where the fuel will be delivered, if known at the time of sale. If unknown, then the PTD must state the destination as unknown.

(b) For transactions of clear and blended gasoline and diesel below the rack where the fuel is not destined for export, only the records described in paragraphs (2)(a)(A), (B), (C), (F), and (G) are required to be retained.

(3) Documenting Credit Transactions. Registered parties must retain the following records related to all credit transactions for at least seven years:

(a) The contract under which the credits were transferred;

(b) Documentation on any other commodity trades or contracts between the two parties conducting the transfer that are related to the credit transfer in any way; and

(c) Any other records relating to the credit transaction, including the records of all related financial transactions.

(4) Review by DEQ. All data, records, and calculations used by a registered party, a fuel producer, or fuel pathway holder registered under OAR 340-253-0500(2) to comply with OAR chapter 340, division 253 are subject to inspection and verification by DEQ. Registered parties, fuel producers, and fuel pathway holders must provide records retained under this rule within 30 calendar days after the date DEQ requests a review of the records, unless DEQ specifies otherwise.

(5) Information exempt from disclosure. Pursuant to the provisions of the Oregon public records law, ORS 192.410 to 192.505, all information submitted to DEQ is subject to inspection upon request by any person unless such information is determined to be exempt from disclosure under the Oregon public records law or other applicable Oregon law.

(6) Attestations regarding environmental attributes used for book and claim for renewable electricity, biomethane, or biogas.

(a) A registered party reporting any fuel claimed in the CFP using a book and claim accounting method must retire RTCs

or RECs that embody the full environmental attributes of that fuel in an electronic tracking system approved by DEQ. The quantity of energy covered by the RTC or the REC must match or exceed the volume of fuel claimed in the CFP. The environmental attributes embodied by that RTC or REC must not have been used or claimed in any other program or jurisdiction with the exception of the federal RFS, any reporting required under OAR chapter 340, division 215, and the program under OAR chapter 340, division 273. To be validly used in compliance with this division, any such claims under the federal RFS or OAR chapter 340, divisions 215 and 273, must be made for the same use and volume of biomethane or its derivatives as it is being claimed for in the CFP.

(b) A fuel pathway holder using directly delivered renewable electricity, biogas or biomethane as a process energy or feedstock must obtain and keep attestations from each upstream party collectively demonstrating that such holder has exclusive right to use those environmental attributes. The attestation must include documentation that shows:

(A) The entity claiming the environmental attributes for renewable electricity, biogas or biomethane in the CFP must have the exclusive right to claim the environmental attributes associated with the use of that fuel; and

(B) The environmental attributes have not been used or claimed in any other program or jurisdictions with the exception of the federal RFS and any reporting required under OAR chapter 340, divisions 215 and 273. To be validly used in compliance with this division, any such claims under the federal RFS or OAR chapter 340, divisions 215 and 273 must be made for the same use and volume of biomethane or its derivatives as it is being claimed for in the CFP.

(c) Any attestation or retirement records for biogas, biomethane, and renewable electricity must be provided to DEQ within seven calendar days of receiving a request for such attestation by DEQ. Failure to provide such attestations is grounds for credit invalidation under OAR 340-253-0670.

(9) Monitoring plan for registered parties who are required to obtain third-party verification services under OAR 340-253-0700. Each registered party responsible for obtaining third-party verification of their data under OAR chapter 340, division 272 must complete and retain a written monitoring plan for review by a verifier or DEQ. If a fuel production facility is required to complete and maintain a monitoring plan by the California LCFS, the same monitoring plan may be used to meet the requirements of this rule unless there are substantive differences between the two programs' treatment of the fuel production process. A monitoring plan must include the following, as applicable:

(a) All of the following general items are required for all monitoring plans:

(A) Information to allow DEQ and the verification team to develop a general understanding of boundaries and operations relevant to the entity, facility, or project, including participation in other markets and other third-party audit programs;

(B) Reference to management policies or practices applicable to reporting pursuant to this division, including recordkeeping;

(C) Explanation of the processes and methods used to collect necessary data for reporting pursuant to this division, including identification of changes made after January 1, 2020;

(D) Explanations and queries of source data to compile summary reports of intermediate and final data necessary for reporting pursuant to this division;

(E) Reference to one or more simplified block diagrams that provide a clear visual representation of the relative locations and positions of measurement devices and sampling locations, as applicable, required for calculating reported data (e.g., temperature, total pressure, LHV or HHV, fuel consumption); the diagram(s) must include storage tanks for raw material, intermediate products, and finished products, fuel sources, combustion units, and production processes, as applicable;

(F) Clear identification of all measurement devices supplying data necessary for reporting pursuant to this division, including identification of low flow cutoffs as applicable, with descriptions of how data from measurement devices are incorporated into the submitted report;

(G) Descriptions of measurement devices used to report CFP data and how acceptable accuracy is demonstrated, e.g., installation, maintenance, and calibration method and frequency for internal meters and financial transaction meters; this provision does not apply to data reported in the Oregon Fuels Reporting System for generating credits for EV charging;

(H) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for CFP reports;
(I) Original equipment manufacturer (OEM) documentation or other documentation that identifies instrument accuracy and required maintenance and calibration requirements for all measurement devices used to collect necessary data for reporting pursuant to this division;
(J) The dates of measurement device calibration or inspection, and the dates of the next required calibration or inspection;
(K) Requests for postponement of calibrations or inspections of internal meters and subsequent approvals by DEQ. The entity must demonstrate that the accuracy of the measured data will be maintained pursuant to the measurement accuracy requirements of OAR 340-253-0450(12);
(L) A listing of the equation(s) used to calculate flows in mass, volume, or energy units of measurement, and equations from which any non-measured parameters are obtained, including meter software, and a description of the calculation of weighted average transport distance;
(M) Identification of job titles and training practices for key personnel involved in CFP data acquisition, monitoring, reporting, and report attestation, including reference to documented training procedures and training materials;
(N) Records of corrective and subsequent preventative actions taken to address verifier and DEQ findings of past nonconformance and material misstatements;
(O) Log of modifications to a fuel pathway report conducted after attestation in response to review by third-party verifier or DEQ staff;
(P) Written description of an internal audit program that includes data report review and documents ongoing efforts to improve the entity's CFP reporting practices and procedures, if such an internal audit program exists; and
(Q) Methodology used to allocate the produced fuel quantity to each fuel pathway code;
(b) Any monitoring plan related to a fuel pathway carbon intensity or reporting quantities of fuels must also include the following elements specific to fuel pathway carbon intensity calculations and produced quantities of fuels per fuel pathway code:
(A) Explanation of the processes and methods used to collect necessary data for fuel pathway application and annual fuel pathway reports and all site-specific OR-GREET 3.0 inputs, as well as references to source data;
(B) Description of steps taken, and calculations made to aggregate data into reporting categories, for example aggregation of quarterly fuel transactions per fuel pathway code;
(C) Methodology for assigning fuel volumes by fuel pathway code, if not using a method prescribed by DEQ. If using a DEQ prescribed methodology, the methodology should be referenced;
(D) Methodologies for testing conformance to specifications for feedstocks and produced fuels, particularly describing physical testing standards and processes;
(E) Description of procedure taken to ensure measurement devices are performing in accordance with the measurement accuracy requirements of OAR 340-253-0450(12);
(F) Methodology for monitoring and calculating weighted average feedstock transport distance and modes, including the specific documentation records that will be collected and retained on an ongoing basis;
(G) Methodology for monitoring and calculating fuel transport distance and modes, including the specific documentation records that will be collected and retained on an ongoing basis;
(H) References to contracts and accounting records that confirm fuel quantities were delivered into Oregon for use in carbon intensity determination, and confirm feedstock and finished fuel transportation distance; and
(I) All documentation required pursuant to OAR 340-253-0600(10) for specified source feedstocks, defined in OAR 340-253-0400(6); and
(c) The monitoring plan must also include documentation that can be used to justify transaction types reported for fuel in the Oregon Fuels Reporting System, including the production amount, sale/purchase agreements and final fuel dispensing records. Such documentation must be specific to quarterly fuel transactions reports for importers of blendstocks, importers of finished fuels, Oregon producers, credit generators, aggregators, and out-of-state producers.

(10) Feedstock Transfer Documents. A feedstock transfer document for specified source feedstocks must prominently state the following information:

(a) Transferor company name, address and contact information;

(b) Recipient company name, address and contact information;

(c) Type and amount of feedstock, including units; and

(d) Transaction date.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.266, 468A.268, 468A.277

STATUTES/OTHER IMPLEMENTED: ORS 468.020, ORS 468A.265 through 468A.277

AMEND: 340-253-1020

RULE TITLE: Calculating Credits and Deficits

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Corrects cross-references to OAR chapter 340, division 273.

RULE TEXT:

(1) Except as provided in sections (2) and (3), credit and deficit generation must be calculated for all fuels included in OAR 340-253-1010:

(a) Using credit and deficit basics as directed in OAR 340-253-1000;

(b) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8010;

(c) Calculating the adjusted energy in megajoules by multiplying the energy in megajoules from section (2) by the energy economy ratio of the fuel listed in Table 7 under OAR 340-253-8010 or as approved by DEQ under OAR 340-253-0460, as applicable;

(d) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity as approved under OAR 340-253-0400 through -0470, adjusted for the fuel application's energy economy ratio as listed in Table 7 under OAR 340-253-8010 or as approved under OAR 340-253-0460 as applicable, from the clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and diesel substitutes listed in Table 2 under OAR 340-253-8010, or alternative jet fuel listed in table 3 under OAR 340-253-8010, as applicable;

(e) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in megajoules in section (3) by the carbon intensity difference in section (4);

(f) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in section (5) by 1,000,000; and

(g) Determining under OAR 340-253-1000(5) whether credits or deficits are generated.

(2) Calculating credits for electricity used to power fixed guideway vehicles on track placed in service prior to 2012 and forklifts from model year 2015 and earlier. Credit generation must be calculated by:

(a) Using credit and deficit basics as directed in OAR 340-253-1000;

(b) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8010;

(c) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity as approved under OAR 340-253-0400 through -0470, adjusted for the fuel application's energy economy ratio listed in Table 7 under OAR 340-253-8010 as applicable, from the clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and diesel substitutes listed in Table 2 under OAR 340-253-8010, as applicable;

(d) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in megajoules in section (3) by the carbon intensity difference in section (4);

(e) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in section (5) by 1,000,000; and

(f) Determining under OAR 340-253-1000(5) whether credits or deficits are generated.

(3) Calculating credits for electricity used in residential charging of electric vehicles. credit calculations must be based on the total electricity dispensed (in kilowatt hours) to vehicles, measured by:

(a) The use of direct metering (either sub-metering or separate metering) to measure the electricity directly dispensed to all vehicles at each residence; or

(b) For residences where direct metering has not been installed, DEQ will calculate the total electricity dispensed as a transportation fuel based on analysis of the total number of BEVs and PHEVs in a utility's service territory based on Oregon Department of Motor Vehicles records. DEQ will perform this analysis at least twice a year and issue credits based on it. DEQ will select one of the following methods for estimating the amount of electricity charged based on its analysis of which is more accurate and feasible at the time it is performing the analysis:

(A) An average amount of electricity consumed by BEVs and PHEVs at residential chargers, based on regional or national data; or
(B) An analysis of the average electric vehicles miles traveled by vehicle type or make and model, which compares the total amount of estimated charging for those electric vehicle miles travelled with the total reported charging in those territories in order to determine the amount of unreported charging that can be attributed to residential charging. The analysis may be done on a utility territory specific or statewide basis.
(c) If DEQ determines after the issuance of residential electric vehicle credits that the estimate under (b) contained a significant error that led to one or more credits being incorrectly generated, the error will be corrected by withholding an equal number of credits to the erroneous amount from the next generation of residential electric vehicle credits.
(d) A credit generator or aggregator may propose an alternative method, subject to the approval of DEQ upon its determination that the alternative method is more accurate than either of the methods described in subsection (b).
(e) Credits generated under this subsection will be calculated by DEQ under section 1 of this rule using the estimated amount of electricity under subsection (3)(b) and issued at least twice per year into the OFRS account of the utility or the backstop aggregator within three months of the close of that year.
(4) Calculating Incremental Credits. In calculating incremental credits for actions that lower the carbon intensity of electricity, the credit calculations must be performed based on section (1) of this rule, except that the carbon intensity difference is calculated based on the carbon intensity of the renewable power and the carbon intensity used to calculate the base credits for that electric vehicle or charging equipment, and consistent with following requirements, as applicable:
(a) Incremental credits for non-residential charging are generated upon the retirement of RECs that qualify under OAR 340-253-0470(5) by the credit generator, its aggregator, or the incremental aggregator, or by another entity on their behalf. For credit generators and their aggregators, RECs must be retired prior to or at the same time as the submittal as the quarterly report where the charging is being reported and REC retirement records must be submitted with the quarterly report as supplemental documentation. RECs may be retired by another entity on behalf of the credit generator or aggregator for their electric vehicle charging so long as it is clearly documented, and that documentation is submitted with the quarterly report.
(b) For incremental credits generated using a Utility Renewable Electricity Product or Power Purchase Agreement, evidence that the chargers were covered by such a product must be submitted at least annually along with a quarterly report. Upon request by DEQ, any entity using a Power Purchase Agreement or a Utility Renewable Electricity Product must produce evidence that the charging equipment was covered by that agreement or product for all time periods when the entity was claiming incremental credits.
(c) For the incremental aggregator, incremental credits are generated when it retires RECs on behalf of non-residential electric vehicle charging.
(d) Incremental credits for residential charging are generated by a utility or its aggregator when RECs are retired on behalf of that charging, or when a utility demonstrates to DEQ that EVs are being charged by customers enrolled in its Utility Renewable Electricity Products.
(5) Additional credits.
(a) Except as provided in subsection (b), starting in 2023, fuel pathway holders that are registered parties may request additional credits from the prior year if their fuel facility has:
(A) Completed verification under OAR 340-253-0700 and OAR chapter 340, division 272; and
(B) The verified operational carbon intensity value for a given fuel pathway is more than 1gCO2e/MJ lower than the certified carbon intensity value for that year.
(b) Subsection (a) does not apply to lookup table, temporary, or provisional carbon intensities.
(c) DEQ will determine the number of additional credits to award in response to a request under subsection (a) by:
(A) Calculating the difference between the certified and verified operational carbon intensities;
(B) Multiplying the difference calculated under paragraph (A) by the total obligated volume for the year; and
(C) DEQ may adjust the obligated volume for a given year for this calculation if it is aware that a volume of the fuel

under a given fuel pathway code was imported or produced in the fourth quarter of a year and exported or otherwise removed from the obligated fuel pool in the first quarter of the following year.

