

# EITE Rulemaking Background Memo 1 Rulemaking Overview

## Summary

The Oregon Department of Environmental Quality is developing rules specific to emissions-intensive, trade-exposed (EITE) and direct natural gas (DNG) industrial sources covered by Oregon's Climate Protection Program (CPP) through a rulemaking process. This process includes conversations and listening sessions with facilities like pulp and paper mills, iron and steel mills, semiconductor manufacturers, chemical and concrete manufacturers. DEQ aims to present the rules to the Oregon Environmental Quality Commission by the middle of 2027 for consideration.

This rulemaking aims to develop baseline greenhouse gas emissions intensity values, **benchmarks**, for EITE and DNG sources, and a **schedule of emissions reductions** from those sources. DEQ anticipates the greenhouse gas emission intensity values may be the number of metric tons of carbon dioxide equivalent released per unit of manufacturing product or process.

## Climate Protection Program

[The Climate Protection Program](#) sets an enforceable and declining limit on greenhouse gas emissions from fossil fuels used in transportation, residential, commercial, and industrial settings. It does not apply to electrical utilities. The limit is based on average emission levels from 2017-2019 and lowers over time, reaching a 50% percent reduction by 2035 and 90% reduction in emissions by 2050. The program went into effect January 1, 2025.

The Climate Protection Program has three interrelated goals: to significantly reduce greenhouse gas emissions, to support a strong overall economy in the transition to cleaner energy, and to improve outcomes for Oregon's environmental justice communities. Oregon's environmental justice communities are those that are overburdened by pollution and climate risk, have traditionally had less representation, and have less access to clean energy alternatives and infrastructure. This includes our communities experiencing lower incomes, tribal communities, rural communities, communities of color and others.

## Covered entities and emissions

Regulated entities in the program include natural gas utilities, liquid fuels and propane suppliers, and EITE and DNG sources. EITE sources are emissions-intensive and operate in industrial sectors that face significant competition outside of Oregon. Direct natural gas sources are also emissions-intensive, but do not operate in a designated trade-exposed sector and use natural gas distributed by an entity other than a natural gas utility.

DEQ has currently identified [37 EITE or DNG sources](#) subject to direct regulation under the program's threshold of 15,000 metric tons/year of carbon dioxide equivalent emissions.

<b>Covered entity</b>	<b>Covered emissions</b>	<b>Applicability</b>
Natural gas utilities	Human-caused greenhouse gas emissions from natural gas supplied.  Excludes: <ul style="list-style-type: none"> <li>• Natural gas used at electricity generating facilities</li> <li>• Biomass-derived fuels</li> <li>• Emissions-intensive trade-exposed sources</li> </ul>	No threshold
Liquid fuels and propane suppliers	Human-caused greenhouse gas emissions from combustion or oxidation of propane or liquid fuels  Excludes: <ul style="list-style-type: none"> <li>• Biomass-derived fuels</li> <li>• Aviation fuels</li> </ul>	Currently 100,000 metric ton/year of carbon dioxide equivalent emissions; decreases over time
Emissions-intensive trade-exposed sources	Human-caused greenhouse gas emissions from all uses of natural gas (utility or other), solid fuels, and industrial processes  Excludes: <ul style="list-style-type: none"> <li>• Biomass-derived fuels</li> <li>• Liquid fuels or propane</li> </ul>	15,000 metric ton/year carbon dioxide equivalent emissions <i>and</i> specified North American Industry Classification System (NAICS) codes
Direct natural gas sources	Human-caused greenhouse gas emissions from natural gas supplied by an entity other than a utility, solid fuels, and industrial processes  Excludes: <ul style="list-style-type: none"> <li>• Biomass-derived fuels</li> <li>• Liquid fuels or propane</li> </ul>	15,000 metric ton/year carbon dioxide equivalent emissions

**Note: this is a summary table; for full requirements see Oregon Administrative Rules.**

# Rulemaking objectives

The central objective of this rulemaking is to determine how EITE and DNG sources will be regulated in the program's second compliance period (2028-2029) and beyond. When developing the Climate Protection Program, DEQ wanted to incentivize emission reductions at these facilities while recognizing the special circumstances they face as trade-exposed, and the role they play in supporting Oregon's economy. Avoiding leakage of emissions and economic activity, that is, the relocation of manufacturing and associated emissions from Oregon to places without emissions-reduction programs, is a key consideration for DEQ in this rulemaking.

When developing the Climate Protection Program, DEQ determined directly regulating EITE sources would allow these sources to have more options and control of their emission reduction strategies and potentially greater resources. DEQ also determined that emissions from sources that are large users of natural gas, not supplied by gas utilities, who do not operate in EITE sectors should also be covered by the program. By directly regulating EITE and DNG sources, DEQ could consider providing a slower reduction timeline for these facilities, while still maintaining the overall program's emission reductions of 50% by 2035 and 90% by 2050.

