

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

NORTHWEST NATURAL GAS
COMPANY, AVISTA
CORPORATION, and CASCADE
NATURAL GAS CORPORATION,

Petitioners,

v.

OREGON ENVIRONMENTAL
QUALITY COMMISSION,

Respondent.

CA No.

PETITION FOR JUDICIAL REVIEW
OF ADMINISTRATIVE RULE

1.

Pursuant to ORS 183.400, Petitioners Northwest Natural Gas Company, Avista Corporation, and Cascade Natural Gas Corporation (collectively, the “Petitioners”) seek judicial review of the rules attached as Exhibit 1 that were adopted by Respondent Oregon Environmental Quality Commission (the “EQC”) on December 16, 2021 and filed with the Oregon Secretary of State the same day.

2.

The parties to this review are:

Petitioners

Northwest Natural Gas Company
250 SW Taylor Street
Portland, OR 97204

Avista Corporation
1411 E. Mission Avenue
Spokane, WA 99252

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

Respondent

Oregon Environmental Quality Commission
Department of Environmental Quality
4026 Fairview Industrial Drive SE
Salem, OR 97302

3.

The Petitioners are jointly represented by:

BAKER BOTTS L.L.P.
Megan H. Berge (CA Bar No. 332536)
Motion to admit out-of-state counsel to be filed.
101 California Street
San Francisco, CA 94111
415-291-6233
megan.berge@bakerbotts.com

Sterling Marchand (DC Bar No. 1001065)
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.
700 K Street NW
Washington, D.C. 20001
202-639-1113
sterling.marchand@bakerbotts.com
scott.novak@bakerbotts.com

SNELL & WILMER L.L.P.
Clifford S. Davidson, OSB No. 125378
Drew L. Eyman, OSB No. 163762
1455 SW Broadway, Suite 1750
Portland, OR 97201
503-624-6800
csdavidson@swlaw.com
deyman@swlaw.com

The Respondent is represented by:

Ellen F. Rosenblum, OSB No. 753239
Attorney General
Oregon Department of Justice
400 Justice Building
1162 Court Street, NE
Salem, OR 97301-4096
503-378-6002
ellen.f.rosenblum@doj.state.or.us

There are no self-represented parties in this matter.

4.

Petitioners seek review of the Climate Protection Program, adopted on December 16, 2021 by the EQC of the Department of Environmental Quality (the “Rule”). The Rule is attached as Exhibit 1.

The Rule’s stated purpose is to create a program intended to reduce greenhouse gas emissions from sources located in Oregon. The Rule purports to do so by imposing declining limits or caps on emissions attributed to the combustion of products sold or transported by covered fuel suppliers, including local distribution companies like Petitioners. The Department of Environmental Quality (“DEQ”)

developed the program, and EQC approved it, at the direction of Oregon Governor Kate Brown. *See* Office of the Governor – State of Oregon, Exec. Order No. 20-04, 4(c) (May 10, 2020). The first compliance period is 2022 through 2024.

Under the Rule, DEQ imputes to each local distribution company a presumptive quantity of carbon dioxide equivalent emissions resulting from the combustion of the natural gas it imports, sells, or distributes in Oregon. To comply with the Rule, a covered fuel supplier must provide a compliance instrument or a Community Climate Investment (“CCI”) credit for each metric ton of carbon dioxide equivalent emissions imputed to that supplier.

Each year, the program distributes to covered fuel suppliers a declining quantity of compliance instruments equivalent to that year’s cap. Each compliance instrument represents one metric ton of carbon dioxide equivalent emissions, and may be banked for future compliance periods or traded with other covered fuel suppliers if not used for compliance that year. The number of compliance instruments distributed each year to covered fuel suppliers, including Petitioners, is set at a baseline using data from 2017 through 2019, and will decline each year through 2050. By 2035, the compliance instrument distributions will decline by 50% from the baseline. By 2050, the compliance instrument distributions will decline by 90% from the baseline.

The program also intends that covered fuel suppliers can acquire CCI credits by paying DEQ-approved third-party entities to implement projects purporting to reduce greenhouse gas emissions in Oregon. For the period 2022 through 2024, covered fuel suppliers can use CCI credits to meet only up to 10% of their compliance obligations; this percentage increases to 15% in 2025 through 2027, and to 20% starting in 2028 onward.

Thus, the Rule aims to reduce the amount of natural gas sold or distributed by local distribution companies by shrinking the amount of available compliance instruments and limiting the number of CCI credits that can be used for compliance.

Petitioners challenge the authority of EQC to adopt the Rule. While Petitioners fully support the goal of decarbonization, Petitioners believe that it must be done in a legally supported, consistent, effective, and verifiable way, so that it benefits all Oregonians.

5.

Northwest Natural Gas Company (“NW Natural”) is a “public utility”, as defined in ORS 757.005(1), that provides natural gas distribution services to more than 770,000 customers across the Pacific Northwest, including Oregon. As a public utility company, NW Natural is a “person” under ORS 183.310(8), and ORS 183.400(1) authorizes “any person” to petition the Court of Appeals to determine

“[t]he validity of any rule.” NW Natural is not a party to an order or contested case in which the validity of the Rule may be determined by a court.

6.

Avista Corporation (“Avista”) is a “public utility”, as defined in ORS 757.005(1), providing electricity to 402,000 customers and natural gas to 368,000 customers across four northwestern states, including Oregon. As a public utility company, Avista is a “person” under ORS 183.310(8), and ORS 183.400(1) authorizes “any person” to petition the Court of Appeals to determine “[t]he validity of any rule.” Avista is not a party to an order or contested case in which the validity of the Rule may be determined by a court.

7.

Cascade Natural Gas Corporation (“Cascade”) is a “public utility”, as defined in ORS 757.005(1), that provides natural gas to nearly 300,000 customers located in smaller, mostly rural communities across Oregon and Washington. As a public utility company, Cascade is a “person” under ORS 183.310(8), and ORS 183.400(1) authorizes “any person” to petition the Court of Appeals to determine “[t]he validity of any rule.” Cascade is not a party to an order or contested case in which the validity of the Rule may be determined by a court.

8.

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

9.

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

DATED: March 18, 2022

SNELL & WILMER L.L.P.

s/ Clifford S. Davidson

Clifford S. Davidson, OSB No. 125378

Drew L. Eyman, OSB No. 163762

BAKER BOTTS L.L.P.

Megan H. Berge (CA Bar No. 332536)

Sterling Marchand (DC Bar No. 1001065)

Scott Novak (DC Bar No. 1736274)

*Motions to admit out-of-state counsel
to be filed.*

Attorneys for Petitioners

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

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

PERMANENT ADMINISTRATIVE ORDER

DEQ 27-2021

CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

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& LEGISLATIVE COUNSEL

FILING CAPTION: Greenhouse Gas Emissions Program 2021 Rulemaking

EFFECTIVE DATE: 12/16/2021

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CONTACT: Emil Hnidey
503-229-5946
emil.hnidey@deq.oregon.gov

700 NE Multnomah St.
Suite 600
Portland, OR 97232

Filed By:
Emil Hnidey
Rules Coordinator

RULES:

340-012-0054, 340-012-0135, 340-012-0140, 340-271-0010, 340-271-0020, 340-271-0030, 340-271-0090, 340-271-0100, 340-271-0110, 340-271-0120, 340-271-0130, 340-271-0150, 340-271-0310, 340-271-0320, 340-271-0330, 340-271-0390, 340-271-0410, 340-271-0420, 340-271-0430, 340-271-0440, 340-271-0450, 340-271-0490, 340-271-0500, 340-271-0510, 340-271-0590, 340-271-0810, 340-271-0820, 340-271-0830, 340-271-0890, 340-271-0900, 340-271-0910, 340-271-0920, 340-271-0930, 340-271-0950, 340-271-0990, 340-271-8100, 340-271-8110, 340-271-8120, 340-271-9000

AMEND: 340-012-0054

RULE TITLE: Air Quality Classification of Violations

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: Adding Division 271 to the list of potential violations

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) Failing to comply with any of the clean fuel standards set forth in OAR 340-253-0100(6) and 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 regulated party's true compliance obligation denominated in deficits under such program;
- (gg) Making misstatements about material information or knowingly or recklessly providing false information when