(d) DEQ will deposit the additional credits determined under subsection (c) into the fuel pathway holder's account.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.266, 468A.268, 468A.277

STATUTES/OTHER IMPLEMENTED: ORS 468.020, ORS 468A.265 through 468A.277

AMEND: 340-272-0120

RULE TITLE: Requirements for Verification of GHG Reporting Program Emissions Data Reports Submitted under OAR Chapter 340, Division 215

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Corrects a cross-reference to OAR chapter 340, division 273.

RULE TEXT:

(1) Annual verification of GHG Reporting Program emissions data reports.

(a) Applicability. The following persons must meet the requirements of this division and engage the services of a verification body for the purposes of annual verification of the entire emissions data report, including required site visit(s), for each separate emissions data report submitted under OAR chapter 340, division 215, except as otherwise provided under subsection (b):

(A) A regulated entity that submits an emissions data report as described under OAR 340-215-0044(1) that indicates emissions equaled or exceeded 25,000 metric tons of CO2e, excluding CO2 from biomass-derived fuels;

(B) A third party that is not the Bonneville Power Administration (BPA) that registers and submits an emissions data report on behalf of a consumer-owned utility for emissions, data, and information submitted for each individual utility with emissions that equaled or exceeded 25,000 metric tons of CO2e, excluding CO2 from biomass-derived fuels and excluding emissions associated with preference power purchased from BPA;

(C) A regulated entity that submitted an emissions data report that indicated emissions exceeded the threshold in paragraph (A) in the previous year, but that submits an emissions data report that indicates emissions are reduced below that applicability threshold in the current reporting year;

(D) All regulated entities subject to the Climate Protection Program requirements described under OAR chapter 340, division 273, regardless of emissions reported; and

(E) All regulated entities that are electric companies and electricity service suppliers as defined in ORS 757.600, regardless of emissions reported.

(b) Exemptions. The following are not subject to the requirements of this division:

(A) A regulated entity that is not an electric company and not subject to requirements under OAR chapter 340, division 215 and that submits an emissions data report as described under OAR 340-215-0044(1) that indicates emissions were less than 25,000 metric tons of CO2e, excluding CO2 from biomass-derived fuels. For the purposes of this rule, any GHG emissions in emissions data reports as described under OAR 340-215-0044(1)(c) submitted by fuel suppliers or in-state producers that are related entities or share full or partial common ownership or operational control must be aggregated together to determine whether or not the exemption applies;

(B) An emissions data report as described under OAR 340-215-0044(1)(a) that includes emissions data and information described in 40 C.F.R. part 98 subpart HH – Municipal Solid Waste Landfills;

(C) An emissions data report as described under OAR 340-215-0044(1)(d) submitted by a natural gas supplier that is an interstate pipeline; and

(D) Any emissions data report as described under OAR 340-215-0044(1)(e) submitted by Bonneville Power Administration (BPA) acting as a third-party reporter on behalf of any consumer-owned utility, as allowable under OAR 340-215-0120(4).

(c) Verification schedule. Responsible entities that are subject to the subsection (a) requirement to engage the services of a verification body to perform verification of emissions data reports must ensure a verification statement for each emissions data report is submitted to DEQ according to OAR 340-272-0100.

(A) These requirements are in addition to the requirements in 40 C.F.R. 98.3(f).

(B) An asset-controlling supplier that submitted an emissions data report to DEQ as described under OAR 340-215-0044(1)(f) that includes the same data and information reported to and verified under California ARB's Mandatory Reporting of Greenhouse Gas Emissions program may submit the same verification statement to DEQ. If an adverse verification statement is received, a current issues log must also be submitted to DEQ.

(2) Cessation of verification requirement.

(a) Responsible entities must have an emissions data report verified for the first year that the report indicates emissions are reduced below the applicability threshold defined in paragraph (1)

(a)(A). An emissions data report is not subject to verification in any following year thereafter where emissions remain below the threshold.

(b) A responsible entity that meets the verification cessation requirements for two consecutive years must notify DEQ in writing in the second year that it is ceasing the verification requirement according to this paragraph and provide the reason(s) for cessation of verification. The notification must be submitted no later than the applicable reporting deadline under OAR chapter 340, division 215 for that year.

(c) If in any subsequent year after meeting verification cessation requirements an emissions data report meets the applicability requirements of subsection (1)(a), the responsible entity must have the emissions data report verified according to the requirements of this division, and verification must continue until the cessation requirement is met again.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.050, 468A.280

STATUTES/OTHER IMPLEMENTED: ORS 468A.010, 468A.015, 468A.050, 468A.280

ADOPT: 340-273-0010

RULE TITLE: Purpose and Scope

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the purposes of the Climate Protection Program, including to reduce greenhouse gas emissions that cause climate change from sources in Oregon, achieve co-benefits from reduced emissions of other air contaminants, support a strong economy, and enhance public welfare for Oregon communities, particularly environmental justice communities.

RULE TEXT:

(1) This division establishes rules and requirements for the Climate Protection Program for certain air contamination sources that emit greenhouse gases or that cause greenhouse gases to be emitted.

(2) Climate change caused by anthropogenic 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 environmental justice 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) Environmental justice communities in 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, support a strong statewide economy, and enhance public welfare for Oregon communities, particularly environmental justice 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 environmental justice communities;

(d) Provides covered entities with compliance options to minimize disproportionate business and consumer economic impacts associated with meeting the Climate Protection Program requirements;

(e) Incentivizes the reduction of greenhouse gas emissions from industries in Oregon, while allowing trade exposed industries to remain competitive; and

(f) Allows covered entities to comply with the Climate Protection Program requirements in part through contributing community climate investment funds to support projects that reduce greenhouse gas emissions and prioritize benefits for environmental justice communities in Oregon.

(4) DEQ administers this division in all areas of the State of Oregon.

(5) (a) Whenever the DEQ Director has good cause to believe that any person is engaged or is about to engage in any acts or practices that constitute a violation of this division, the Director may authorize DEQ to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(b) The proceedings authorized by subsection (a) may be instituted without the necessity of prior DEQ notice, hearing and order.

(c) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to DEQ. This includes, without limitation, the authority to impose civil penalties and issue orders according to ORS Chapter 468.090 to 468.140 and OAR chapter 340, divisions 11 and 12.

(6) If any dates under this division occur on a Saturday, Sunday, or a state holiday, the deadline is extended to the following business day.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.135

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.135, 468.035, 468.010, 468A.015, 468A.045, 468A.295

ADOPT: 340-273-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Defines terms relating to this division of rules, including key definitions of “covered entity,” which establishes who is regulated by these rules.

RULE TEXT:

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. Air contamination sources include, without limitation, stationary sources, fuel suppliers, in- state fuel producers, and local distribution companies.

(2) “Biomass-derived fuels” has the meaning given the term in OAR 340-215-0020. Biomass-derived fuels include, without limitation, biomethane, biodiesel, renewable diesel, renewable propane, woody biomass, and ethanol.

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

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

(5) “Community climate investment credit” or “CCI credit” or “credit” means an instrument issued by DEQ to track a covered entity’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.

(6) “Community climate investments,” “community climate investment funds” or “CCI funds” means money paid by a covered entity to a community climate investment entity to support implementation of community climate investment projects and any interest that accrues on the money while it is held by a CCI entity or subcontractor.

(7) “Community climate investment entity” or “CCI entity” means a nonprofit organization that has been approved by DEQ as a CCI entity and that has entered into a written agreement with DEQ consistent with OAR 340-273-0920 to implement projects supported by community climate investment funds.

(8) “Compliance instrument” means an instrument issued by DEQ that authorizes the emission of one MT CO2e of greenhouse gases.

(9) “Compliance obligation” means the total quantity of covered emissions from a covered fuel supplier rounded down to the nearest metric ton of CO2e.

(10) “Compliance period” means a period of multiple consecutive calendar years, as described in OAR 340-273-0440.

(11) “Covered direct natural gas source” or “Covered DNG source” means an air contamination source as described in OAR 340-273-0110(6).

(12) “Covered EITE source” means an air contamination source as described in OAR 340-273-0110(5).

(13) “Covered emissions” means the greenhouse gas emissions described in any of subsections OAR 340-273-0110(3)(b), (4)(b), (5)(b), and 6(b) for which covered entities may be subject to the requirements of this division.

(14) “Covered entity” means an air contamination source subject to the requirements of this division. A covered entity may be one or more of a covered fuel supplier, a covered EITE source, or a covered DNG source.

(15) “Covered fuel supplier” means an air contamination source that is one or more of the following:

(a) A fuel supplier or in-state producer as described in OAR 340-273-0110(3); or

(b) A local distribution company as described in OAR 340-273-0110(4).

(16) “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 entity 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).

(17) “Direct natural gas source” or “DNG source” means a stationary source that uses natural gas distributed to the

source by an entity other than a local distribution company.
(18) “Emissions-intensive and trade-exposed source” or “EITE source” means a stationary source engaged in a sector described in OAR 340-273-9000 Table 7.
(19) “Eligible projects” means projects undertaken by a CCI entity that reduce anthropogenic greenhouse gas emissions as described in OAR 340-273-0900(2)(a).
(20) “Environmental justice communities” means communities of color, communities experiencing lower incomes, communities experiencing health inequities, tribal communities, rural communities, remote communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.
(21) “Nominal electric generating capacity” has the meaning given in ORS 469.300.
(22) “Shut down” means that all 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: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0030

RULE TITLE: Acronyms

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Defines acronyms relating to this division of rules.

RULE TEXT:

(1) “CCI” means community climate investment.

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

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

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

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

(6) “EITE” means emissions-intensive and trade-exposed.

(7) “EQC” means Environmental Quality Commission.

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

(9) “IRS” means US Internal Revenue Service.

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

(11) “NAICS” means North American Industry Classification System.

(12) “US” means United States.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0090

RULE TITLE: Overview of Program Provisions for Covered Entities and CCI Entities

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Provides an outline of the program-related rules of this division.

RULE TEXT:
(1) OAR 340-273-0100 describes general requirements for covered entities.
(2) OAR 340-273-0110 describes which air contamination sources are covered entities subject to the requirements of the CPP.
(3) OAR 340-273-0120, OAR 340-273-0130, and 340-273-0150 describe covered entity requirements including notifying DEQ of changes in ownership, operational control, and related entities; cessation of applicability; and requirements to obtain CPP permits, respectively.
(4) OAR 340-273-400 describes the generation of compliance instruments under the cap.
(5) OAR 340-273-0410 through OAR 340-273-0890 describe
the provisions that apply to covered entities.
(6) OAR 340-273-0900 through OAR 340-273-0990 describe the provisions for how DEQ will approve CCI entities and how CCI entities will implement eligible projects supported by CCI funds.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.065, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0100

RULE TITLE: Oregon Climate Protection Program Requirements

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes general requirements for covered entities.

RULE TEXT:

(1) A person who owns or operates a covered entity must comply with the rules in this division, including all provisions of this division that create any type of obligation of, or requirement that applies to, the covered entity that such person owns or operates. Compliance with this division does not relieve a person who owns or operates a covered entity of the obligation to comply with any other provisions of OAR chapter 340, as applicable.

(2) A person who owns or operates a covered entity identified in OAR 340-273-0110 must apply for and hold a CPP permit according to OAR 340-273-0150 that authorizes the person's covered emissions and subjects the person to the requirements of this division.

(3) A person who owns or operates a covered entity must submit reports and attestations required in this division, as applicable.

(4) 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 use forms and reporting tools approved and issued by DEQ for all certifications, attestations and submissions. All submissions must be made electronically unless otherwise requested or approved by DEQ.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.065, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0110

RULE TITLE: Covered Entity and Covered Emissions Applicability

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the covered DNG sources, covered EITE sources, and covered fuel suppliers to which this division of rules apply and the emissions from those sources that are regulated by these rules.

RULE TEXT:

(1) Calculations of covered emissions, compliance obligations, and distribution of compliance instruments will be based on emissions data and information submitted in accordance with this rule and in emissions data reports submitted by a person described in this rule and required according to OAR chapter 340, division 215, which may be subject to verification according to OAR chapter 340, division 272. For any person that does not submit sufficient information in compliance with OAR chapter 340, divisions 215 and 272, calculations will be informed by additional best data available to DEQ. For any person that has not registered and reported according to division 215, such calculations will be based on the best data available to DEQ, following all reporting requirements and assumptions that would be applicable had the person reported according to that division.

(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 340-273-0130.

(3) Applicability for fuel suppliers and in-state fuel producers. A person is a covered fuel supplier if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in any applicability determination calendar year that equal or exceed the threshold for applicability listed in Table 1 in OAR 340-273-9000. All persons that are related entities must aggregate their emissions together to determine applicability and each becomes a covered fuel supplier if applicability is met. When applicability is met, each person is a covered fuel supplier beginning with the calendar year a person becomes a covered fuel supplier, as provided in Table 1 in OAR 340-273-9000. Once a person is a covered fuel supplier, the person remains a covered fuel supplier until the person has met the cessation requirements according to OAR 340- 273-0130.

(a) The person is a fuel supplier or in-state producer that imports, sells, or distributes fuel for use in Oregon, 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 in 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 in OAR chapter 735, division 176;

(C) A person that produces, imports, sells, or distributes gasoline or distillate fuel oil for use in Oregon and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax in OAR chapter 735, divisions 170 and 176; or

(D) A person that either produces propane 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;

(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;

(iii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems; and

(iv) Emissions from fuels that have been used in a manner other than combustion or oxidization, and that does not result in material emissions of CO_2e, if documented in information provided to DEQ.

(4) Applicability for local distribution companies. A person is a covered fuel supplier if the person is described in

subsection (a) and has annual covered emissions described in subsection (b) in 2020 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-273-0130.
(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_2e 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;
(ii) Emissions described in 40 CFR part 98 subpart W – Petroleum and Natural Gas Systems;
(iii) Emissions avoided where the use of natural gas results in greenhouse gas emissions captured and stored, if documented by information provided to DEQ under approved protocols;
(iv) Emissions from natural gas delivered to an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts; and
(v) Emissions from the combustion or oxidation of natural gas at a covered EITE source as described in section (5).
(5) Applicability for EITE sources. A person is a covered EITE source if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in 2020 or any subsequent calendar year that equal or exceed 15,000 MT CO_2e.
(a) The person owns or operates a source engaged in a sector described in OAR 340-273-9000 Table 7.
(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).
(A) Covered emissions include all emissions of anthropogenic greenhouse gases in metric tons of CO_2e, including without limitation, emissions from all uses of natural gas and solid fuels, from energy production, from industrial processes, and from any other processes.
(B) Covered emissions do not include:
(i) Emissions from the use of biomass-derived fuels;
(ii) Emissions from the use of liquid fuels or propane;
(iii) Emissions from an air contamination source that is owned or operated by an interstate natural gas pipeline and that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission;
(iv) Emissions from an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts.
(v) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;
(vi) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills; and
(vii) Emissions avoided where greenhouse gas emissions are captured and stored, if documented by information provided to DEQ under approved protocols;
(6) Applicability for direct natural gas sources. A person is a covered DNG source if the person is described in subsection (a) and has annual covered emissions described in subsection (b) in 2020 or any subsequent calendar year that equal or exceed 15,000 MT CO_2e.
(a) The person owns or operates a stationary source that:
(A) Is not in a source classification described in OAR 340-273-9000 Table 7; and
(B) Uses natural gas distributed to the source by an entity other than a local distribution company.
(b) Except as provided in paragraph (B), covered emissions include emissions described in paragraph (A).
(A) Covered emissions include all emissions of anthropogenic greenhouse gases in metric tons of CO_2e, including without limitation, emissions from all uses of natural gas and solid fuels, from energy production, from industrial processes, and from any other processes.

(B) Covered emissions do not include:
(i) Emissions from the use of biomass-derived fuels;
(ii) Emissions from the use of liquid fuels or propane;
(iii) Emissions from an air contamination source that is owned or operated by an interstate natural gas pipeline and that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission;
(iv) Emissions from an air contamination source that is an electric power generating plant with a total nominal electric generating capacity greater than or equal to 25 megawatts;
(v) Emissions described in 40 CFR part 98 subpart HH – Municipal Solid Waste Landfills;
(vi) Emissions described in 40 CFR part 98 subpart TT – Industrial Waste Landfills;
(vii) Emissions avoided where greenhouse gas emissions are captured and stored, if documented by information provided to DEQ under approved protocols; and
(viii) Emissions from natural gas, compressed natural gas, or liquefied natural gas used on site that was delivered by a local distribution company.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.010, 468A.015, 468A.045, 468.035

ADOPT: 340-273-0120

RULE TITLE: Changes in Covered Entity Ownership and Changes to Related Entities

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes covered entity requirements for reporting to DEQ on changes in ownership and changes to related entities.

RULE TEXT:

(1) Changes in ownership or operational control.

(a) 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. The person must submit a complete and accurate notification, 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;

(D) Name of the designated representative;

(E) If the covered entity is a covered fuel supplier that is not a local distribution company information about each person that was a related entity prior to the change in ownership or operational control and that was required to report emissions according to OAR chapter 340, division 215, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(F) If the covered entity is a covered fuel supplier that is not a local distribution company, information about each person that is a related entity after the change in ownership or operational control and that is required to report emissions according to OAR chapter 340, division 215, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit.

(b) The covered entity continues to be a covered entity following a change in ownership or operational control, until it meets the cessation requirements in OAR 340-273-0130. Any other covered entity that was a related entity also continues to be a covered entity following the change in ownership or operational control, until it meets the cessation according to OAR 340-273-0130.

(c) Following a change in ownership or operational control, a covered fuel supplier that holds a compliance instrument or CCI credit according to OAR 340-273-0430 or OAR 340-273-0830 continues to hold the compliance instrument or CCI credit according to each rule, as applicable.

(2) Changes to related entities of covered fuel suppliers.

(a) If a person subject to any regulations in OAR chapter 340, division 215, becomes a new related entity to a covered fuel supplier that is not a local distribution company due to a change in ownership or operational control, the designated representative of the covered fuel supplier must notify DEQ in writing, on a form approved by DEQ, within 30 days of the ownership or operational control change. The designated representative must submit a complete and accurate notification, including providing the following information:

(A) Information about the new related entity, including legal name, full mailing address, and whether the person is a covered fuel supplier and holds a CPP permit;

(B) The name of the previous owner or operator of the new related entity;

(C) The name of the new owner or operator of the new related entity;

(D) The date of ownership or operator change for the new related entity; and

(E) Information about all other related entities subject to any regulations in OAR chapter 340, including legal names, full mailing addresses, and whether each is a covered fuel supplier and holds a CPP permit.

(b) If the person that is the new related entity to a covered fuel supplier identified in paragraph (a)(A) is not already a covered fuel supplier, the person:

(A) Becomes a covered fuel supplier beginning with the date of ownership or operator change;

(B) Must apply to DEQ for a CPP permit according to OAR 340-273-0150(1)(a)(B); and

(C) If the person is a covered fuel supplier, the person will have compliance obligations beginning with covered emissions from the calendar year in which the ownership or operator change occurred.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.065, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0130

RULE TITLE: Cessation of Covered Entity Applicability

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the conditions under which a person ceases to be a covered entity.

RULE TEXT:

(1) Cessation for covered fuel suppliers.

(a) A person that is a covered fuel supplier as described in OAR 340-273-0110 remains a covered fuel supplier until the person receives written notification from DEQ after either or both:

(A) The person's annual covered emissions are 0 (zero) MT CO2e for six consecutive calendar years. If the person is not a local distribution company, the covered emissions of the person's related entities must also be 0 (zero) MT CO2e for the same six consecutive calendar years; or

(B) The person was designated a covered fuel supplier in OAR 340-273-0110(3), the sum of its annual covered emissions and the annual covered emissions of its related entities are less than 25,000 MT CO2e 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) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(A), DEQ will notify the designated representative of the covered fuel supplier in writing that cessation is met.

(c) In order for cessation according to paragraph (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) If the person is not a local distribution company information about each related entity required to report emissions according to OAR chapter 340, division 215, for each of the six consecutive calendar years, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit;

(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 340, division 273. 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) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(B), DEQ will notify the designated representative of the covered fuel supplier in writing that the application for cessation is approved and that cessation is met.

(e) A person that ceases to be a covered fuel supplier according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered fuel supplier.

(f) When a person ceases to be a covered fuel supplier:

(A) The cessation does not change the compliance obligation for any year for which the person has already demonstrated compliance;

(B) Any remaining compliance instruments held by the person will be retired, held in reserve, or distributed by DEQ according to OAR 340-273-0430(3); and

(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-273-0830(1)(c).
(2) Cessation for covered EITE sources.
(a) A person that is a covered EITE source as described in OAR 340-273-0110(5) remains a covered EITE source until the person receives written notification from DEQ after either or both:
(A) The person's annual covered emissions are 0 (zero) MT CO2e for six consecutive calendar years.; or
(B) The person's annual covered emissions are less than 15,000 MT CO2e for six consecutive calendar years and the person applies to DEQ according to subsection (c).
(b) After a covered EITE source identified according to paragraph (2)(a)(A) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(A), DEQ will notify the designated representative of the covered EITE source in writing that cessation is met.
(c) In order for cessation according to paragraph (2)(a)(B) to take effect, a covered EITE source must apply to cease being a covered EITE source by submitting the following information to DEQ on a form approved by DEQ:
(A) Information about the covered EITE source, 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) Information about remaining requirements that must be met according to this division at the time the application is submitted to DEQ; and
(C) The following attestation, signed by the designated representative of the covered EITE 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. [EITE source name] meets the eligibility for cessation as a covered EITE source according to Oregon Administrative Rules chapter 340, division 273. I understand that ceasing to be a covered EITE source means that [EITE source name] will also cease to hold any compliance instruments and CCI credits.

(d) After the covered EITE source applying for cessation according to paragraph (a)(B) and subsection (c) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(B), DEQ will notify the designated representative of the covered EITE source in writing that the application for cessation is approved and that cessation is met.
(e) A person that ceases to be a covered EITE source according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered EITE source.
(f) When a person ceases to be a covered EITE source:
(A) The cessation does not change the compliance obligation for any year for which the person has already demonstrated compliance;
(B) Any remaining compliance instruments held by the person will be retired, held in reserve, or distributed by DEQ according to OAR 340-273-0430(3); and
(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-273-0830(1)(c).
(3) Cessation for covered DNG sources.
(a) A person that is a covered DNG source as described in OAR 340-273-0110(6) remains a covered DNG source until the person receives written notification from DEQ after either or both:
(A) The person's annual covered emissions are 0 (zero) MT CO2e for six consecutive calendar years.; or
(B) The person's annual covered emissions are less than 15,000 MT CO2e for six consecutive calendar years and the person applies to DEQ according to subsection (c).
(b) After a covered DNG source identified according to paragraph (3)(a)(A) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(A), DEQ will notify the designated

representative of the covered DNG source in writing that cessation is met.
(c) In order for cessation according to paragraph (3)(a)(B) to take effect, a covered DNG source must apply to cease being a covered DNG source by submitting the following information to DEQ on a form approved by DEQ:
(A) Information about the covered DNG source, 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) Information about remaining requirements that must be met according to this division at the time the application is submitted to DEQ; and
(C) The following attestation, signed by the designated representative of the covered DNG 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. [DNG source name] meets the eligibility for cessation as a covered DNG source according to Oregon Administrative Rules chapter 340, division 273. I understand that ceasing to be a covered DNG source means that [DNG source name] will also cease to hold any compliance instruments and CCI credits.

(d) After the covered DNG source applying for cessation according to paragraph (a)(B) and subsection (c) demonstrates compliance with compliance obligations for the years up to and including the years described in paragraph (a)(B), DEQ will notify the designated representative of the covered DNG source in writing that the application for cessation is approved and that cessation is met.
(e) A person that ceases to be a covered DNG source according to this section must comply with all remaining applicable recordkeeping requirements of this division from the last date on which the person was a covered DNG source.
(f) When a person ceases to be a covered DNG source:
(A) The cessation does not change the compliance obligation for any year for which the person has already demonstrated compliance;
(B) Any remaining compliance instruments held by the person will be retired, held in reserve, or distributed by DEQ according to OAR 340-273-0430(3); and
(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-273-0830(1)(c).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0150

RULE TITLE: Covered Entity Permit Requirements

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes covered entity requirements for obtaining a CPP permit.

RULE TEXT:

(1) A person described in either or both OAR 340-273-0110(3) or (4) must apply for a CPP permit as provided in this section.

(a) The person must apply for a CPP permit according to subsections (b) and (c) by the following deadlines:

(A) If DEQ notifies the person in writing that the person is a covered fuel supplier, then the person must apply to DEQ for a CPP permit within 30 days of the notification or by another date DEQ specifies in the notification that is at least 30 days after the date of the notification;

(B) If DEQ does not provide a notification according to paragraph (A), then the person must apply to DEQ for a CPP permit by April 15 of the year after the calendar year that the person becomes a covered fuel supplier; or

(C) If there was a change in ownership or operational control according to OAR 340- 273-0120(2), then the person must apply to DEQ for a CPP permit within 45 days of the change in ownership or operational control.

(b) A person that submits a CPP permit application to DEQ must submit a complete and accurate application. The application for a CPP permit must be submitted to DEQ using a form approved by DEQ and include:

(A) Identifying information about the covered fuel supplier including name, full mailing address, and website, and designated representative's contact information including name, title or position, phone number, and email address;

(B) If the person is a covered fuel supplier that is not a local distribution company, information about each related entity required to report emissions according to OAR chapter 340, division 215, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; 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 340-273-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 273.