- submitting an application for a carbon intensity score under OAR 340-253-0450;
- (hh) Failing to timely submit a complete and accurate annual compliance report under OAR 340-253-0100(8);
- (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 340-239-0105;
- (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 340-239-0105(5)(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 340-271-0120;
- (yy) Owning or operating a covered entity, identified in OAR 340-271-0110, after a submittal deadline under OAR 340-271-0150(1)(a) or OAR 340-271-0330(1)(b) without having submitted a complete application for a Climate Protection Program permit or Climate Protection Program permit addendum required under OAR 340-271-0150;
- (zz) Emitting covered emissions from a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020, without having been issued a BAER order under OAR 340-271-0320 and a permit issued under OAR 340-271-0150(3)(c);
- (aaa) Failing to submit a BAER assessment or an updated BAER assessment according to OAR 340-271-0310;
- (bbb) Failing to comply with a BAER order issued under OAR 340-271-0320.
- (ccc) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions;
- (ddd) Failing to demonstrate compliance according to OAR 340-271-0450;
- (eee) Failing to comply with the requirements for trading of compliance instruments under OAR 340-271-0500 or 340-271-0510; or
- (fff) Submitting false or inaccurate information on any application or submittal required under OAR Chapter 340 division 271.
- (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 register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is a producer or importer of blendstocks, as defined in OAR 340-253-0040;
 - (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 records under OAR 340-253-0600 when the records relate to obtaining a carbon intensity under OAR 340-253-0450;
 - (t) Failing to keep records related to obtaining a carbon intensity under OAR 340-253-0450;
 - (u) Failing to timely submit a complete and accurate quarterly report under OAR 340-253-0100(7);
 - (v) Violating any requirement under OAR Chapter 340 division 272, unless otherwise classified;
 - (w) Violating any requirement under OAR 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 271, unless otherwise classified; or
 - (z) Violating any condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150, unless otherwise classified.
- (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 340 division 257;
- (g) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is an importer of finished fuels, as defined in OAR 340-253-0040; or
- (h) Failing to keep records under OAR 340-253-0600, except as provided in subsection (2)(s).

[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: 08/05/2021

RULE SUMMARY: Adding Division 271 to the list of magnitude categories.

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) Exceeding the clean fuel standards set forth in OAR 340-253-0100(6) and Tables 1 and 2 of 340-253-8010 by not retiring sufficient credits to satisfy a regulated party's compliance obligation:

(i) Major — more than 15 percent of their total deficit obligation remains unsatisfied;

(ii) Moderate — more than 10 percent but less than 15 percent of their total deficit obligation remains unsatisfied; or

(iii) Minor — less than 10 percent of their total deficit obligation remains unsatisfied.

(B) Failing to register under OAR 340-253-0100(1) and (4): Moderate — producers and importers of blendstocks;

(C) Failing to submit an aggregator designation form under OAR 340-253-0100(3) and (4)(c): Minor;

(D) Failing to keep records as set forth in OAR 340-253-0600, when the records relate to obtaining a carbon intensity under OAR 340-253-04500600: Minor;

(E) Failing to submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340 division 253: Moderate;

(F) Failing to timely submit a complete and accurate annual compliance report or quarterly report under OAR chapter 340, division 253: Minor.

(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 or any compliance obligation under the Climate Protection Program, OAR chapter 340, division 271: Major.

(n) Oregon Climate Protection Program violations:

- (A) Failing to demonstrate compliance according to OAR 340-271-0450: Major.
- (B) Failing to comply with a BAER order issued under OAR 340-271-0320: Major
- (C) Failing to comply with a condition in a permit, Climate Protection Program permit, or Climate Protection Program permit addendum issued according to OAR 340-271-0150 that requires the reduction of greenhouse gas emissions: Major.
- (D) Failing to obtain a BAER order under OAR 340-271-0320 or a permit issued under OAR 340-271-0150(3)(c), for a covered entity, as identified in OAR 340-271-0110, that is a new source, as defined in OAR 340-271-0020: 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 CA_{acute} , where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CA_{acute} 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:

- (i) 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: 08/05/2021

RULE SUMMARY: Adding Division 271 to the list of 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) (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 271.

(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 by a person registered as a credit generator, an aggregator, or a registered fuel producer 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 Clean Fuels Program under OAR chapter 340, division 253 by a person registered as an

importer of finished fuels unless the violation is otherwise classified in this rule.

(R) 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

STATUTES/OTHER IMPLEMENTED: ORS 459.995, 459A.655, 459A.660, 459A.685, 468.035

ADOPT: 340-271-0010

RULE TITLE: Purpose and Scope

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New rule describing the purpose and scope of division 271.

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, 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; and

(e) Allows covered fuel suppliers 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 and subject to the requirements in this division and OAR 340-200-0010(3), LRAPA is designated by the EQC to implement OAR 340-271-0150(3) of this division within its area of jurisdiction.

(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 which 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.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.135, 468.100

STATUTES/OTHER IMPLEMENTED: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.135, 468.035, 468A.010, 468A.015, 468A.045, 468.100

ADOPT: 340-271-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New definitions rule for division 271.

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 producers, and local distribution companies.

(2) "Best available emissions reduction order" or "BAER order" means a DEQ order establishing required actions the owner or operator of a covered stationary source must take to limit covered emissions from the covered stationary source. The BAER order will identify the conditions and requirements that must be included in the CPP permit addendum.

(3) "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.

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

(5) "Climate Protection Program permit addendum" or "CPP permit addendum" means written authorization that incorporates the requirements of this division into a permit by amending an Air Contaminant Discharge Permit or a Title V Operating Permit.

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

(7) "Community climate investment credit" or "CCI credit" or "credit" means an instrument issued by DEQ to track a covered fuel supplier's payment of community climate investment funds, and which may be used in lieu of a compliance instrument, as further provided and limited in this division.

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

(9) "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 340-271-0920 to implement projects supported by community climate investment funds.

(10) "Compliance instrument" means an instrument issued by DEQ that authorizes the emission of one MT CO₂e of greenhouse gases. Compliance instruments may not be divided into fractions.

(11) "Compliance obligation" means the total quantity of covered emissions from a covered fuel supplier rounded to the nearest metric ton of CO₂e.

(12) "Compliance period" means a period of multiple consecutive calendar years, as described in OAR 340-271-0440.

(13) "Covered emissions" means the greenhouse gas emissions described in any of subsections OAR 340-271-0110(3)(b), (4)(b) and (5)(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 either a covered fuel supplier, a covered stationary source, or both.

(15) "Covered fuel supplier" means an air contamination source that is either:

(a) A fuel supplier or in-state producer as described in OAR 340-271-0110(3); or

(b) A local distribution company as described in OAR 340-271-0110(4).

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

(17) "Designated representative" means the person responsible for certifying, signing, and submitting any registration,

report, or form required to be submitted according to this division, on behalf of a covered entity. For the owner or operator of a covered stationary source with an Oregon Title V Operating Permit, the designated representative is the responsible official and certification must be consistent with OAR 340-218-0040(5).

(18) "Environmental justice communities" means communities of color, communities experiencing lower incomes, tribal communities, rural 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.

(19) "Evaluation period" means a period of multiple consecutive calendar years, as described in Table 5 in OAR 340-271-9000, that DEQ uses to evaluate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company.

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

(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.

(23) "Related entity" means any direct or indirect parent company, direct or indirect subsidiary, company that shares ownership of a direct or indirect subsidiary, or company under full or partial common ownership or control.

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: 340-271-0030

RULE TITLE: Acronyms

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Acronyms rule for division 271.

RULE TEXT:

- (1) "BAER" means best available emissions reduction.
- (2) "CCI" means community climate investment.
- (3) "CFR" means Code of Federal Regulations.
- (4) "CPI-U West" means the US Bureau of Labor and Statistics West Region Consumer Price Index for All Urban Consumers for all Items.
- (5) "CPP" means Oregon Climate Protection Program established in this division.
- (6) "DEQ" means Oregon Department of Environmental Quality.
- (7) "EQC" means Environmental Quality Commission.
- (8) "EPA" means US Environmental Protection Agency.
- (9) "IRS" means US Internal Revenue Service.
- (10) "LRAPA" means Lane Regional Air Pollution Agency.
- (11) "Metric tons of CO₂e" or "MT CO₂e" means metric tons of carbon dioxide equivalent.
- (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: 340-271-0090

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

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Overview of Program Provisions for Covered Entities and CCI Entities rule for division 271

RULE TEXT:

- (1) OAR 340-271-0100 describes general requirements for covered entities.
- (2) OAR 340-271-0110 describes which air contamination sources are covered entities subject to the requirements of the CPP.
- (3) OAR 340-271-0120, OAR 340-271-0130, and 340-271-0150 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 and CPP permit addendums, respectively.
- (4) OAR 340-271-0310 through OAR 340-271-0390 describe the provisions that apply to covered stationary sources.
- (5) OAR 340-271-0410 through OAR 340-271-0890 and OAR 340-271-9000 describe the provisions that apply to covered fuel suppliers.
- (6) OAR 340-271-0900 through OAR 340-271-0990 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, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-271-0100

RULE TITLE: Oregon Climate Protection Program Requirements

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Oregon Climate Protection Program Requirements rule for division 271

RULE TEXT:

- (1) A person who owns or operates a covered entity must comply with the rules in this division. Compliance with this division does not relieve a person who owns or operates a covered entity of the obligation to comply with any other provisions of OAR chapter 340, as applicable.
- (2) CPP permit or CPP permit addendum. A person who owns or operates a covered entity identified in OAR 340-271-0110 must apply for and hold a CPP permit or CPP permit addendum according to OAR 340-271-0150 that authorizes the person's covered emissions and subjects the person to the requirements of this division.
- (3) Reporting. A person who owns or operates a covered entity must submit reports and attestations required in this division, as applicable.
- (4) Recordkeeping. A person who owns or operates a covered entity must develop and retain all records required in this division, as applicable.
- (5) A person who owns or operates a covered entity must 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, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-271-0110

RULE TITLE: Covered Entity and Covered Emissions Applicability

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Covered Entity and Covered Emissions Applicability rule for division 271.

RULE TEXT:

(1) Calculations of covered emissions, compliance obligations and distribution of compliance instruments will be based on emissions data and information 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 340-271-0130.

(3) Applicability for fuel suppliers and in-state 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 340-271-9000. 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 340-271-9000. 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 340-271-0130.

(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 CO₂e 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; and

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

(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 2018 or any subsequent calendar year, unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is a local distribution company that either produces natural gas, compressed natural gas, or liquefied

natural gas in Oregon, or that imports, sells, or distributes natural gas, compressed natural gas, or liquefied natural gas to end users in the state.

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

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

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels;

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

(iii) Emissions that result from non-combustion-related processes that use natural gas, as determined by DEQ; and

(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.

(5) Applicability for stationary sources. A person is a covered stationary source if the person is described in subsection (a), unless the person has met the cessation requirements according to OAR 340-271-0130.

(a) The person is either or both of the following:

(A) The person owns or operates an existing source required to obtain either a Title V Operating Permit or an Air Contaminant Discharge Permit and that has annual covered emissions described in subsection (b) that equal or exceed 25,000 MT CO₂e in 2018 or in any subsequent calendar year; or

(B) The person owns or operates a new source, or proposes to own or operate a new source, required to obtain either or both a Title V Operating Permit or an Air Contaminant Discharge Permit and that has a potential to emit annual covered emissions described in subsection (b) that will equal or exceed 25,000 MT CO₂e in any calendar year.

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

(A) Covered emissions include emissions of anthropogenic greenhouse gases in metric tons of CO₂e that are from either or both processes or the combustion of solid or gaseous fuels, including emissions from combustion for both energy production and processes.

(B) Covered emissions do not include:

(i) Emissions that are from the combustion of biomass-derived fuels;

(ii) Biogenic CO₂ emissions from solid fuels;

(iii) Emissions that are from the combustion of liquid fuels or propane;

(iv) Emissions from natural gas, compressed natural gas, or liquefied natural gas used on-site that was delivered by a local distribution company;

(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 from an air contamination source that is owned or operated by an interstate natural gas pipeline that is operating under authority of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission; and

(viii) 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.

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: 340-271-0120

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

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Changes in Covered Entity Ownership and Changes to Related Entities rule for division 271.

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) Information about each person that was a related entity prior to the change in ownership or operational control, subject to any regulations in OAR chapter 340, including legal name, full mailing address, and whether each is a covered fuel supplier and holds a CPP permit; and

(F) Information about each person that is a related entity after the change in ownership or operational control, subject to any regulations in OAR chapter 340, 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 340-271-0130. 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 340-271-0130.

(c) Following a change in ownership or operational control, a covered fuel supplier that holds a compliance instrument or CCI credit according to OAR 340-271-0430 or OAR 340-271-0830 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 becomes a new related entity to a covered fuel supplier due to a change in ownership or operational control, the designated representative of the covered fuel supplier must notify DEQ in writing 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 340-271-0150(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, 468.035, 468A.010, 468A.015,
468A.045

ADOPT: 340-271-0130

RULE TITLE: Cessation of Covered Entity Applicability

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Cessation of Covered Entity Applicability rule for division 271.

RULE TEXT:

(1) Cessation for covered fuel suppliers.

(a) A person that is a covered fuel supplier as described in OAR 340-271-0110 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; or

(B) The person was designated a covered fuel supplier in OAR 340-271-0110(3) and its annual covered emissions 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) Information about each related entity subject to any regulations in OAR chapter 340 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 271. I understand that ceasing to be a covered fuel supplier means that [covered fuel supplier] will also cease to hold any compliance instruments and CCI credits.

(d) After the covered fuel supplier applying for cessation according to paragraph (a)(B) and subsection (c) 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 340-271-0430(3); and

(C) Any remaining community climate investment credits held by the person will be canceled according to OAR 340-271-0830(1)(c).

(2) Cessation for covered stationary sources.

(a) A person that is a covered stationary source as described in OAR 340-271-0110 remains a covered stationary source until either of the following occur:

(A) The person's operations are changed such that all greenhouse gas emitting processes and operations cease to operate or are shut down. In order for cessation to take effect, the person must submit a written notification to DEQ certifying the cessation of all greenhouse gas emitting processes and operations; or

(B) The person's covered emissions are less than 25,000 MT CO₂e for five consecutive calendar years and the person has fully complied with any applicable BAER order and any related reporting requirements and has submitted any remaining required BAER assessment and five-year BAER report. In order for cessation to take effect, DEQ will notify the covered stationary source that cessation is met.

(b) This section does not apply to seasonal operational cessations or other temporary cessation of operations.

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

(3) Any person that ceases to be a covered entity according to this rule must resume meeting the requirements of this division for any future year in which applicability is met.

STATUTORY/OTHER AUTHORITY: 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: 340-271-0150

RULE TITLE: Covered Entity Permit Requirements

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Covered Entity Permit Requirements rule for division 271.

RULE TEXT:

(1) A person described in either or both OAR 340-271-0110(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 whichever is later of:

(i) February 14 of the calendar year a person becomes a covered fuel supplier; or

(ii) March 31 of the year after the first applicability determination calendar year that the person's emissions equal or exceed the threshold in Table 1 in OAR 340-271-9000; or

(C) If there was a change in ownership or operational control according to OAR 340-271-0120(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) Information about each related entity subject to any regulations in OAR chapter 340, 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 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(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) The owner or operator of a new source that is a covered stationary source may not emit any covered emissions prior to being issued a BAER order and a permit according to subsection (3)(c) and OAR 340-271-0330(1).

(3) The owner or operator of a covered stationary source required to apply for a CPP permit addendum according to OAR 340-271-0330(1) must submit a complete and accurate application to DEQ or LRAPA, as applicable, that complies with and includes information identified in this section.