(c) DEQ may issue a CPP permit to a covered fuel supplier that submits a complete and accurate application. The permit may contain all applicable provisions of this division and such other conditions as DEQ determines are necessary to implement, monitor and ensure compliance with this division.

(2) A person described in either OAR 340-273-0110(5) or (6) must apply for a CPP permit as provided in this section.

(a) The CPP permit application deadlines are:

(A) If DEQ notifies the owner or operator in writing that they are a covered entity, then the owner or operator must apply to DEQ for a CPP permit within 60 days of the notification or by another date DEQ specifies in the notification that is at least 60 days after the date of the notification; or

(B) If DEQ does not provide a notification according to paragraph (A), then the owner or operator must apply to DEQ for a CPP permit by April 15 of the year after the calendar year that the EITE source or DNG source becomes a covered entity.

(b) A covered EITE source or DNG source that submits a CPP permit application to DEQ must submit a complete and accurate application. The application for a CPP permit must be submitted to DEQ using a form approved by DEQ and include:

(A) Identifying information about the covered entity, including name and the name of the person that owns or operates the covered entity, full mailing address, the physical address of the covered entity, 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 a source that has already been issued an air quality permit, and the primary and any secondary NAICS code(s) of the covered entity;
(B) A process flow diagram showing the complete production or operational process at the covered entity including all emission units;
(C) For each process or product produced by the covered entity:
(i) The type of process or product and a proposed metric of emissions intensity;
(ii) The level of process or quantity of product produced in each of the 5 previous calendar years, or all years of operation if the facility has not been in operation for 5 years; and
(iii) A calculation of all greenhouse gas emissions in MT CO2e resulting from the process or production of the product in each of the same five previous calendar years used in subparagraph (ii). If multiple processes or products are produced at the covered entity, provide a methodology for allocating emissions to each product; and
(D) Any other information requested by DEQ.
(c) DEQ may issue a CPP permit to a covered EITE source or covered DNG source that submits a complete and accurate application. The permit may contain all applicable provisions of this division and such other conditions as DEQ determines are necessary to implement, monitor and ensure compliance with this division.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.135

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.135, 468.065, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0400

RULE TITLE: Generation of Compliance Instruments

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how DEQ generates compliance instruments, each of which authorizes a covered entity to emit one metric ton of carbon dioxide equivalent (MT CO2e) of greenhouse gas emissions. The total amount of compliance instruments DEQ will generate is equal to annual emissions caps in Table 2. with the exception of additional compliance instruments for 2025.

RULE TEXT:

(1) Each year, DEQ will generate the number of compliance instruments equal to the cap for the calendar year identified in Table 2 in OAR 340-273-9000.

(2) Additional 2025 compliance instruments. DEQ will add together the 2022, 2023, and 2024 emissions that would have been considered covered emissions as described in OAR 340-273-0110(3)(B) for all fuel suppliers that individually, or as a group of related entities, had covered emissions greater than or equal to 200,000 MT CO2e from any calendar year between 2018 and 2022, and DEQ will compare these total emissions to a benchmark of 81,003,850 MT CO2e. If the total emissions from those fuel suppliers are at least 10,000 MT CO2e below the benchmark, DEQ will generate additional compliance instruments equal to the difference between those total emissions and 81,003,850 and will distribute those additional compliance instruments in 2025 as described in OAR 340-273-0420(5).

(3) A compliance instrument is a regulatory instrument and does not constitute personal property, a security or any other form of property.

(4) Compliance instruments may not be divided into fractions.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0410

RULE TITLE: Distribution of Compliance Instruments to Covered Emissions-Intensive and Trade-Exposed Sources and Covered Direct Natural Gas Sources

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how DEQ will distribute compliance instruments to covered EITE and DNG sources and that these sources are not distributed compliance instruments for the first compliance period.

RULE TEXT:

(1) DEQ will distribute compliance instruments annually to covered EITE sources and covered DNG sources according to this rule. DEQ will distribute compliance instruments from a cap no later than June 30 of each calendar year.

(2) In order to be eligible for an annual distribution of compliance instruments, a covered EITE source or covered DNG source must:

(a) Provide DEQ with timely and accurate reports as required under OAR Chapter 340, Division 215; and

(b) Hold a CPP permit as required by OAR 340-273-0150(4).

(3) Covered EITE sources and covered DNG sources are exempt from compliance obligations for the first compliance period.

(a) Covered EITE sources and covered DNG sources do not have compliance obligations for covered emissions for 2025, 2026, and 2027.

(b) Covered EITE sources and covered DNG sources will not receive a distribution of compliance instruments in 2025, 2026, or 2027.

(4) The EQC recognizes that EITE sources may face competition from sources operating outside of Oregon and not subject to these rules. Avoiding leakage of emissions and economic activity to other jurisdictions as a result of the cost of compliance with this division of rules is a critical objective of this division of rules. To achieve this objective while hastening investments to decarbonize manufacturing in Oregon, DEQ staff will work to develop a proposed baseline emissions intensity value for each covered EITE source and covered DNG source for the second and subsequent compliance periods from data provided by each covered entity. DEQ staff anticipates that the proposed baseline emissions intensity value would calculate the number of metric tons of CO2e emitted per unit of applicable product or operational process for each covered entity, and then DEQ staff would propose to establish an annual decline from the proposed baseline emissions intensity value for all such covered entities. Each calendar year DEQ could propose to distribute to each covered EITE source and covered DNG source compliance instruments from the annual cap equivalent to the applicable emission intensity target times the number of applicable units using emissions and production data from the previous calendar year. DEQ staff will develop this proposal for potential adoption by the EQC.

(5) For the second and subsequent compliance periods, DEQ will distribute compliance instruments to each covered EITE source and covered DNG source equal to the covered entity's average covered emissions for 2022 through 2023 multiplied by the emission reduction target in OAR 340-273-9000 Table 8 for each year of the compliance period. If DEQ does not have emissions data for a covered EITE source or covered DNG source for either or both 2022 and 2023, DEQ will replace the missing year(s) with the most recent calendar year(s) of emissions data that is available from calendar years 2017 through 2024. If DEQ only has one year of emissions data for a covered EITE source or covered DNG source between 2017 and 2024, DEQ will distribute the number of compliance instruments equal to the covered entity's covered emissions for that one year. If DEQ does not have any emissions data for a covered entity from 2017 through 2024, DEQ will distribute compliance instruments equal to the covered entity's 2024 covered emissions.

(6) A covered EITE source or covered DNG source that begins operations in 2025 or any subsequent year will not incur a compliance obligation for covered emissions occurring until the first year of the next compliance period after they become a covered entity.

(a) For any covered EITE source or covered DNG source that begins operations in 2025 or any subsequent year, DEQ will use the most recent year(s) of available data to calculate a covered emissions baseline, up to two years.

(b) A covered EITE source or covered DNG source that begins operations in 2025 or any subsequent year will not receive a distribution of compliance instruments until the first year of the next compliance period after becoming a covered entity.
(c) Beginning in the first year of the next compliance period after becoming a covered EITE source, the EITE source will receive a distribution of compliance instruments equal to the covered EITE source's emissions baseline, as described in subsection (a), multiplied by an emission reduction target of 1. The emissions reduction target will decrease by 0.03 per year until this target reaches an equivalent emissions reduction to the emissions reduction target for that calendar year outlined in Table 8.
(d) Beginning in the first year of the next compliance period after becoming a covered DNG source, the DNG source will receive a distribution of compliance instruments equal to the covered DNG source's emissions baseline, as described in subsection (a), multiplied by an emission reduction target of 1. The emissions reduction target will decrease by 0.05 per year until this target reaches an equivalent emissions reduction to the emissions reduction target for that calendar year outlined in Table 8.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0420

RULE TITLE: Distribution of Compliance Instruments to Covered Fuel Suppliers

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how DEQ will distribute compliance instruments to covered fuel suppliers.

RULE TEXT:

(1) DEQ will distribute compliance instruments to covered fuel suppliers according to this rule. DEQ will distribute compliance instruments from a cap according to sections (2), (3), (4), (5), (6), and (7) no later than June 30 of the calendar year of that cap.

(2) Annual distribution of compliance instruments to covered fuel suppliers that are local distribution companies. DEQ will annually distribute to each local distribution company, or to its successor(s) due to a change in ownership or operation, the percentage of compliance instruments from the calendar year's cap stated in Table 4 in OAR 340-273-9000. This percentage shall be derived from the remaining compliance instruments under the cap after the number of compliance instruments distributed to covered EITE sources and covered DNG sources according to OAR 340-273-0410 are subtracted from the cap.

(3) DEQ will establish a compliance instrument reserve for covered fuel suppliers that are new to the program and are not local distribution companies. DEQ will hold, according to subsection (4)(a), a subset of compliance instruments in the reserve from the caps identified in Table 2 in OAR 340-273-9000. Once a compliance instrument is held in the reserve, it remains in the reserve until DEQ determines, at its discretion, to undertake one of the following actions:

(a) DEQ distributes the compliance instrument according to section (6) to a new covered fuel supplier that is not a local distribution company;

(b) DEQ retires the compliance instrument because the compliance instrument reserve exceeds the size described in Table 3 OAR 340-273-9000, provided that after such retirement the size of the compliance instrument reserve will equal or exceed the reserve size described in Table 3; or

(c) DEQ distributes the compliance instrument to a covered fuel supplier that is not a local distribution company because the size of the compliance instrument reserve exceeds the reserve size described in Table 3 in OAR 340-273-9000. DEQ will only distribute compliance instruments from the reserve according to this subsection if there are at least 10,000 compliance instruments to distribute and if the remaining size of the reserve after this distribution will equal or exceed the reserve size described in Table 3 in OAR 340-273-9000. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company according to subsection (4)(b), except "total compliance instruments to distribute" means the total number of compliance instruments DEQ is distributing from the reserve according to this subsection.

(4) Annual distribution of compliance instruments to covered fuel suppliers that are not local distribution companies. DEQ will annually distribute compliance instruments from the applicable calendar year's cap to covered fuel suppliers that are not local distribution companies as follows:

(a) If the size of the compliance instrument reserve is less than the reserve size described in Table 3 in OAR 340-273-9000 for the calendar year, then DEQ will calculate the difference and hold in the compliance instrument reserve that quantity of compliance instruments. Otherwise, the number of compliance instruments in the reserve will not be changed.

(b) Except for compliance instruments identified in Table 4 in OAR 340-273-9000 for distribution according to section (2) and the compliance instruments held in the reserve according to section (3) and subsection (4)(a), DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company as described in this subsection, including paragraphs (A) through (E), based on emissions data from the prior calendar year as reported by each covered fuel supplier as required by OAR chapter 340, division 215, and subject to DEQ's initial review for errors, but prior to completion of third-party verification as required by OAR chapter 340, division 272. A person that becomes a covered fuel supplier after DEQ has distributed the compliance instruments for that year will not receive a distribution under this subsection.

(A) Beginning with the 2026 annual distribution of compliance instruments, prior to each calculation of compliance instrument distribution described in paragraph (B), DEQ will apply a "Verified emissions data correction factor" to the annual compliance instrument distribution of each covered fuel supplier. DEQ will recalculate the compliance instrument distribution from the previous year using third-party verified emissions data. If DEQ determines that the reported emission data used for the previous year's compliance instrument distribution resulted in a lesser or greater number of compliance instruments being distributed to a covered fuel supplier, when compared to the recalculation using the third-party verified data, DEQ will increase or reduce, respectively, the number of compliance instruments distributed to the covered fuel supplier by an equal amount in the current compliance instrument distribution.
(B) DEQ will use the following formula to calculate the number of compliance instruments to distribute to each covered fuel supplier:

Number of Compliance Instruments = (Total compliance instruments to distribute * ([Covered fuel supplier covered emissions + covered fuel supplier biofuel emissions] / Total emissions)) ± Verified emissions data correction factor – Compliance instrument holding limit reduction