(a) The application must include the following:

(A) Identifying information about the covered stationary source, including name and the name of the person that owns or operates the covered stationary source, full mailing address, the physical address of the covered stationary source, and a description of the nature of business being operated, the name, phone number and email address of the designated representative who is responsible for compliance with the permit, the permit number for an existing source, and the SIC or NAICS code of the covered stationary source;

(B) The name of a person authorized to receive requests from DEQ for additional data and information;

- (C) The date DEQ notified the owner or operator of the covered stationary source of the BAER order established according to OAR 340-271-0320;
- (D) A BAER implementation plan that includes the following:
 - (i) Identification of the actions that the owner or operator of the covered stationary source will take to comply with the BAER order; and
 - (ii) The schedule for implementing the requirements in the BAER order, consistent with any deadlines provided by DEQ in the BAER order, if applicable, and including an estimate of when all requirements from the BAER order will be completed;
- (E) Any other information requested by DEQ; and
- (F) The following attestation, signed by the designated representative of the covered stationary source;

I certify under penalty of perjury under the laws of the State of Oregon that to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. [Covered entity] meets the Climate Protection Program applicability requirements described in OAR 340-271-0110 and requests a permit with the understanding that [covered entity] must comply with such permit as provided in Oregon Administrative Rules chapter 340, division 271.

(b) DEQ or LRAPA, as applicable, may issue a CPP permit addendum to the owner or operator of a covered stationary source that submits a complete and accurate permit modification application consistent with the requirements of OAR chapter 340, divisions 216 and 218, as applicable. The CPP permit addendum will be issued as a Category I permit action according to OAR chapter 340, division 209. A CPP permit addendum will amend the covered stationary source's Air Contaminant Discharge Permit or Title V Operating Permit until the requirements in the addendum can be incorporated into the operating permit. The CPP permit addendum may contain all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and this division.

(c) If DEQ or LRAPA approves an application for an Air Contaminant Discharge Permit or Title V Operating Permit submitted by the owner or operator of a new source, then DEQ or LRAPA, as applicable, will incorporate the CPP conditions into the new operating permit and will not issue a separate CPP permit addendum. Such CPP conditions may contain all applicable provisions of this division and such other conditions as DEQ or LRAPA, as applicable, determines are necessary to implement, monitor and ensure compliance with the permit and 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, 468.035, 468A.010, 468A.015, 468A.045

ADOPT: 340-271-0310

RULE TITLE: Best Available Emissions Reduction Assessments for Covered Stationary Sources

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Best Available Emissions Reduction Assessments for Covered Stationary Sources rule for division 271.

RULE TEXT:

(1) Requirement to conduct a BAER assessment.

(a) When notified in writing by DEQ, the owner or operator of a covered stationary source described in OAR 340-271-0110(5)(a)(A) must submit a complete and accurate BAER assessment according to this rule. The owner or operator of the covered stationary source must submit a complete BAER assessment to DEQ not later than nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in its notice or DEQ approves an extension according to section (6).

(b) The owner or operator of a new or proposed covered stationary source described in OAR 340-271-0110(5)(a)(B) must submit a complete and accurate BAER assessment completed according to this rule with its permit application submitted according to OAR chapter 340, division 216, or its notice of construction application submitted according to OAR chapter 340, division 210.

(2) BAER assessment requirements. BAER assessments submitted to DEQ must include the following:

(a) A description of the covered stationary source's production processes and a flow chart of each process;

(b) Identification of all fuels, processes, equipment, and operations that contribute to the covered stationary source's covered emissions, including:

(A) Estimates of annual average covered emissions identified in OAR 340-271-0110(5)(b). For existing covered stationary sources, estimates must be of current annual average covered emissions. For new sources, estimates must be of anticipated annual average covered emissions. Emissions must be identified in MT CO₂e, following methodologies identified in OAR chapter 340, division 215. This must also include and distinguish quantities and covered emissions of each fuel used to control air contaminants that are not greenhouse gases; and

(B) Estimates of current annual average type and quantity of all fuels used by the covered stationary source, and anticipated annual average fuel usage for new sources;

(c) Identification and description of all available fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions described in OAR 340-271-0110(5)(b). Strategies considered must include but are not limited to the strategies used by other sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality; and

(d) An assessment of each of the following for each strategy identified in subsection (c):

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

(B) Environmental and health impacts, both positive and negative, if the strategy were implemented, including any impacts on air contaminants that are not greenhouse gases and impacts to nearby communities;

(C) Energy impacts if the strategy were implemented, including whether and how the strategy would change energy consumption at the covered stationary source, including impacts related to any fuel use that results in anthropogenic greenhouse gas emissions. Any energy-related costs must be included in the economic impacts assessment in paragraph (D), not the energy impacts assessment;

(D) Economic impacts if the strategy were implemented, including operating costs and the costs of changing existing processes or equipment or adding to existing processes and equipment. Any energy-related costs must be included in the economic impacts assessment, not the energy impacts assessment in paragraph (C). The economic impacts assessment must include both costs and cost savings (benefits);

(E) An estimate of the time needed to fully implement the strategy at the covered stationary source; and

(F) A list of the information, resources, and documents used to support development of the BAER assessment, including,

if available, links to webpages that provide public access to supporting documents.

(3) Upon receipt of a BAER assessment described in section (2), DEQ will review the submittal and if DEQ determines that any additional information, corrections, or updates are required then DEQ may provide the owner or operator of the covered stationary source with a written request to provide such information by a certain date or DEQ may issue the BAER order based on the information it has available. If DEQ requests that the owner or operator of the covered stationary source revise its BAER assessment according to this section, the owner or operator must provide such information no later than the deadline provided by DEQ.

(4) Five year BAER reports.

(a) Every five years following the date that DEQ issued a BAER order, the owner or operator of a covered stationary source must submit to DEQ a five year BAER report that includes an update of the information described in subsections (2)(a) through (c).

(b) If one or more new strategies are identified in a five year BAER report required in subsection (a) that have not previously been evaluated in a BAER assessment, DEQ may notify the owner or operator of the covered stationary source and require that it conduct a complete BAER assessment according to section (2) and submit it to DEQ. Such complete BAER assessment must also include:

(A) Evaluation of any new strategies identified and any previously identified strategies using any new information available at the time the assessment is being conducted; and

(B) Current status and analysis of the implementation of requirements in any prior BAER order(s).

(5) When notified in writing by DEQ, the owner or operator of a covered stationary source identified in section (1) may be required to conduct and submit an updated complete BAER assessment conducted according to this rule, in accordance with the following:

(a) DEQ may not require the owner or operator of a covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment. However, if DEQ determines the owner or operator of a covered stationary source submitted information that it knew or should have known was false, inaccurate, or incomplete to DEQ, then DEQ may require the owner or operator of the covered stationary source to complete an updated BAER assessment within five years of the date of submission of the most recently completed BAER assessment;

(b) The updated BAER assessment must include assessment of new strategies and previously identified strategies and any new information available at the time the assessment is being conducted;

(c) The owner or operator of the covered stationary source must include current status and analysis of the implementation of requirements in any prior BAER order; and

(d) The owner or operator of the covered stationary source must submit the updated BAER assessment to DEQ not later than nine months following the date of DEQ's notice, unless DEQ has identified a later deadline in the notice or DEQ approves an extension according to section (6).

(6) The owner or operator of a covered stationary source required to conduct a BAER assessment as described in sections (1) or (5) may request an extension of time to complete the BAER assessment by providing DEQ with a written request no fewer than 30 days prior to the submittal deadline. DEQ may grant an extension based on the following criteria:

(a) The owner or operator of the covered stationary source has demonstrated progress in completing the submittal; and

(b) A delay is necessary, for good cause shown by the owner or operator of the covered stationary source, related to obtaining more accurate or new data, performing additional analyses, or addressing changes in operations or other key parameters, any of which are likely to have a substantive impact on the outcomes of the BAER assessment.

STATUTORY/OTHER AUTHORITY: 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: 340-271-0320

RULE TITLE: DEQ Best Available Emissions Reduction Order

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New DEQ Best Available Emissions Reduction Order for division 271.

RULE TEXT:

- (1) DEQ may issue a BAER order for each owner or operator of a covered stationary source that must submit a BAER assessment as provided in OAR 340-271-0310. A BAER order will establish the actions that the owner or operator of a covered stationary source must take to reduce covered emissions and the timeline on which the actions must be taken.
- (2) In establishing the requirements in a BAER order for a covered stationary source, DEQ may consider any information it deems relevant, and must consider the following:
 - (a) Information submitted in a BAER assessment;
 - (b) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques that maximize covered emissions reductions;
 - (c) The fuels, processes, equipment, technology, systems, actions, and other strategies, methods and techniques for reducing covered emissions used by sources in this state or in other jurisdictions that produce goods of comparable type, quantity, and quality;
 - (d) A reasonable schedule and amount of time necessary to implement a strategy under consideration by DEQ to reduce covered emissions;
 - (e) Environmental, public health, and energy impacts of a strategy under consideration by DEQ to reduce covered emissions, including but not limited to air quality impacts for nearby communities and impacts related to switching to cleaner energy resources, zero-emissions energy resources, or renewable fuels;
 - (f) Economic impacts of a strategy under consideration by DEQ to reduce covered emissions including, but not limited to, costs so great that a new source could not be built or an existing source could not be operated, and cost-effectiveness of different strategies that would achieve similar covered emissions reductions;
 - (g) Processes and operations currently in use by and at the covered stationary source and the remaining useful life of the covered stationary source;
 - (h) Whether a strategy under consideration by DEQ to reduce covered emissions is achievable, technically feasible, commercially available, and cost-effective;
 - (i) Whether a strategy under consideration by DEQ to reduce covered emissions has an impact on the type or quality of good(s) produced by and at the covered stationary source, if applicable; and
 - (j) Input from the public and community organizations from nearby the covered stationary source.
- (3) For the owner or operator of a covered stationary source required to register and report according to OAR chapter 340, division 215, DEQ will consider emissions data reports to assess whether covered emissions reductions are being achieved when establishing the requirements in a BAER order or for determining when to notify the owner or operator of a covered stationary source to conduct and submit an updated complete BAER assessment as described in OAR 340-271-0310(5).
- (4) DEQ may verify information submitted in a BAER assessment.
- (5) DEQ may consult with industry experts and third-party organizations before issuing a BAER order.
- (6) DEQ will notify the owner or operator of a covered stationary source of a BAER order in writing. A BAER order is effective 30 days from the date of the notification unless, within that time, DEQ receives a written request for a hearing from the owner or operator of the covered stationary source according to section (7).
- (7) The owner or operator of a covered stationary source may file with DEQ a written request for a contested case hearing to challenge a BAER order issued according to section (6). The request must be filed in writing within 30 days of the date that DEQ issued the BAER order and must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 11.
- (8) DEQ will provide a public status update if DEQ has not yet issued a BAER order after 18 months of the date on which

DEQ notified the owner or operator of a covered stationary source that it must conduct a BAER assessment.

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: 340-271-0330

RULE TITLE: Compliance with a BAER Order

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Compliance with a BAER Order rule for division 271.

RULE TEXT:

(1) The owner or operator of a covered stationary source for which DEQ has issued a BAER order according to OAR 340-271-0320 must:

- (a) Comply with the requirements in the BAER order; and
- (b) Submit to DEQ or LRAPA, as applicable, a complete application for a CPP permit addendum according to OAR 340-271-0150(3) not later than 30 days after the date that the BAER order is final and effective.

(2) Reporting requirements.

(a) The owner or operator of a covered stationary source that has been issued a CPP permit addendum or operating permit that includes provisions related to a BAER order must submit an annual progress report to DEQ describing the progress in implementing the requirements in the BAER order. The annual progress reports are due to DEQ on or before February 15 of each year following the date that the notice of the BAER order is final and effective. The annual progress report must include:

- (A) A description of the progress achieved in implementing the requirements in any BAER order;
 - (B) A schedule indicating dates for future increments of progress;
 - (C) A description of any increases or decreases in covered emissions that have occurred at the covered stationary source since the submission date of the most recently conducted complete BAER assessment; and
 - (D) An estimate of when all implementation of requirements of the BAER order will be complete.
- (b) The owner or operator of a covered stationary source must submit a BAER order completion report to DEQ no later than 60 days after implementation of all requirements in the BAER order are complete, except for items related to continuous and ongoing requirements. The report must include:
- (A) The final increments of progress achieved in fully implementing the requirements in the BAER order and the date the final increments of progress were achieved;
 - (B) A summary of the actions taken to fully implement the requirements in the BAER order; and
 - (C) An estimate of the resulting covered emissions reductions that will be achieved now that the requirements in the BAER order are being implemented.

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: 340-271-0390

RULE TITLE: Recordkeeping Requirements Related to BAER

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Recordkeeping Requirements Related to BAER rule for division 271.

RULE TEXT:

(1) Recordkeeping requirements related to BAER assessments and five year BAER reports.

(a) The owner or operator of a covered stationary source that submits any information to DEQ related to a complete BAER assessment or five year BAER report conducted according to OAR 340-271-0310 must retain the following records, in paper or electronic format, for a period of at least ten years from the date the information is submitted to DEQ:

(A) A copy of the assessment or report submitted to DEQ;

(B) Any contract(s) with any independent third-party(ies) in relation to developing the assessment or report; and

(C) All other information and documentation used to support and inform development of the assessment or report.

(b) The owner or operator of the covered stationary source must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source must fulfill a records request from DEQ.

(2) Recordkeeping requirements related to compliance with a BAER order.

(a) The owner or operator of a covered stationary source issued a BAER order must retain the following records, in paper or electronic format, for a period of at least ten years from the applicable date specified below:

(A) All records and information related to a BAER order including but not limited to a copy of the most recently submitted complete BAER assessment and a copy of DEQ's written BAER order from the effective date of the BAER order;

(B) A copy of the permit modification application for the CPP permit addendum or the applicable permit application from the date it is submitted to DEQ;

(C) A copy of each progress report from the date it is submitted to DEQ; and

(D) All other information and documentation related to actions taken to comply with requirements in a BAER order from the effective date of the BAER order.

(b) The owner or operator of a covered stationary source issued a BAER order must make available to DEQ upon request all of the records it is required to retain according to this section. DEQ will specify the date by which the owner or operator of the covered stationary source 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: 340-271-0410

RULE TITLE: Generation of Compliance Instruments

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Generation of Compliance Instruments rule for division 271.

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 340-271-9000.

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

STATUTORY/OTHER AUTHORITY: 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: 340-271-0420

RULE TITLE: Distribution of Compliance Instruments to Covered Fuel Suppliers

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Distribution of Compliance Instruments to Covered Fuel Suppliers rule for division 271.

RULE TEXT:

(1) DEQ will distribute compliance instruments according to this rule. DEQ will distribute compliance instruments from a cap according to sections (2) through (4) no later than March 31 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 number of compliance instruments from the calendar year's cap stated in Table 4 in OAR 340-271-9000.

(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 340-271-9000. 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 (5) to a 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 340-271-9000, 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 340-271-9000. 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 340-271-9000. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier that is not a local distribution company according to section (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 340-271-9000 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 340-271-9000 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, based on available information from the evaluation period described in Table 5 in OAR 340-271-9000. If a covered fuel supplier or its related entities do not have available information for one or more of the years of the evaluation period, DEQ may exclude the covered fuel supplier and its emissions from this calculation. If the covered fuel supplier is excluded, then the distribution for the covered fuel supplier will be addressed using the methodology described in section (5).

(A) 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)

(B) As used in the formula in paragraph (A):

(i) "Total compliance instruments to distribute" means the cap for the calendar year, according to Table 2 in OAR 340-271-9000, minus the number of compliance instruments identified in Table 4 in OAR 340-271-9000; and minus the number of compliance instruments held in the compliance instrument reserve;

(ii) "Covered fuel supplier covered emissions" means the sum of a covered fuel supplier's covered emissions during the evaluation period;

(iii) "Covered fuel supplier biofuel emissions" means emissions described in OAR 340-271-0110(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 during the evaluation period; and

(iv) "Total emissions" means the sum of "covered fuel supplier covered emissions" and "covered fuel supplier biofuel emissions" during the evaluation period for all covered fuel suppliers whose compliance instrument distribution is calculated according to this section.

(C) DEQ will distribute a number of compliance instruments to each covered fuel supplier using the formula in paragraph (A) and rounded down to the nearest whole number.

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

(5) 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:

(A) The covered fuel supplier was excluded from the distribution in section (4) due to a lack of sufficient available information; or

(B) The person becomes a covered fuel supplier after DEQ has distributed the compliance instruments for that year according to section (4).