(C) As used in the formula in paragraph (B):
(i) "Total compliance instruments to distribute" means the cap for the calendar year, according to Table 2 in OAR 340-273-9000, minus the number of compliance instruments identified in Table 4 in OAR 340-273-9000; and minus the number of compliance instruments held in the compliance instrument reserve;
(ii)(I) For the 2026 and all subsequent annual distributions, "covered fuel supplier covered emissions" means the sum of a covered fuel supplier's covered emissions for the prior calendar year;
(II) For the 2025 annual distribution of compliance instruments, each covered fuel supplier's "covered fuel supplier covered emissions" will be either the sum of the covered fuel supplier's verified covered emissions for the 2023 calendar year or the sum of the covered fuel supplier's unverified covered emissions for the 2024 calendar year. The verified 2023 data will be used if the sum of a covered fuel supplier's verified 2023 covered emissions plus the verified emissions described in OAR 340-271- 0110(3)(b)(B)(i) that result from the complete combustion or oxidation of all biomass- derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state in 2023 is greater than the sum of a covered fuel supplier's unverified 2024 covered emissions plus the unverified emissions described in OAR 340-271-0110(3)(b)(B)(i) that result from the complete combustion or oxidation of all biomass- derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state in 2024. The unverified 2024 data will be used if the sum of a covered fuel supplier's unverified 2024 covered emissions plus the unverified emissions described in OAR 340-271-0110(3)(b)(B)(i) that result from the complete combustion or oxidation of all biomass-derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state in 2024 is greater than the sum of a covered fuel supplier's verified 2023 covered emissions plus the verified emissions described in OAR 340-271-0110(3)(b)(B)(i) that result from the complete combustion or oxidation of all biomass- derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state in2023;
(iii)(I) For the 2026 and all subsequent annual distributions, "covered fuel supplier biofuel emissions" means emissions described in OAR 340-273-0110(3)(b)(B)(i) that result from the complete combustion or oxidation of the annual quantity of biomass- derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state for the prior calendar year;
(II) For the 2025 annual distribution of compliance instruments, if a covered fuel supplier's covered fuel supplier covered emissions, as determined under sub- subparagraph (ii)(II), are its verified 2023 calendar year emissions, then its "covered fuel supplier biofuel emissions" will be based on verified 2023 calendar year emissions data, but if a covered fuel supplier's covered fuel supplier covered emissions, as determined under sub-subparagraph (ii)(II), are its unverified 2024 calendar year emissions, then its "covered fuel supplier biofuel emissions" will be based on unverified 2024 calendar year emissions data;
(iv) "Total emissions" means the sum of "covered fuel supplier covered emissions" and "covered fuel supplier biofuel

emissions" for the prior calendar year for all covered fuel suppliers whose compliance instrument distribution is calculated according to this section. For the 2025 annual distribution of compliance instruments, "Total emissions" means the sum of "covered fuel supplier covered emissions" and "covered fuel supplier biofuel emissions" used for that year's calculation, as described in subparagraphs (ii) and (iii); and
(v) "Verified emissions data correction factor" means a correction applied as a result of changes to reported data since the previous distribution of compliance instruments, as described in paragraph (A); and
(vi) "Compliance instrument holding limit reduction" means the number of compliance instruments described in OAR 340-273-0430(2). If the compliance instrument holding limit reduction exceeds the number of compliance instruments that a covered fuel supplier would have received in the distribution before subtracting the compliance instrument holding limit reduction, then the covered fuel supplier will not receive any compliance instruments in the distribution, and a compliance instrument holding limit reduction equal to the amount by which it exceeded the number of compliance instruments that a covered fuel supplier would have received in the distribution before subtracting the compliance instrument holding limit will be applied in the following year.
(D) DEQ will distribute a number of compliance instruments to each covered fuel supplier using the formula in paragraph (B) and rounded down to the nearest whole number.
(E) Any remaining compliance instruments not distributed due to rounding as described in paragraph (D) will be held in the compliance instrument reserve.
(5) DEQ will distribute any additional 2025 compliance instruments generated as described in OAR 340-273-0400 no later than June 30, 2025 as follows:
(a) DEQ will use the following formula to calculate the number of additional 2025 compliance instruments to distribute to each covered fuel supplier:

Number of Additional Compliance Instruments = Total additional compliance instruments to distribute * (Sum of covered fuel supplier biofuel emissions / Total biofuel emissions)

(b) As used in subsection (5)(a):
(A) "Total additional compliance instruments to distribute" means the number of additional compliance instruments generated as described in OAR 340-273-0400, if any;
(B) "Sum of covered fuel supplier biofuel emissions" means the sum of a covered fuel supplier's emissions described in OAR 340-273-0110(3)(b)(B)(i) that result from the complete use of the quantity of biomass-derived fuels that the covered fuel supplier imported, sold, or distributed for use in the state in 2022, 2023, and 2024; and
(C) "Total biofuel emissions" means the sum of emissions described in OAR 340-273- 0110(3)(b)(B)(i) that result from the complete use of the quantity of biomass-derived fuels that all covered fuel suppliers whose compliance instrument distribution is calculated according to this section imported, sold, or distributed for use in the state in 2022, 2023, and 2024.
(6) Distribution from compliance instrument reserve for new covered fuel suppliers that are not local distribution companies.
(a) A covered fuel supplier is eligible for a distribution from the compliance instrument reserve if it is not a local distribution company and if the person was not included in the distribution of compliance instruments for that year according to section (4).
(b) A covered fuel supplier meeting the requirements of subsection (a) is not eligible for a distribution of compliance instruments from the reserve if the person is a related entity to a covered fuel supplier that received a distribution of compliance instruments under section (4).
(c) A covered fuel supplier identified according to subsection (a) and not ineligible under subsection (b) 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), no later than June 1 of the year after the calendar year of the annual distribution of compliance instruments from which the covered fuel supplier was not

included. The covered fuel supplier must submit a separate application for each year for which it is seeking distribution of compliance instruments from the reserve.
(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 of covered emissions 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.

(d) 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.
(e) If DEQ approves an application, DEQ will distribute one or more compliance instruments to the covered fuel supplier from the reserve no later than June 15 of the year after the calendar year of the annual distribution of compliance instruments from which the covered fuel supplier was not included. DEQ will distribute compliance instruments from the reserve to the covered fuel supplier, as follows:
(A) A maximum distribution amount that will not exceed the covered fuel supplier's covered emissions in that calendar year using emissions data from the prior calendar year as reported by each covered fuel supplier as required by OAR 340, division 215, and subject to DEQ's initial review for errors, but prior to completion of third-party verification as required by OAR 340, division 272; and
(B) If there are fewer compliance instruments in the reserve at the time of distribution than have been requested by all covered fuel suppliers who are approved for a reserve distribution for a calendar year, DEQ shall allocate compliance instruments in the reserve according to the ratio of each covered fuel supplier's covered emissions in that calendar year to the total covered emissions from all covered fuel suppliers in that calendar year.
(7) Each year, the sum of all compliance instruments that are not distributed to fuel suppliers in the distribution under section (4) as a result of compliance instrument holding limit reductions will be distributed to all covered fuel suppliers that did not have any compliance instrument holding limit reduction using the formula described in paragraph OAR 340-273-0420(4)(b)(B), except that, for purposes of such redistribution, "total compliance instruments to distribute" means the total number of compliance instruments that DEQ did not distribute to fuel suppliers in the general distribution under section (4) as a result of compliance instrument holding limit reductions. Such additional distribution of compliance instruments shall be made at the same time as the distribution described in section (4). Any remaining compliance instruments not distributed due to rounding will be held in the compliance instrument reserve.
(8) Upon distribution of compliance instruments according to sections (2), (4), (5), (6), and (7), DEQ will notify the designated representative of each covered fuel supplier in writing of the availability of compliance instruments.
(9) DEQ will track distributed compliance instruments.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0430

RULE TITLE: Holding Compliance Instruments

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how a covered entity that is issued or acquires compliance instruments can bank compliance instruments that have not yet been used to demonstrate compliance. Describes how a compliance instrument holding limit reduction is assessed for covered fuels suppliers that are not local distribution companies.

RULE TEXT:

(1) A covered entity that is issued or acquires a compliance instrument under this division may continue to hold the compliance instrument until any of the following apply:

(a) The covered entity uses the compliance instrument toward its demonstration of compliance with a compliance obligation according to OAR 340-273-0450;

(b) The covered entity transfers the compliance instrument to another covered entity according to OAR 340-273-0500; or

(c) The covered entity has ceased being a covered entity according to OAR 340-273- 0130. When this occurs, DEQ may, at its discretion:

(A) Retire the compliance instrument;

(B) Hold the compliance instrument in the compliance instrument reserve described in OAR 340-273-0420(3); or

(C) Distribute the compliance instrument to covered fuel suppliers according to OAR 340-273-0420, by adding the compliance instrument to the total compliance instruments to be distributed to covered fuel suppliers during the next annual distribution of compliance instruments. DEQ will only distribute the compliance instrument if there are at least 10,000 compliance instruments to distribute.

(2) For each covered fuel supplier that is not a local distribution company, a compliance instrument holding limit reduction will be calculated on November 22 of the year following the end of each compliance period, or 25 days after DEQ's notification in OAR 340-273-0450(1), whichever is later. A covered fuel supplier's compliance instrument holding limit reduction is the number of compliance instruments from any prior year held by the covered fuel supplier on that date that exceeds one and a half times the sum of the covered fuel supplier's annual compliance obligation(s) and biofuel emissions for each year of the prior compliance period. In the year subsequent to the year after the end of a compliance period, if a fuel supplier did not receive any compliance instruments in the distribution under section OAR 340-273-0420(4) in the prior year because its compliance instrument holding limit reduction exceeded the number of compliance instruments that it otherwise would have been distributed, then the fuel supplier's compliance instrument holding limit reduction will be reduced as provided in subparagraph OAR 340-273-0420(4)(b)(B)(vi), and such reduced compliance instrument holding limit reduction will be used in the subsequent year's compliance instrument distribution calculation under section OAR 340-273-0420(4).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0440

RULE TITLE: Compliance Periods

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes a three-year compliance period for the first compliance period followed by two- year compliance periods. The first compliance period includes calendar years 2025,2026 and 2027.

RULE TEXT:

(1) The first compliance period is three consecutive calendar years. Each subsequent compliance period is two consecutive calendar years.

(2) The first compliance period begins with calendar year 2025 and includes calendar years 2026 and 2027.

(3) A new compliance period begins with the calendar year following the last calendar year of the preceding compliance period.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0450

RULE TITLE: Demonstration of Compliance

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how covered entities demonstrate compliance. Covered entities demonstrate compliance once for each compliance period for their total compliance obligations. Covered entities may use compliance instruments or CCI credits, but there is a limit to the percent of its total compliance obligations that can be achieved with CCI credits for each compliance period. DNG and EITE sources do not have any compliance obligations for the first compliance period.

RULE TEXT:

(1) DEQ will determine the total compliance obligation for a compliance period for each covered fuel supplier, each covered EITE source, and each covered DNG source as the sum of the covered entity's annual compliance obligation(s) for each year of the compliance period. DEQ will base its determinations on emissions calculated according to OAR 340-273-0110(1). DEQ will notify each covered entity of DEQ's determination.

(2) A covered fuel supplier must demonstrate compliance according to this rule by December 9 of the year following the end of each compliance period, or 40 days after DEQ's notification described in section (1), whichever is later.

(3) A covered EITE source or covered DNG source must demonstrate compliance according to this rule by December 9 of the year following the end of the first compliance period in which they have a compliance obligation according to OAR 340-273-0410, or 40 days after DEQ's notification described in section (1), whichever is later.

(4) To demonstrate compliance for a compliance period, each covered entity required to demonstrate compliance must submit the following to DEQ:

(a) For each metric ton of CO2e of the total compliance obligation, either a compliance instrument or a CCI credit, subject to the following limitations:

(A) A covered entity may only submit compliance instruments that DEQ distributed from the caps for the calendar years of the applicable compliance period or from caps for earlier compliance periods; and

(B) The quantity of CCI credits used to demonstrate compliance as a percentage of the total compliance obligation for the applicable compliance period may not exceed the allowable percentage specified in Table 5 in OAR 340-273-9000; and

(b) A demonstration of compliance form, approved by DEQ that includes:

(A) Name and full mailing address of the covered entity;

(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 entity is demonstrating compliance;

(D) The total compliance obligations 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 entity is submitting to DEQ to demonstrate compliance, and separately the total number submitted from each calendar year's cap;

(F) The total number of CCI credits the covered entity is submitting to DEQ to demonstrate compliance; and

(G) The following attestation, signed by the designated representative of the covered entity:

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered entity name], 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 entity] 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 entity] has not exceeded the allowable use of CCI credits. If any portion of these compliance obligations remain unmet after this submission, I understand that [covered entity] must still demonstrate compliance with the remaining portion and may be subject to enforcement action.

(5) Each metric ton of CO2e of a compliance obligation for which a covered entity does not demonstrate compliance according to this rule is a separate violation of this division.
(6) If a change in ownership of a covered entity occurs, the person that owns or operates the covered entity as of December 31 in the final year of a compliance period is responsible for demonstration of compliance according to this rule for each annual 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.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0490

RULE TITLE: Recordkeeping Requirements Related to Demonstration of Compliance

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the recordkeeping requirements for covered entities related to demonstrating compliance.

RULE TEXT:

(1) A covered entity 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, divisions 215 and 272, 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 covered entity must retain the following records necessary for supporting demonstration of compliance, according to OAR 340-273-0450, in paper or electronic format for a period of at least seven years following the deadline for demonstration of compliance in OAR 340-273-0450:

(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 entity must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered entity must fulfill a records request from DEQ.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0500

RULE TITLE: Trading of Compliance Instruments

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes requirements for covered entities to be able to trade compliance instruments.

RULE TEXT:

(1) Covered entities may trade one or more compliance instruments only according to this rule. A covered entity may transfer one or more compliance instruments to another covered entity up to the amount that it has available and has not used to demonstrate compliance. A covered entity may acquire one or more compliance instruments from another covered entity.

(2) Covered entities may not trade fractions of a compliance instrument. All compliance instrument trades must be of whole compliance instruments.

(3) Covered entities may not engage in a trade of a compliance instrument involving, related to, in service of, or associated with any of the following:

(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 value of the compliance instrument being traded. 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.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0510

RULE TITLE: Compliance Instrument Trade Notifications and Process

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes requirements for covered entities to notify DEQ of trades of compliance instruments.

RULE TEXT:

(1) Covered entities that trade one or more compliance instruments as authorized by OAR 340-273-0500 must notify DEQ of the trade. The designated representatives of both the covered entity transferring the compliance instrument and the covered entity acquiring the compliance instrument must sign and submit a compliance instrument trade form that meets the requirements of this section, using a form approved by DEQ.

(a) The covered entity transferring one or more compliance instruments must sign first; and

(b) The covered entity acquiring the compliance instrument(s) must sign the same form and submit it to DEQ no later than one week after the transferring covered entity signs the form.

(c) 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, and separately the total number traded from each calendar year's cap.

(C) The total value per compliance instrument (in US dollars), excluding any fees. If a specific dollar value is not paid for the compliance instrument, an estimate must be provided.