(b) A covered fuel supplier identified according to subsection (a) may request a distribution of compliance instruments from the reserve by submitting an application to DEQ, on a form approved by DEQ, that includes the information described in paragraphs (A) through (D). The 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.

(c) DEQ will review an application submitted according to subsection (b) to ensure that it meets the requirements of this section. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If the application is incomplete, DEQ will not consider the application further until the applicant provides the additional information requested by DEQ.

(d) If DEQ approves an application, DEQ may distribute one or more compliance instruments to the covered fuel supplier from the reserve. In determining the number of compliance instruments to distribute from the reserve to the covered fuel supplier, DEQ may consider:

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

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

(C) A maximum distribution amount that will not exceed the covered fuel supplier's covered emissions in that year; and

(D) A maximum distribution amount that will not exceed 300,000 compliance instruments per covered fuel supplier per year.

(6) Upon distribution of compliance instruments according to sections (2), (4), and (5), DEQ will notify the designated representative of each covered fuel supplier in writing of the availability of compliance instruments.

(7) 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: 340-271-0430

RULE TITLE: Holding Compliance Instruments

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Holding Compliance Instruments rule for division 271.

RULE TEXT:

When DEQ distributes a compliance instrument to a covered fuel supplier according to OAR 340-271-0420 or when a covered fuel supplier acquires a compliance instrument according to OAR 340-271-0500, the covered fuel supplier may continue to hold the compliance instrument until any of the following apply:

- (1) The covered fuel supplier uses the compliance instrument toward its demonstration of compliance with a compliance obligation according to OAR 340-271-0450;
- (2) The covered fuel supplier transfers the compliance instrument to another covered fuel supplier according to OAR 340-271-0500; or
- (3) The covered fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When this occurs, DEQ may, at its discretion:
 - (a) Retire the compliance instrument; or
 - (b) If the covered fuel supplier is not a local distribution company:
 - (A) Hold the compliance instrument in the compliance instrument reserve described in OAR 340-271-0420(3); or
 - (B) Distribute the compliance instrument to a covered fuel supplier that is not a local distribution company. DEQ will only distribute the compliance instrument if there are at least 10,000 compliance instruments to distribute. DEQ will calculate the number of compliance instruments to distribute to each covered fuel supplier according to OAR 340-271-0420(4)(b), except "total compliance instruments to distribute" means the total number of compliance instruments DEQ is distributing according to this paragraph.

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: 340-271-0440

RULE TITLE: Compliance Periods

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Compliance Periods rule for division 271.

RULE TEXT:

- (1) Each compliance period is three consecutive calendar years.
- (2) The first compliance period begins with calendar year 2022, and includes calendar years 2023 and 2024.
- (3) A new compliance period begins with the calendar year following the last calendar year of the preceding compliance period.

STATUTORY/OTHER AUTHORITY: 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: 340-271-0450

RULE TITLE: Demonstration of Compliance

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Demonstration of Compliance rule for division 271.

RULE TEXT:

(1) DEQ will determine a covered fuel supplier's total compliance obligation for a compliance period as the sum of the covered fuel supplier's annual compliance obligation(s) for each year of the compliance period. DEQ will base its determinations on emissions calculated according to OAR 340-271-0110(1). DEQ will notify the covered fuel supplier of its determination.

(2) A covered fuel supplier must demonstrate compliance according to this rule by November 28 of the year following the end of each compliance period, or 25 days after DEQ's notification described in section (1), whichever is later.

(3) To demonstrate compliance for a compliance period, a covered fuel supplier 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 fuel supplier 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 6 in OAR 340-271-9000.

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

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

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

(C) Identification of the compliance period and calendar year(s) for which the covered fuel supplier is demonstrating compliance;

(D) The total compliance 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 fuel supplier 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 fuel supplier is submitting to DEQ to demonstrate compliance; and

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

I certify under penalty of perjury under the laws of the State of Oregon that I am a representative of [covered fuel supplier], am authorized to submit this report on its behalf, and that, to the best of my knowledge and belief, the information provided in this form is true, accurate, and complete. It is the intent of [covered fuel supplier] to use the quantity of compliance instruments and credits listed on this form and submitted to DEQ for the demonstration of compliance. I certify that [covered fuel supplier] has not exceeded the allowable use of CCI credits. If any portion of these compliance obligations remain unmet after this submission, I understand that [covered fuel supplier] must still demonstrate compliance with the remaining portion and may be subject to enforcement action.

(4) Each metric ton of CO₂e of a compliance obligation for which a covered fuel supplier does not demonstrate compliance according to this rule is a separate violation of this division.

(5) If a change in ownership of a covered fuel supplier occurs, the person that owns or operates the covered fuel supplier as of December 31 in the final year of a compliance period is responsible for 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: 340-271-0490

RULE TITLE: Recordkeeping Requirements Related to Demonstration of Compliance

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Recordkeeping Requirements Related to Demonstration of Compliance rule for division 271.

RULE TEXT:

(1) A person must retain the following records necessary for determining compliance obligations, in paper or electronic format, for a period of at least seven years beginning September 30 of the year following a year in which covered emissions occurred:

(a) Records according to the recordkeeping requirements of OAR chapter 340, 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 person must retain the following records necessary for supporting demonstration of compliance, according to OAR 340-271-0450, in paper or electronic format for a period of at least seven years following the deadline for demonstration of compliance in OAR 340-271-0450:

(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 fuel supplier 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 fuel supplier 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: 340-271-0500

RULE TITLE: Trading of Compliance Instruments

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Trading of Compliance Instruments rule for division 271.

RULE TEXT:

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

(2) A covered fuel supplier 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 price of the compliance instrument being sold. A fact is material if it is reasonably likely to influence a decision by another person or by DEQ;

(d) Any activity intended to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition in the market for compliance instruments;

(e) A conspiracy in restraint of trade or commerce; or

(f) An attempt to monopolize holding of compliance instruments, or to combine, collude, or conspire with any other person or persons to monopolize.

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: 340-271-0510

RULE TITLE: Compliance Instrument Trade Notifications and Process

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Compliance Instrument Trade Notifications and Process rule for division 271.

RULE TEXT:

(1) Covered fuel suppliers that trade one or more compliance instruments must notify DEQ of the trade. The designated representatives of both the covered fuel supplier transferring the compliance instrument and the covered fuel supplier acquiring the compliance instrument must sign and submit a compliance instrument trade form that meets the requirements of this section, using a form approved by DEQ.

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

(b) The covered fuel supplier acquiring the compliance instrument(s) must sign the same form and submit it to DEQ no later than one week after the transferring covered fuel supplier 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 price 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 fuel supplier transferring the compliance instrument(s):

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

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

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

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

(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 fuel supplier] is acquiring compliance instruments from [covered fuel supplier that is transferring] for the price described in this form.

(2) When 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 covered fuel suppliers involved in a trade, DEQ will track traded compliance instruments. DEQ will notify the designated representative of the covered fuel supplier acquiring compliance instrument(s) in writing of availability of these compliance instruments. DEQ will notify the designated representative of the covered fuel supplier transferring compliance instrument(s) in writing that the covered fuel supplier 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 fuel supplier 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). Trades may only be reported to DEQ after DEQ has made the compliance instrument trade form available. DEQ will notify covered fuel suppliers when the compliance instrument trade form is available.

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: 340-271-0590

RULE TITLE: Recordkeeping Requirements Related to Trading

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Recordkeeping Requirements Related to Trading rule for division 271.

RULE TEXT:

(1) A person who transfers one or more compliance instruments in a trade according to OAR 340-271-0510 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 person who acquires one or more compliance instruments in a trade according to OAR 340-271-0510 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 fuel suppliers must make the records retained according to this rule available to DEQ upon request. DEQ will specify the date by which the covered fuel supplier 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: 340-271-0810

RULE TITLE: Covered Fuel Supplier Application for Community Climate Investment Credits

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Covered Fuel Supplier Application for Community Climate Investment Credits rule for division 271.

RULE TEXT:

(1) A covered fuel supplier is eligible to receive one or more CCI credits if it contributes CCI funds according to this rule.

(a) The covered fuel supplier may receive CCI credits only for contributions to a CCI entity that has been approved by DEQ according to OAR 340-271-0920(1) and has entered into a written agreement with DEQ to accept and administer CCI funds according to OAR 340-271-0920(2).