(D) As applicable, other information about the trade that DEQ determines is necessary to support DEQ's monitoring of trades and that DEQ includes on the form;

(E) The following information about the covered entity transferring the compliance instrument(s):

(i) Name and full mailing address of the covered entity.

(ii) Designated representative's contact information including name, title or position, phone number, and email address.

(iii) 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 entity] is transferring these compliance instruments to [covered entity that is acquiring] for the price described in this form.

(F) The following information about the covered entity acquiring the compliance instrument(s):

(i) Name and full mailing address of the covered entity.

(i) Designated representative's contact information including name, title or position, phone number, and email address.

(iii) 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 entity] is acquiring compliance instruments from [covered entity that is transferring] for the price described in this form.

(2) After DEQ receives a compliance instrument trade form for one or more compliance instruments as described in section (1), 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 signed by both parties involved in a trade, DEQ will track traded compliance instruments. DEQ will notify the designated representative of the covered entity acquiring compliance instrument(s) in writing of availability of these compliance instruments. DEQ will notify the designated representative of the covered entity transferring compliance instrument(s) in writing that the covered entity no longer holds the 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.
(3) A covered entity acquiring one or more compliance instrument(s) in a trade may not use the compliance instrument(s) in other trades or toward demonstration of compliance with any compliance obligation until the trade has been reported to DEQ and DEQ has tracked the traded compliance instrument(s).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0590

RULE TITLE: Recordkeeping Requirements Related to Trading

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the recordkeeping requirements for covered entities related to trades.

RULE TEXT:

(1) A covered entity that transfers one or more compliance instruments in a trade according to OAR 340-273-0510 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 covered entity that acquires one or more compliance instruments in a trade according to OAR 340-273-0510 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 entities must make the records retained according to this rule available to DEQ upon request. DEQ will specify the date by which the covered entity must fulfill a records request from DEQ.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0810

RULE TITLE: Application for Community Climate Investment Credits

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how covered entities may receive CCI credits from DEQ after contributing funds to one or more CCI entity(ies).

RULE TEXT:
(1) Covered entities are eligible to receive one or more CCI credits if they contribute CCI funds according to this rule. Covered EITE sources and covered DNG sources are ineligible to receive CCI credits for contributions made to a CCI entity prior to January 1, 2028.
(a) The covered entity may receive CCI credits only for contributions to a CCI entity that has been approved by DEQ according to OAR 340-273-0920(1) and that has entered into a written agreement with DEQ to accept and administer CCI funds according to OAR 340-273-0920(2).
(b) If more than one CCI entity is approved to accept funds according to subsection (a) the covered entity must contribute an equal amount of CCI funds to each CCI entity that may receive funds consistent with its agreement with DEQ according to OAR 340-273- 0920(2). The contribution amount to each CCI entity may vary by up to one US dollar.
(2) A covered entity must apply to receive CCI credits by submitting an application to DEQ, on a form approved by DEQ that includes the information described in section (3). A covered entity may not submit an application to request CCI credits on behalf of another person.
(3) A covered entity that submits an application to DEQ to request CCI credits must submit a complete and accurate application. The application must include:
(a) Information about the covered entity, 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 each CCI entity that received CCI funds from the covered entity;
(c) A copy of the receipt(s) described in OAR 340-273-0930(1)(a) received from each CCI entity;
(d) The total CCI funds (in US dollars) contributed to each 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 entity] contributed the community climate investment funds noted in this application to each community climate investment entity listed for the purposes of supporting eligible projects as described in OAR 340-273-0900.

(4)(a) A covered entity seeking to receive CCI credits in order to use them to demonstrate compliance for a particular compliance period must submit its application to DEQ no later than November 14 of the year it will demonstrate compliance according to OAR 340-273-0450, or 11 days after DEQ's notice described in OAR 340-273-0450(1), whichever is later.
(b) DEQ's determination of the quantity of CCI credits to generate and distribute is based on the amount of the covered entity's contribution to CCI entities, as documented in its application and the CCI credit contribution amount described in Table 6 in OAR 340-273-9000 that was in effect on the date the contribution was made, adjusted for inflation according to OAR 340-273-0820(3).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0820

RULE TITLE: Generation and Distribution of Community Climate Investment Credits

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how DEQ will generate and distribute CCI credits to covered entities, including the contribution amount required to earn a CCI credit.

RULE TEXT:
(1) DEQ will review an application submitted according to OAR 340-273-0810 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 or does not meet the requirements of OAR 340-273-0810, 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 entity if DEQ determines that the application is accurate and complete according to the requirements of OAR 340-273-0810, and DEQ determines that the CCI funds have been provided to an approved CCI entity that is in good standing according to OAR 340-273-0910 through OAR 340-273-0990.
(3) Approval of an application for CCI credits.
(a) Upon approval of an application for CCI credits, DEQ will notify the applicant in writing that DEQ has approved the application and will generate and distribute to the covered entity the quantity of CCI credits approved according to subsection (b).
(b) The amount of CCI credits that DEQ will generate and distribute to the covered entity is one CCI credit for every verified contribution of the CCI credit contribution amount that a covered entity provides to a CCI entity, rounded down to the nearest whole number. The CCI credit contribution amount is the applicable amount in Table 6 in OAR 340-273-9000 for the date the contribution was made, with the CCI credit contribution amount adjusted for inflation and rounded to the nearest dollar using the inflation rate since January 2024, 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 CCI credit contribution amount on its website effective March 1 of each year. The formula for the adjustment is as follows:

CCI Credit Contribution Amount = CCI Credit Contribution Amount in Table 6 in
OAR 340-273-9000 * (CPI-U West for January of the calendar year for the price in Table 6 in OAR 340-273-9000 that is currently in effect / CPI-U West for January 2024)

(4) A CCI credit is a regulatory instrument and does not constitute personal property, a security or any other form of property.
(5) DEQ will track distributed CCI credits.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0830

RULE TITLE: Holding Community Climate Investment Credits

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes when DEQ would cancel CCI credits distributed to a covered entity and that CCI credits cannot be traded.

RULE TEXT:

(1) After DEQ distributes a CCI credit to a covered entity according to OAR 340-273- 0820, the covered entity may continue to hold the CCI credit until any of the following apply:

(a) The covered entity uses the CCI credit toward its demonstration of compliance according to OAR 340-273-0450;

(b) Two demonstration of compliance deadlines described in OAR 340-273-0450(2) have passed since the date DEQ provided written notice of its approval of the CCI credit to the covered entity according to OAR 340-273-0820 and the covered entity has not used the CCI credit in its demonstration(s) of compliance. In such a case, DEQ will cancel the CCI credit. A cancelled CCI credit may not be used toward demonstration of compliance; or

(c) The covered entity has ceased being a covered entity according to OAR 340-273-0130. When a covered entity ceases to be a covered entity, DEQ will cancel the CCI credit at the time of such cessation. A cancelled CCI credit may not be used toward any demonstration of compliance.

(2) Only the covered entity that receives a CCI credit from DEQ may hold the CCI credit. CCI credits may not be traded.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0890

RULE TITLE: Recordkeeping Requirements Related to Community Climate Investment Funds

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the recordkeeping requirements for covered entities related to CCIs.

RULE TEXT:

(1) A covered entity that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period of time that begins with the date it provides the CCI funds and lasts seven years after all resulting CCI credits are submitted to demonstrate compliance or are cancelled:

(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 entity 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 years after the CCI credit is used to demonstrate compliance or is cancelled:

(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 entity must make available to DEQ upon request all of the records it is required to retain according to this rule. DEQ will specify the date by which the covered entity must fulfill a records request from DEQ.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0900

RULE TITLE: Purposes of Community Climate Investments and Eligible Uses of CCI Funds

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the purposes of CCIs, including to achieve reductions of at least one MT CO2e of greenhouse gas emissions per CCI credit distributed by DEQ on average as well as other purposes. CCI funds may only be spent on projects that reduce anthropogenic greenhouse gas emissions in Oregon and for related costs, such as for reporting, oversight, and capacity building.

RULE TEXT:

(1) The purposes of community climate investments are to:

(a) Provide covered entities with an optional means of meeting part of their compliance obligation for one or more compliance periods;

(b) Reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO2e per CCI credit distributed by DEQ;

(c) Reduce emissions of other air contaminants that are not greenhouse gases, particularly in or near environmental justice communities in Oregon;

(d) Promote public health, environmental, and economic benefits for environmental justice communities throughout Oregon to mitigate impacts from climate change, air contamination, energy costs, or any combination of these; and

(e) Accelerate the transition of residential, commercial, industrial and transportation- related uses of fossil fuels in or near environmental justice communities in Oregon to zero or to other lower greenhouse gas emissions sources of energy in order to protect people, communities and businesses from increases in the prices of fossil fuels.

(2) A CCI entity may use CCI funds only for:

(a) Implementing eligible projects in Oregon, which are actions that reduce anthropogenic greenhouse gas emissions that would otherwise occur in Oregon in the transportation, residential, industrial and commercial sectors. Eligible projects include, without limitation, actions that reduce emissions in Oregon resulting from:

(A) Transportation of people, freight, or both;

(B) An existing or new residential use or structure;

(C) An existing or new industrial process or structure; and

(D) An existing or new commercial use or structure.

(b) The costs of administering CCI funds and eligible projects, including costs of reporting and other requirements included in OAR 340-273-0930 and costs of capacity- building for implementation of eligible projects.

(3) A CCI entity must use a minimum of 15% of CCI funds that are used for implementing eligible projects for projects that benefit federally recognized tribes and tribal communities in Oregon.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0910

RULE TITLE: Application to DEQ for Approval as a Community Climate Investment Entity

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the criteria and application requirements for organizations that apply to be CCI entities approved by DEQ.

RULE TEXT:

(1) To be eligible for DEQ approval as a community climate investment entity, an entity must demonstrate that it:

(a) Is authorized to do business in Oregon, and that it is exempt from federal taxation according to Section 501(c)(3) of the U.S. Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Has the capacity to administer and spend CCI funds to carry out eligible projects as specified in OAR 340-273-0900(2);

(c) Has or will have staff capable of conducting work associated with being a CCI entity according to this division;

(d) Has or will have staff or subcontractors capable of implementing eligible projects throughout Oregon; and

(e) Is not a covered entity or a related entity of a covered entity.

(2) An eligible entity described in section (1) may apply to be approved as a CCI entity to implement eligible projects directly or by agreement with one or more subcontractors, or both. Subcontractors are not CCI entities, and do not need to meet the eligibility requirements of section (1). However, a CCI entity may not use CCI funds to pay a subcontractor that is a covered entity or a related entity of a covered entity.

(3) An entity that seeks approval as a CCI entity must submit an application to DEQ, in a format approved by DEQ that includes the following:

(a) Information about the entity, including:

(A) Name, full mailing address, and website address;

(B) Contact person's information including name, title or position, phone number, and email address;

(C) Information to describe how the entity meets the eligibility criteria in section (1);

(D) A copy of the entity's current articles of incorporation and bylaws, and a description of the mission of the entity and how being a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals, who would be working to implement eligible projects with CCI funds or assigned work associated with the requirements of a CCI entity described in OAR 340-273-0930;

(F) A description of experience implementing or supporting implementation of eligible projects or project types, including projects or project types that reduce anthropogenic greenhouse gas emissions in the transportation, residential, industrial and commercial sectors particularly in environmental justice communities in Oregon. This may include the experience of the key individuals described in paragraph (E) whether or not that prior experience occurred while working with the entity;

(G) Information regarding any violation by the entity related to federal or state laws, including labor laws, within the preceding five years;

(H) The entity's IRS Form 990 for each of the three most recent years, if available; and

(I) Proof that the IRS has certified the entity 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) Information about each known or planned subcontractors, as available, 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) Confirmation that the subcontractor is not a covered entity or any of its related entities;

(D) If applicable, a description of the mission of the subcontractor and how being a subcontractor of a CCI entity supports the mission;

(E) A description of the experience and expertise of key individuals who would be working to implement eligible projects

with CCI funds;
(F) A description of the subcontractor's prior experience implementing or supporting implementation of eligible projects, including projects or project types that reduce anthropogenic greenhouse gas emissions in the transportation, residential, industrial, and commercial sectors, and a description of prior experience serving communities in Oregon. This may include the experience of the key individuals described in paragraph (E), whether or not that prior experience occurred while working with the subcontractor; and
(G) Information regarding any violation by the proposed subcontractor related to federal or state laws, including labor laws, within the preceding five years;
(c) Information about how any subcontractor(s) may be selected during project implementation if there are none listed in the application or if the entity expects to select one or more additional subcontractors during project implementation;
(d) If known, a general description of either or both of the following:
(A) Anticipated eligible project(s) or project type(s) that support the purposes of CCIs described in OAR 340-273-0900(1) and that are eligible projects as defined in OAR 340-273-0900(2) that the entity plans to implement if approved as a CCI entity; and
(B) The communities in Oregon that are anticipated to benefit if the entity is approved as a CCI entity;
(e) Description of the administrative processes and financial controls the entity will use to ensure all CCI funds are held separately from the entity's other funds. This must detail how the entity will manage and invest funds in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f); and
(f) The following attestation, signed by the entity'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. [Entity] seeks to become a community climate investment entity and, if approved, will comply with the applicable requirements in Oregon Administrative Rules chapter 340, division 273.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0920

RULE TITLE: DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the DEQ process for making CCI entity-related approvals and written agreements, including consultation with the equity advisory committee. The written agreement must be approved before an entity receives final approval as a CCI entity and is authorized to receive CCI funds.