(b) A covered fuel supplier is not eligible to receive a CCI credit for any contribution made to a CCI entity prior to March 1, 2023.

(c) If more than one CCI entity is approved to accept funds according to subsection (a) the covered fuel supplier 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 340-271-0920(2). The contribution amount to each CCI entity may vary by up to one US dollar.

(2) A covered fuel supplier 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 fuel supplier may not submit an application to request CCI credits on behalf of another person.

(3) A covered fuel supplier 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 fuel supplier, including:

(A) Name and full mailing address; and

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

(b) The name of each CCI entity that received CCI funds from the covered fuel supplier;

(c) A copy of the receipt(s) described in OAR 340-271-0930(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 fuel supplier] 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 340-271-0900.

(4)(a) A covered fuel supplier 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 340-271-0450, or 11 days after DEQ's notice described in OAR 340-271-0450(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 fuel supplier's contribution to CCI entities, as documented in its application and the CCI credit contribution amount described in Table 7 in OAR 340-271-9000 that was in effect on the date the contribution was made, adjusted for inflation according to OAR 340-271-0820(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: 340-271-0820

RULE TITLE: Generation and Distribution of Community Climate Investment Credits

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Generation and Distribution of Community Climate Investment Credits rule for division 271.

RULE TEXT:

(1) DEQ will review an application submitted according to OAR 340-271-0810 to ensure that it meets the requirements of that rule. DEQ will inform the applicant either that the submitted application is complete or that additional specific information is required to make the application complete. If DEQ determines that the application is incomplete or does not meet the requirements of OAR 340-271-0810, 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 fuel supplier if DEQ determines that the application is accurate and complete according to the requirements of OAR 340-271-0810, and DEQ determines that the CCI funds have been provided to an approved CCI entity that is in good standing according to OAR 340-271-0910 through OAR 340-271-0990.

(3) Approval of an application for CCI credits.

(a) Upon approval of an application for CCI credits, DEQ will notify the covered fuel supplier in writing that DEQ has approved the application and will generate and distribute to the covered fuel supplier 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 fuel supplier is one CCI credit for every verified contribution of the CCI credit contribution amount that a covered fuel supplier provides to a CCI entity, rounded down to the nearest whole number. The CCI credit contribution amount is the applicable amount in Table 7 in OAR 340-271-9000 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 2021, 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 7 in OAR 340-271-9000 * (CPI-U West for January of the calendar year for the price in Table 7 in OAR 340-271-9000 that is currently in effect / CPI-U West for January 2021)

(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: 340-271-0830

RULE TITLE: Holding Community Climate Investment Credits

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Holding Community Climate Investment Credits rule for division 271.

RULE TEXT:

(1) When DEQ distributes a CCI credit to a covered fuel supplier according to OAR 340-271-0820, the covered fuel supplier may continue to hold the CCI credit until any of the following apply:

(a) The covered fuel supplier uses the CCI credit toward its demonstration of compliance according to OAR 340-271-0450;

(b) Two demonstration of compliance deadlines described in OAR 340-271-0450(2) have passed since the date DEQ provided written notice of its approval of the CCI credit to the covered fuel supplier according to OAR 340-271-0820 and the covered fuel supplier 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 fuel supplier has ceased being a covered fuel supplier according to OAR 340-271-0130. When a covered fuel supplier ceases to be a covered fuel supplier, 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 a covered fuel supplier that receives a CCI credit from DEQ may hold the CCI credit. The covered fuel supplier may not trade the CCI credit.

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: 340-271-0890

RULE TITLE: Recordkeeping Requirements Related to Community Climate Investment Funds

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Recordkeeping Requirements Related to Community Climate Investment Funds rule for division 271.

RULE TEXT:

(1) A covered fuel supplier that provides CCI funds to a CCI entity must retain the following records, in paper or electronic format, for a period 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 fuel supplier must retain the following records, in paper or electronic format, for a period that begins the date it applies for a CCI credit and lasts seven 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 fuel supplier 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 fuel supplier 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: 340-271-0900

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

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Purposes of Community Climate Investments and Eligible Uses of CCI Funds rule for division 271.

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. 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 340-271-0930 and costs of capacity-building for implementation of eligible projects.

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: 340-271-0910

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

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Application to DEQ for Approval as a Community Climate Investment Entity rule for division 271.

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 340-271-0900(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, on a form 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, if known, 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 340-271-0930;

(F) A description of experience implementing or supporting implementation of eligible projects or project types, 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 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 and a description of prior experience serving communities in Oregon; and

(G) Information regarding any violation by the proposed subcontractor related to federal or state 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 340-271-0900(1) and that are eligible projects as defined in OAR 340-271-0900(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);

(f) The anticipated annual total amount of CCI funds the entity would be able to receive and spend, including a description of why that annual amount is anticipated; and

(g) 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 271.

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: 340-271-0920

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

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New DEQ Review and Approval of Community Climate Investment Entities and Agreements for Approved CCI Entities rule for division 271.

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 340-271-0910 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 340-271-0910, DEQ will consult with the equity advisory committee described in OAR 340-271-0950 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 340-271-0910(1);

(C) Whether each proposed subcontractor, if applicable, complies with the eligibility criteria in OAR 340-271-0910(1)(e);

(D) The overall ability of the entity and, if applicable, its subcontractor(s) to use CCI funds to complete eligible projects that advance the purposes set forth in OAR 340-271-0900(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 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 340-271-0900(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 340-271-0910(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: 340-271-0930

RULE TITLE: Requirements for Community Climate Investment Entities

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Requirements for Community Climate Investment Entities rule for division 271.

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 fuel supplier that seeks to contribute CCI funds. 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 fuel supplier] as described on this receipt and I affirm that I am a representative of [CCI entity] authorized to sign this receipt.

(b) 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.

(3) Use of CCI funds. A CCI entity may only spend CCI funds for the uses specified in OAR 340-271-0900(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 its 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 the work plan prior to committing or expending CCI funds for the period of the work plan. The first work plan must be submitted within 60 days of the date on which the CCI entity entered into a written agreement with DEQ described in OAR 340-271-0920(2). Each subsequent work plan must be submitted no later than 30 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 340-271-0900(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 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 340-271-8100;

(E) 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;

(F) 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

(G) 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) DEQ will review each submitted work plan to ensure that it meets the requirements of this section. DEQ will inform the CCI entity either that the submitted work plan is complete or that additional specific information is 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:

(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 340-271-0900; and

(D) Input from the equity advisory committee described in OAR 340-271-0950 and from any other relevant experts selected by DEQ.

(5) Annual report. A CCI entity must submit to DEQ an annual report by March 31 each year that describes its CCI-related activities and finances for the preceding calendar year, including:

(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) Maintaining CCI entity eligibility.

(a) A CCI entity must notify DEQ in writing as soon as possible, and not later than 30 days after it no longer meets any of the eligibility criteria for approval in OAR 340-271-0910(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 30 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 30 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 30 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.

(7) 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.

(8) Rollover of CCI funds. If DEQ approval is suspended, revoked, or voluntarily withdrawn, DEQ may require the entity to transfer any unspent CCI funds to another CCI entity and provide proof to DEQ that the transfer has been made.

STATUTORY/OTHER AUTHORITY: 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: 340-271-0950

RULE TITLE: Equity Advisory Committee and Environmental Justice Community Engagement

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Equity Advisory Committee and Environmental Justice Community Engagement rule for division 271.

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 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.

(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: 340-271-0990

RULE TITLE: Recordkeeping Requirements for Community Climate Investment Entities

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Recordkeeping Requirements for Community Climate Investment Entities rule for division 271.

RULE TEXT:

(1) A CCI entity must retain the following records, in paper or electronic format, for the duration of its approval as a CCI entity and for a period of at least seven years following the end of its approval:

(a) A copy of each application submitted to DEQ for approval as a CCI entity;

(b) A copy of any invoice or documentation of monetary payment related to CCI funds;

(c) A statement from a financial institution showing any payments related to CCI funds;

(d) A copy of any receipt provided to a covered fuel supplier that makes a CCI payment to the CCI entity;

(e) A copy of any 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: 340-271-8100

RULE TITLE: Program Review

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Program Review rule for division 271.