RULE TEXT:

(1) DEQ will review and may approve applications from entities proposing to be approved as CCI entities according to subsections (a) through (d).

(a) DEQ will review an application submitted according to OAR 340-273-0910 to ensure that it meets the requirements of that rule. DEQ will inform the entity 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 entity provides the additional information requested by DEQ.

(b) When evaluating complete applications submitted according to OAR 340-273-0910, DEQ will consult with the equity advisory committee described in OAR 340-273-0950 and may consult with any other relevant experts selected by DEQ.

(c) DEQ will consider the following when evaluating a complete application:

(A) The content of the application;

(B) Whether the entity meets the eligibility criteria in OAR 340-273-0910(1);

(C) Whether each proposed subcontractor, if applicable, complies with the eligibility criteria in OAR 340-273-0910(1)(e);

(D) The overall ability of the entity and, if applicable, its subcontractor(s) to use CCI funds to complete eligible projects, including projects or project types that reduce anthropogenic greenhouse gas emissions in the transportation, residential, industrial, and commercial sectors, that advance the purposes set forth in OAR 340-273- 0900(1) and that collectively reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO2e per CCI credit distributed by DEQ based on CCI contributions to the entity;

(E) The overall ability of the entity and/or its subcontractor(s) to use CCI funds as described in paragraph (D) relative to the overall ability of other applicants and approved CCI entities; and

(F) Whether the applicant or any proposed subcontractors have violated any federal or state laws, including labor laws, in the preceding five years.

(d) DEQ will notify the applicant in writing whether provisional approval as a CCI entity is granted or denied.

(2) If provisional approval as a CCI entity is granted, DEQ will then work with the CCI entity to complete a written agreement. The written agreement must be approved before an entity receives final approval as a CCI entity and is authorized to receive CCI funds. The written agreement will include, but is not limited to:

(a) Agreement to use CCI funds only for the uses specified in OAR 340-273-0900(2);

(b) The initial term of the agreement and approval, which may not exceed ten years;

(c) Requirements for monitoring and reporting of project outcomes sufficient to document emissions reductions;

(d) Provisions for, and limitations on, the payment of administrative expenses;

(e) Provisions for extensions, amendments, or renewal of the agreement;

(f) Other conditions that DEQ determines are necessary to include in the agreement in order to meet the requirements of this division, such as a limit on the amount of CCI funds that a CCI entity may accept.

(3) If DEQ finds that any of the events in subsections (a) through (c) occur, DEQ may suspend or revoke approval of a CCI entity completely or in part.

(a) The CCI entity fraudulently obtained DEQ approval;

(b) The CCI entity is in violation of any applicable provisions of this division or any written agreement between the CCI

entity and DEQ; or

(c) DEQ determines that the CCI entity is not in compliance with one or more of the eligibility criteria for approval in OAR 340-273-0910(1).

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0930

RULE TITLE: Requirements for Community Climate Investment Entities

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the requirements for CCI entities, including financial controls, work plans to propose eligible projects and calculation methodologies that will be used to estimate emission reductions. Work plans must be approved by DEQ prior to a CCI entity beginning work.

RULE TEXT:

(1) Acceptance of CCI funds.

(a) Once approved by DEQ, unless otherwise specified in the agreement between a CCI entity and DEQ, a CCI entity must accept CCI funds from any covered entity that seeks to contribute CCI funds, except that a CCI entity may not accept funds from any covered EITE source or covered DNG source during calendar years 2025, 2026 and 2027.

(b) The CCI entity must provide a receipt to the covered fuel supplier upon receipt of CCI funds from 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;

(D) The date the CCI entity accepted the CCI funds; and

(E) The following attestation:

I verify that [CCI Entity] received the contribution from [Covered entity] as described on this receipt and I affirm that I am a representative of [CCI entity] authorized to sign this receipt.

(c) Unless otherwise specified in the agreement between the CCI entity and DEQ, a CCI entity must accept CCI funds transferred to it from another CCI entity according to section (8).

(2) Holding CCI funds.

(a) A CCI entity must hold all CCI funds in one or more accounts separate from any other funds. Additionally, prior to being spent in compliance with the provisions of this division and its agreement with DEQ, funds must be managed and invested in a manner consistent with ORS 128.318(2), (3), and (5)(a) through (f). A CCI entity may not encumber CCI funds or pledge CCI funds as a security for other purposes than completing one or more projects under a DEQ-approved work plan.

(b) A CCI entity must complete an independent financial audit of CCI funds for each year in which it holds CCI funds and review the auditor relationship every five years.

(3) Use of CCI funds. A CCI entity may only spend CCI funds for the uses specified in OAR 340-273-0900(2). The expenditures of CCI funds must conform to the CCI's work plan approved by DEQ under section (4) of this rule.

(4) Work Plan.

(a) A CCI entity must submit a proposed work plan to DEQ for review and approval. The period of the work plan will normally be a calendar year, unless otherwise specified in the agreement between DEQ and the CCI entity. A CCI entity must obtain DEQ approval of a work plan prior to committing or expending CCI funds for the period of the work plan. The first proposed work plan must be submitted within 90 days of the date on which the CCI entity has received at least $5 million in CCI funds from covered entities. Each subsequent work plan must be submitted no later than 60 days prior to the end of the current work plan period.

(b) The work plan must include:

(A) A description of the project(s) or project type(s) the CCI entity expects to support with CCI funds during the period of the work plan, and how the project(s) or project type(s) support each of the purposes of CCIs described in OAR 340-273-0900(1)(b) through (e);

(B) A description of how the project(s) or project type(s) will benefit communities in Oregon, including description of the

potential locations of communities or regions of Oregon in which projects may be implemented or a description of how locations may be selected;
(C) A description of how each project or project type would benefit environmental justice communities in Oregon;
(D) A description of the how project or project type would benefit federally recognized tribes and tribal communities, a description of how the CCI entity has engaged with federally recognized tribes and tribal communities on the work plan, or a description for how the CCI entity intends to engage with federally recognized tribes and tribal communities in the future, as investments benefitting federally recognized tribes and tribal communities is a priority.
(E) A description of the methodology that the CCI entity is using to estimate the reductions in anthropogenic greenhouse gas emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan. The methodology must be sufficient to allow DEQ to perform the necessary calculations in a program review according to OAR 340-273-8100(1)(a);
(F) A description of the methodology that the CCI entity is using to estimate the reductions in other air contaminant emissions that will result from the project(s) or project type(s) in the work plan, along with an estimate of the anticipated reductions during the period of the work plan;
(G) The name and contact person's contact information of subcontractors that will be involved in any project activities during the period of the work plan; and
(H) The estimated total budget for the period of the work plan. CCI funds must be listed separately from any other funds, as applicable. This must separately include the following:
(i) All costs related to project implementation, listed separately for groups of project(s) or project type(s), including but not limited to personnel costs and materials costs; and
(ii) Administrative costs related to the project implementation and meeting the requirements of this rule.
(c) A CCI entity may request DEQ approval of modifications to a DEQ-approved work plan by submitting modifications to the information described in subsection (b). The CCI entity must obtain DEQ approval of any modification to a work plan prior to beginning work according to a modified work plan.
(d) Prior to approving a work plan, DEQ will solicit input from the equity advisory committee and any other relevant experts selected by DEQ. DEQ will review each proposed work plan to ensure that it meets the requirements of this section. DEQ will inform the CCI entity if the proposed work plan is incomplete and the additional specific information required to make the work plan complete. If the work plan is incomplete, DEQ will not consider the work plan further until the CCI entity provides the additional information requested by DEQ. DEQ will consider the following in its review and approval of a workplan:
(A) The overall ability of the CCI entity to conduct work according to the work plan;
(B) Whether following the work plan is reasonably likely to reduce anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO2e per CCI credit distributed by DEQ based on CCI fund contributions to the CCI entity;
(C) Whether the work plan is consistent with the purposes of CCIs described in OAR 340-273-0900; and
(D) Input from the equity advisory committee described in OAR 340-273-0950 and from any other relevant experts selected by DEQ.
(5) Annual report. Date of submission of annual report to be determined in written agreement as described in OAR 340-273-0920 (2). A CCI entity must submit to DEQ an annual report each year that describes its CCI-related activities and finances for the preceding year. The information provided must be sufficient to allow DEQ to perform the necessary calculations in a program review according to OAR 340-273-8100(1)(a), and must include:
(a) The following information related to CCI funds received, held, or spent during the year:
(A) Each financial statement for the account(s) where CCI funds were held and the results of the CCI entity's most recent independent financial audit;
(B) The date, amount of CCI funds accepted, and as applicable, the name of the covered fuel supplier for each separate contribution received;
(C) Total CCI fund interest accrual;

(D) Total CCI funds spent, including separate totals of:
(i) CCI funds spent on each project, including but not limited to personnel costs and materials costs; and
(ii) Administrative costs related to the project, including project development, and implementation and meeting the requirements of this rule;
(E) Total CCI funds the CCI entity holds that remain unspent as of the end of the year; and
(F) Total non-CCI funds spent on implementation of each project or project type, as applicable;
(b) The following information related to implementation progress of project(s) or project type(s) during the year:
(A) Documentation of work completed or progress made on each project or project type, including the number of projects completed of each project type, as applicable;
(B) A summary of project outcomes. This must include estimated annual greenhouse gas emissions reductions in metric tons of CO2e and non-greenhouse gas air contaminant emissions reductions in metric tons of the applicable air contaminant that are anticipated to be achieved from any project(s) completed during the year. Emissions reductions must be estimated using the methodology included in the applicable work plan. Emissions reductions may be reported by individual project or may be grouped by project type, if the CCI entity can provide sufficient information to demonstrate that the emissions reductions of multiple projects of the same type are comparable; and
(C) A description of work that occurred compared to the most recently approved work plan or modified work plan. If projects were not implemented as planned, the CCI entity must describe the reason for delay and must describe any steps that may be taken to work to remedy the delay or prevent similar delays in subsequent years; and
(c) A copy of the CCI entity's most recent IRS form 990.
(6) Establishing and maintaining efforts to engage and involve environmental justice communities in the design, administration, and implementation of the funds.
(7) Maintaining CCI entity eligibility.
(a) A CCI entity must notify DEQ in writing as soon as possible, and not later than 15 days after it no longer meets any of the eligibility criteria for approval in OAR 340-273- 0910(1), or if it is in violation of any of the requirements of this rule.
(b) A CCI entity must notify DEQ in writing as soon as possible and not later than 15 days after any changes are made to the administrative processes or financial controls that keep CCI funds separate from other funds;
(c) A CCI entity must notify DEQ in writing as soon as possible and not later than 15 days after any changes related to key individuals or their assigned work associated with being a CCI entity.
(d) A CCI entity must notify DEQ in writing as soon as possible and not later than 15 days after any finding of a violation related to federal or state labor laws by the CCI entity or by an approved subcontractor;
(e) 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 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.
(8) Voluntary withdrawal from DEQ approval. An approved CCI entity may request to withdraw voluntarily its approval by providing a written notice to DEQ requesting such withdrawal.
(9) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require the entity to transfer any uncommitted CCI funds to another CCI entity and provide proof to DEQ that the transfer has been made. If a transfer of funds is required, DEQ will determine allowable expenses for the transition of projects and the remaining funds.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0950

RULE TITLE: Fee for Community Climate Investment Entities

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Each Community Climate Investment Entity must pay a fee to DEQ equal to 4.5% of all CCI contributions that the entity receives from covered fuel suppliers to support DEQ's oversight and administration of the CCI program.

RULE TEXT:

(1) Each approved Community Climate Investment Entity must pay a fee to DEQ equal to 4.5% of all CCI contributions that the entity receives from covered fuel suppliers and:

(a) The fee is due biannually. No later than February 1 of each year, DEQ will send a fee invoice to each Climate Community Investment Entity. Each CCI Entity must pay a fee of 4.5% for all CCI contributions that the entity received from covered fuel suppliers between July 1 and December 31 of the previous calendar year. No later than August 1 of each year each DEQ will send a fee invoice to each Community Climate Investment Entity. Each CCI Entity must pay a fee of 4.5% for all CCI contributions that the entity received from covered fuel suppliers from January 1 through June 30 of that calendar year. Each CCI Entity must pay the fee within 30 calendar days of DEQ sending the fee invoice.

(b) DEQ may reduce the fee for any given fee period if a lesser amount is adequate to cover the costs of administering and overseeing the CCI program. The fee percentage for the fee period will be included in the fee invoice to each CCI entity.

(c) A report of all CCI contributions and date of contributions made during the previous fee period must accompany the fee payment.

(d) If no CCI contributions were received during the previous fee period, the CCI Entity must provide notification to DEQ that no contributions were received, and no fee to be paid.

(e) If a CCI Entity has not paid the CCI fee within the 30 calendar days of DEQ sending the fee invoice, a late fee will be assessed. The late fee may not be paid for using CCI funds. CCI Entity will be subject to late fees as follows:

(A) One hundred dollars per day for payments received between one and seven days late;

(B) Two hundred dollars per day for payments received between eight and thirty days late; and

(C) Five hundred dollars per day for payments received on or after thirty days late.

(2) Reporting. Each fiscal year DEQ will report, post online, and present to the equity advisory committee its program expenditures and revenue related to the CCI fee.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.295

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.295

ADOPT: 340-273-0960

RULE TITLE: Equity Advisory Committee and Environmental Justice Community Engagement

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the DEQ-appointed equity advisory committee and DEQ's commitment to engage with environmental justice communities on CCI-related topics.

RULE TEXT:

(1) DEQ will appoint and convene an equity advisory committee to assist DEQ with:

(a) Review of:

(A) Applications to become a CCI entity;

(B) Requests for DEQ approval of work plans; and

(C) Other submittals by CCI entities that require DEQ review; and

(b) Outreach to environmental justice communities.

(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.

(b) DEQ will prioritize convening an advisory committee that represents multiple areas of 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 gas emissions reductions, including in the transportation, residential, industrial and commercial sectors, and climate change.

(c) DEQ will prioritize convening an advisory committee that represents multiple regions across Oregon.

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

(e) DEQ will appoint at least one committee member that represents a federally recognized tribe or tribal interests.

(3) In addition to outreach conducted by CCI third party entities to environmental justice communities throughout Oregon, DEQ will conduct outreach to these communities to seek input on projects that may be of interest to those communities. The equity advisory committee will consider this input when assisting DEQ as described in section (1). DEQ will consider this input when making approval decisions regarding CCI entities, projects and project types, and work plans.

(4) DEQ will offer guidance and conduct outreach to support the equity advisory committee and environmental justice communities in Oregon in understanding the provisions related to CCIs.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-0990

RULE TITLE: Recordkeeping Requirements for Community Climate Investment Entities

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes the recordkeeping requirements for CCI entities.

RULE TEXT:

(1) A CCI entity must retain the following records, in paper or electronic format, for a period of at least seven years following the date of transaction or submission to DEQ:

(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 entity that makes a CCI payment to the CCI entity;

(e) A copy of any work plan submitted to DEQ by the CCI entity;

(f) A copy of any report or written request for approval submitted to DEQ by the CCI entity;

(g) All other information and documentation related to CCI funds;

(h) All records related to any implemented projects; and

(i) All records and information supporting estimates of greenhouse gas emissions reductions and other air contaminant emissions reductions achieved from implemented projects or project types.

(2) CCI entities must make records required to be retained in this rule available to DEQ upon request. DEQ will specify the date by which the CCI entity must fulfill a records request from DEQ.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-8100

RULE TITLE: Program Review

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes DEQ's program review and reporting to the EQC.

RULE TEXT:

(1) DEQ will report to the EQC on community climate investments and request that the EQC provide input on community climate investment implementation and future improvements. DEQ will submit the first report to the EQC by August 30, 2027 and every two years thereafter. DEQ will share each report with current members of the equity advisory committee after submission to the EQC. Each community climate investment report will include:

(a) A review of community climate investments, including:

(A) CCI credits distributed to covered entities;

(B) CCI credits used by covered entities to demonstrate compliance;

(C) Estimates of greenhouse gas emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(D) Estimates of non-greenhouse gas air contaminant emissions reductions that are anticipated to be achieved by completed projects that CCI entities have reported to DEQ by March 31 of the year DEQ is reporting to the EQC;

(E) Calculation of the average anthropogenic greenhouse gas emissions reductions achieved per CCI credit distributed based on (A) and (C) and whether reductions of approximately one MT CO2e or more of anthropogenic greenhouse gas emissions for the average CCI credit distributed by DEQ was achieved; and

(F) Description of community benefits achieved; and

(b) DEQ's recommendations regarding any necessary or desirable changes to the CPP provisions relating to CCIs, including, without limitation, recommendations on changes to the CCI credit contribution amounts described in Table 6 in OAR 340-273-9000 necessary to assure that the use of CCI funds is reducing anthropogenic greenhouse gas emissions in Oregon by an average of at least one MT CO2e per CCI credit distributed by DEQ, as well as recommendations on how to best achieve the purposes of CCIs described in OAR 340-273-0900, if applicable.

(2) DEQ will engage internal and external auditors as necessary to conduct independent audits of CCI contributions and greenhouse gas emission reductions of completed projects.

(3) DEQ will report to the EQC on implementation of the Climate Protection Program. DEQ will submit the first report to the EQC five years after the date of adoption of this division and at least once every five years thereafter. Each program review report will include:

(a) A review of the Climate Protection Program, including:

(A) Summary of covered fuel suppliers', covered EITE sources', and covered DNG sources' demonstrations of compliance for compliance periods that have occurred since program start, including:

(i) Caps for each year and compliance period;

(ii) Compliance obligations for each year and compliance period;

(iii) Compliance instruments submitted for each compliance period; and

(iv) CCI credits submitted for each compliance period;

(B) Summary of the distribution of compliance instruments, including the size of the compliance instrument reserve at the start and end of each program year that has occurred and compared to Table 3 in OAR 340-273-9000;

(C) Summary of activity relating to trading of compliance instruments for each program year that has occurred;

(D) A current list of covered entities by name and whether each is a covered fuel supplier, covered EITE source, or covered DNG source; and

(E) Description of any enforcement actions taken that involved civil penalties, if applicable; and

(b) DEQ's recommendations regarding any potential changes to the CPP including, for example and without limitation, recommendations regarding potential changes to best achieve the goals described in OAR 340-273-0010(3).

(4) In addition to making the written reports required under sections (1) and (3) DEQ will report to the EQC on the

ongoing implementation of the Climate Protection Program, so the EQC can better evaluate progress on achieving program goals as described in OAR 340-273-0010 and assess whether any changes to the program rules or program implementation are warranted. DEQ will provide the first update to the EQC no later than by December 1, 2026, and will report no less frequently than annually thereafter.

(5) If the average annual statewide retail cost of gasoline, diesel, or propane in Oregon increases year-over-year by an amount that is more than 20 percent higher than the average change in cost for the same fuel over the same period in Washington, Idaho, and Nevada, DEQ will investigate the cause(s) of the increase and report to the EQC regarding whether changes to the rules in this division should be made that would ameliorate a relative increase in costs in Oregon. If necessary, in addition to deferrals, DEQ will consider recommending rule changes, such as changes to caps and distribution of additional compliance instruments, changes to the compliance instrument reserve, or changes to the allowable usage of CCI credits.

(6) DEQ will regularly, and at a minimum at least once per compliance period, request information from the Oregon Public Utility Commission to determine what changes in each local distribution company's proposed or current rates for different customer classes may be attributable to a local distribution company's projected or actual costs of compliance with this division of rules. If DEQ determines that the rates will significantly increase, when compared over a similar timeframe to neighboring states with enforceable and declining limits on greenhouse gas emissions from natural gas, due to local distribution companies' actual costs to comply with this rule, in addition to compliance deadline extensions specified in OAR 340-273-8110, DEQ will recommend to the EQC changes to this division of rules intended to moderate impacts to the affordability of local distribution company rates. These changes could include, but are not limited to, adjustment to future years' caps, changes to the CCI amount, or changes to the allowable usage of CCI credits.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-8110

RULE TITLE: Deferrals

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how DEQ may extend reporting or demonstration of compliance deadlines as DEQ deems necessary or appropriate.

RULE TEXT:
DEQ may extend reporting or demonstration of compliance deadlines as DEQ deems necessary or appropriate and will issue written notice of any extensions.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-8120

RULE TITLE: Severability

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes how each provision of this division is severable and that any remaining provisions will continue in full force and effect.

RULE TEXT:
Each requirement of this division is severable, and if any requirement of this division is held invalid, the remainder of the requirements of this division will continue in full force and effect.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-273-9000

RULE TITLE: Tables

NOTICE FILED DATE: 07/29/2024

RULE SUMMARY: Describes tables referenced in this division of rules.

RULE TEXT:

(1) Table 1. Thresholds for applicability described in OAR 340-273-0110(3).

(2) Table 2. Oregon Climate Protection Program caps.

(3) Table 3. Compliance instrument reserve size.

(4) Table 4. Compliance instrument percentage distribution to covered fuel suppliers that are local distribution companies.

(5) Table 5. Covered entity allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-273-0450(3).

(6) Table 6. CCI credit contribution amount.

(7) Table 7. EITE source classifications.

(8) Table 8. Emission reduction targets for second and subsequent periods for covered EITE and covered DNG sources.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468.035, 468A.010, 468A.015, 468A.045

Oregon Department of Environmental Quality

OAR 340-273-9000

Tables

Table 1 Thresholds for applicability described in OAR 340-273-0110(3)		
Applicability determination calendar year(s)	**Threshold for applicability to compare to annual covered emissions**	**Calendar year a person becomes a covered fuel supplier**
Any year from 2020 through 2025	100,000 MT CO2e	2025
2026	100,000 MT CO2e	2026
2027	100,000 MT CO2e	2027
Any year from 2025 through 2028	50,000 MT CO2e	2028
2029	50,000 MT CO2e	2029
Any year from 2028 through 2030	25,000 MT CO2e	2030
2031	25,000 MT CO2e	2031
Each subsequent year	25,000 MT CO2e	Each subsequent year

Table 2 Oregon Climate Protection Program caps	
Calendar year	**Cap**
2025	24,157,161
2026	23,280,253
2027	22,403,346
2028	25,533,741
2029	24,129,251
2030	23,135,118
2031	21,689,592
2032	20,244,066
2033	18,798,540
2034	17,353,013
2035	15,907,487
2036	15,059,088
2037	14,210,689
2038	13,362,289
2039	12,513,890
2040	11,665,491
2041	10,817,091
2042	9,968,692
2043	9,120,293
2044	8,271,893
2045	7,423,494
2046	6,575,095
2047	5,726,695
2048	4,878,296
2049	4,029,897
2050 and each calendar year thereafter	3,181,497

Table 3 Compliance instrument reserve size	
Calendar year(s) of the cap	**Reserve size**
2025 through 2028	800,000 compliance instruments
2029 through 2034	500,000 compliance instruments
2035 and each calendar year thereafter	250,000 compliance instruments

Table 4 Compliance instrument distribution percentages to covered fuel suppliers that are local distribution companies			
	Compliance instruments to distribute to Avista Utilities	**Compliance instruments to distribute to Cascade Natural Gas Corporation**	**Compliance instruments to distribute to Northwest Natural Gas Company**
2025	2.76%	2.25%	19.74%
2026	2.76%	2.25%	19.74%
2027	2.76%	2.25%	19.74%
2028	2.69%	2.20%	19.25%
2029	2.69%	2.20%	19.25%
2030 and each calendar year thereafter	2.68%	2.18%	19.13%

Table 5
Covered entity allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-273-0450(3)

Compliance period	Allowable percentage of total compliance obligation(s) for which compliance may be demonstrated with CCI credits
Compliance period 1 (2025 through 2027)	15%
Compliance period 2 (2028 through 2029), and for each compliance period thereafter	20%

Table 6
CCI credit contribution amount

Effective date	CCI credit contribution amount in 2024 dollars, to be adjusted according to OAR 340-273-0820(3)
March 1, 2025	$129
March 1, 2026	$129
March 1, 2027	$130
March 1, 2028	$131
March 1, 2029	$132
March 1, 2030	$133
March 1, 2031	$134
March 1, 2032	$135
March 1, 2033	$136
March 1, 2034	$137
March 1, 2035	$138
March 1, 2036	$139
March 1, 2037	$140
March 1, 2038	$141
March 1, 2039	$142
March 1, 2040	$143
March 1, 2041	$144
March 1, 2042	$145
March 1, 2043	$146
March 1, 2044	$147
March 1, 2045	$148
March 1, 2046	$149
March 1, 2047	$150
March 1, 2048	$151
March 1, 2049	$152
March 1, 2050	$153

Table 7 EITE source classifications	
NAICS Code	**Sector Definition**
3364	Aerospace Product and Parts Manufacturing
3251	Basic Chemical Manufacturing
3273	Cement and Concrete Product Manufacturing
3315	Foundries
3114	Fruit and Vegetable Preserving and Specialty Food Manufacturing
3272	Glass and Glass Product Manufacturing
3311	Iron and Steel Mills and Ferroalloy Manufacturing
3274	Lime and Gypsum Product Manufacturing
3314	Nonferrous Metal (except Aluminum) Production and Processing
2123	Nonmetallic Mineral Mining and Quarrying
3329	Other Fabricated Metal Product Manufacturing
3279	Other Nonmetallic Mineral Product Manufacturing
3253	Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing
3261	Plastics Product Manufacturing
3221	Pulp, Paper, and Paperboard Mills
3211	Sawmills and Wood Preservation
3344	Semiconductor and Other Electronic Component Manufacturing
3212	Veneer, Plywood, and Engineered Wood Product Manufacturing

Table 8 Emissions reduction targets for covered EITE sources and covered DNG sources for compliance period 2 and subsequent periods	
Compliance period	**Emissions reduction target**
Compliance period 2 (2028 through 2029)	1
Compliance period 3 (2030 through 2031)	0.95
Compliance period 4 (2032 through 2033)	0.90
Compliance period 5 (2034 through 2035)	0.85
Compliance period 6 (2036 through 2037)	0.80
Compliance period 7 (2038 through 2039)	0.75
Compliance period 8 (2040 through 2041)	0.70
Compliance period 9 (2042 through 2043)	0.65
Compliance Period 10 (2044 through 2045)	0.60
Compliance Period 11 (2046 through 2047)	0.55
Compliance Period 12 (2048 through 2049)	0.50
Compliance Period 13 (2049 through 2051) and thereafter	0.45

Translation or other formats

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the original of this **PETITION FOR JUDICIAL REVIEW** with the Oregon State Court Administrator, Appellate Records Section, by using the appellate electronic filing system on April 16, 2026.

I certify that on April 16, 2026, I caused to be served a true copy of this **PETITION FOR JUDICIAL REVIEW** on the following parties:

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by United States Postal Service, certified mail, return receipt requested, and email.

SNELL & WILMER L.L.P.

s/ Clifford S. Davidson
Clifford S. Davidson, OSB No. 125378