RULE TEXT:

(1) DEQ will report to the EQC on community climate investments. DEQ will submit the first report to the EQC by August 30, 2024 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 fuel suppliers;

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

(C) Estimates of annual 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 annual 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 7 in OAR 340-271-9000 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 340-271-0900, if applicable.

(2) 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' 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 340-271-9000;

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

(D) Summary of covered stationary source requirement activities that have occurred since program start or since the most recently submitted report to the EQC, whichever is later, including:

(i) The number of existing stationary sources that DEQ has notified in writing that must complete a BAER assessment;

(ii) The number of BAER assessments received or anticipated to be received by DEQ;

(iii) A brief summary of any BAER order issued and the required actions that must be taken by the owner or operator of a covered stationary source that has been issued a BAER order;

(iv) A brief summary of the status of any covered stationary source activities regarding implementation of requirements in a BAER order; and

(v) Review of any changes in annual covered emissions from current covered stationary sources to assess whether

covered emissions are being reduced;

(E) Whether emission reductions from covered stationary sources align with the priorities described in section (3). This will be assessed in program reviews beginning after 2029.

(F) A current list of covered entities by name and whether each is a covered fuel supplier or covered stationary source; and

(G) 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 section (3) for covered stationary sources.

(3) CPP goals for covered stationary sources described in OAR 340-271-0110(5) are to:

(a) Reduce total covered emissions from covered stationary sources; and

(b) Reduce total covered emissions from covered stationary sources that are the result of combustion of solid or gaseous fuels by 50 percent by 2035 from the average of 2017 through 2019 emissions.

(4) If the average annual statewide retail cost of gasoline, diesel or natural gas 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, 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.

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: 340-271-8110

RULE TITLE: Deferrals

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Deferrals rule for division 271.

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: 340-271-8120

RULE TITLE: Severability

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Severability rule for division 271.

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: 340-271-9000

RULE TITLE: Tables

NOTICE FILED DATE: 08/05/2021

RULE SUMMARY: New Tables rule for division 271.

RULE TEXT:

- (1) Table 1. Thresholds for applicability described in OAR 340-271-0110(3).
- (2) Table 2. Oregon Climate Protection Program caps.
- (3) Table 3. Compliance instrument reserve size.
- (4) Table 4. Compliance instrument distribution to covered fuel suppliers that are local distribution companies.
- (5) Table 5. Compliance instrument distribution evaluation periods.
- (6) Table 6. Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3).
- (7) Table 7. CCI credit contribution amount.

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



OAR 340-271-9000
Table 1
Thresholds for
applicability described in OAR 340-271-0110(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 2018 through 2022	200,000 MT CO ₂ e	2022
2023	200,000 MT CO ₂ e	2023
2024	200,000 MT CO ₂ e	2024
Any year from 2021 through 2025	100,000 MT CO ₂ e	2025
2026	100,000 MT CO ₂ e	2026
2027	100,000 MT CO ₂ e	2027
Any year from 2024 through 2028	50,000 MT CO ₂ e	2028
2029	50,000 MT CO ₂ e	2029
2030	50,000 MT CO ₂ e	2030
Any year from 2027 through 2031	25,000 MT CO ₂ e	2031
2032	25,000 MT CO ₂ e	2032
Each subsequent year	25,000 MT CO ₂ e	Each subsequent year



OAR 340-271-9000

**Table 2
Oregon Climate Protection Program caps**

Calendar year	Cap
2022	28,081,335
2023	27,001,283
2024	25,921,232
2025	25,763,209
2026	24,637,057
2027	23,510,904
2028	23,013,190
2029	21,842,149
2030	20,671,108
2031	19,910,424
2032	18,688,088
2033	17,465,752
2034	16,243,416
2035	15,021,080
2036	14,219,956
2037	13,418,831
2038	12,617,707
2039	11,816,583
2040	11,015,459
2041	10,214,334
2042	9,413,210
2043	8,612,086
2044	7,810,962
2045	7,009,837
2046	6,208,713

2047	5,407,589
2048	4,606,465
2049	3,805,340
2050 and each calendar year thereafter	3,004,216



OAR 340-271-9000
Table 3
Compliance instrument reserve size

Calendar year(s) of the cap	Reserve size
2022	400,000 compliance instruments
2023 through 2030	800,000 compliance instruments
2031 through 2040	500,000 compliance instruments
2041 and each calendar year thereafter	250,000 compliance instruments



OAR 340-271-9000

Table 4

Compliance instrument distribution to covered fuel suppliers that are local distribution companies

Calendar year	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
2022	703,373	743,707	5,759,972
2023	676,320	715,103	5,538,434
2024	649,267	686,499	5,316,897
2025	622,214	657,895	5,095,359
2026	595,161	629,291	4,873,822
2027	568,109	600,687	4,652,285
2028	541,056	572,083	4,430,747
2029	514,003	543,478	4,209,210
2030	486,950	514,874	3,987,673
2031	459,897	486,270	3,766,135
2032	432,845	457,666	3,544,598
2033	405,792	429,062	3,323,061
2034	378,739	400,458	3,101,523
2035	351,686	371,854	2,879,986
2036	332,930	352,021	2,726,387
2037	314,173	332,189	2,572,787
2038	295,416	312,357	2,419,188
2039	276,660	292,525	2,265,589
2040	257,903	272,693	2,111,990
2041	239,147	252,860	1,958,390
2042	220,390	233,028	1,804,791

2043	201,633	213,196	1,651,192
2044	182,877	193,364	1,497,593
2045	164,120	173,532	1,343,993
2046	145,364	153,699	1,190,394
2047	126,607	133,867	1,036,795
2048	107,850	114,035	883,196
2049	89,094	94,203	729,596
2050 and each calendar year thereafter	70,337	74,371	575,997



OAR 340-271-9000

Table 5

Compliance instrument distribution evaluation periods

Calendar years of emissions for evaluation period	Year in which evaluation occurs to determine distribution of compliance instruments	Calendar year of the cap
2018 through 2020	2021	2022
2019 through 2021	2022	2023
2020 through 2022	2023	2024
Each subsequent three year period	Each subsequent year	Each subsequent year



OAR 340-271-9000

Table 6

Covered fuel supplier allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-271-0450(3)

Compliance period	Allowable percentage of total compliance obligation(s) for which compliance may be demonstrated with CCI credits
Compliance period 1 (2022 through 2024)	10%
Compliance period 2 (2025 through 2027)	15%
Compliance period 3 (2028 through 2030), and for each compliance period thereafter	20%



OAR 340-271-9000
Table 7
CCI credit contribution amount

Effective date	CCI credit contribution amount in 2021 dollars, to be adjusted according to OAR 340-271-0820(3)
March 1, 2023	\$107
March 1, 2024	\$108
March 1, 2025	\$109
March 1, 2026	\$110
March 1, 2027	\$111
March 1, 2028	\$112
March 1, 2029	\$113
March 1, 2030	\$114
March 1, 2031	\$115
March 1, 2032	\$116
March 1, 2033	\$117
March 1, 2034	\$118
March 1, 2035	\$119
March 1, 2036	\$120
March 1, 2037	\$121
March 1, 2038	\$122
March 1, 2039	\$123
March 1, 2040	\$124
March 1, 2041	\$125
March 1, 2042	\$126
March 1, 2043	\$127
March 1, 2044	\$128
March 1, 2045	\$129
March 1, 2046	\$130

March 1, 2047	\$131
March 1, 2048	\$132
March 1, 2049	\$133
March 1, 2050	\$134

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the original of this **PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE RULE** with the Oregon State Court Administrator, Appellate Records Section, by using the appellate electronic filing system on March 18, 2022.

I further certify that I served a true copy of this **PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE RULE** upon all participants in the case as follows:

Ellen F. Rosenblum
Attorney General of the State of Oregon
Benjamin Gutman
Office of the Solicitor General
Oregon Department of Justice
Appellate Division
400 Justice Building
1162 Court Street, NE
Salem, OR 97301-4096
Email: ellen.f.rosenblum@doj.state.or.us
benjamin.gutman@doj.state.or.us

Oregon Environmental Quality Commission
Department of Environmental Quality
4026 Fairview Industrial Drive SE
Salem, OR 97302

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

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

4871-5647-5670

CERTIFICATE OF FILING AND SERVICE