EITE and DNG sources do not currently have compliance obligations other than reporting, but will in the program's second compliance period starting in 2028. EITE and DNG emission will be covered under the program's declining emission limit and like other regulated companies, DEQ will distribute compliance instruments to each facility, which they can trade or bank for future use. Facilities can also choose to purchase and use community climate investments credits.

Currently, DEQ is scheduled to distribute compliance instruments to EITE and DNG sources based on their historic emissions ([OAR 340-273-0410](#) and [OAR 340-273-9000](#)) beginning with the 2028 distribution. While this approach incentivizes emission reductions, it doesn't directly incorporate manufacturing production levels or growth.

With this rulemaking DEQ aims to develop greenhouse gas emission intensity benchmarks – starting values of emissions per unit of output or process – and a schedule of emissions reductions. DEQ would use these intensity benchmarks along with the reduction schedule to calculate how many compliance instruments to distribute to each EITE or DNG source.

An example of this would be:

benchmark (emissions/unit output) multiplied by reduction schedule multiplied by annual output equals the number of compliance instruments

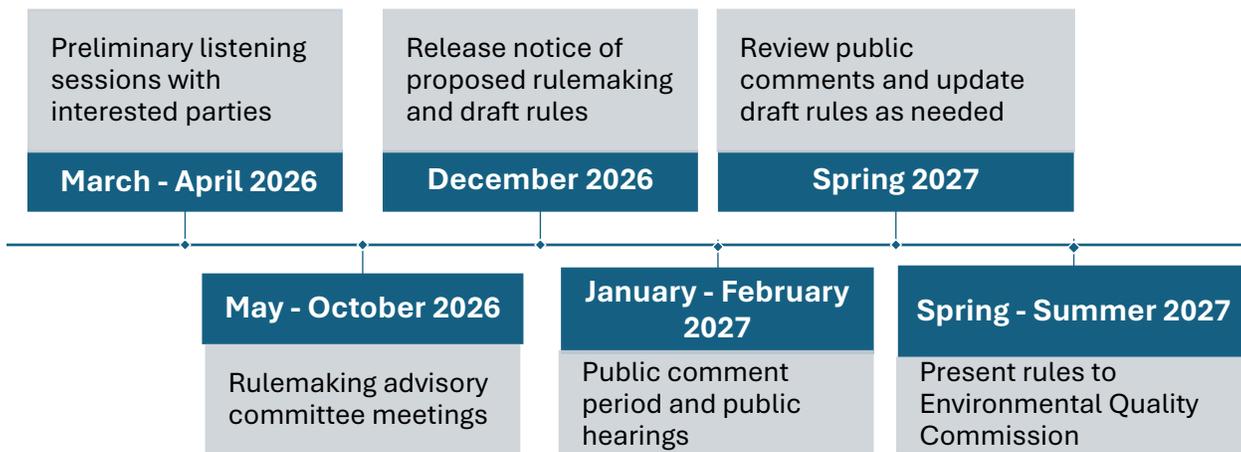
Staff have spent several months collecting information from EITE and DNG sources to support development of these benchmarks.

# Key program elements

Key program elements to be discussed in this rulemaking:

- Greenhouse gas emission intensity benchmarks for each industry, each product, or each source
- Product categories
- Emissions reduction schedules
- Developing benchmarks for any new EITE and DNG sources
- Adjusting benchmarks due to significant changes in product or sources

# Rulemaking timeline



# Benchmarks example

An illustrative example of benchmarks [comes from California](#) and the European Union. California has had product-based benchmarks since 2010. The European Union has had its carbon trading system since 2005, and has significantly strengthened it three times:

## CALIFORNIA AIR RESOURCES BOARD

<u>Sector</u>	<u>NAICS code</u>	<u>Activity</u>	<u>CA Benchmark (Imperial Units)</u>	<u>CA Benchmark Units (SI Units)</u>	<u>EU ETS Benchmark (SI Units)</u>			
Paper (except Newsprint) Mills	322121	Through-Air-Dried (TAD) Tissue Manufacturing	1.30	Allowances / Air-Dried Short Ton of TAD tissue	1.43	Allowances / Air-Dried Metric Ton of TAD tissue	N/A	N/A
Paperboard Mills	322130	Recycled Boxboard Manufacturing	0.499	Allowances / Air-Dried Short Ton of Recycled Boxboard	0.550	Allowances / Air-Dried Metric Ton of Recycled Boxboard	0.273	Allowances / Air-Dried Metric Ton of Coated Carton Board
		Recycled Linerboard (Testliner) Manufacturing	0.468	Allowances / Air-Dried Short Ton of Recycled Linerboard	0.516	Allowances / Air-Dried Metric Ton of Recycled Linerboard	0.248	Allowances / Air-Dried Metric Ton of Testliner and Fluting
		Recycled Medium (Fluting) Manufacturing	0.394	Allowances / Air-Dried Short Ton of Recycled Medium	0.434	Allowances / Air-Dried Metric Ton of Recycled Medium	0.248	Allowances / Air-Dried Metric Ton of Testliner and Fluting

# Key rule language

Oregon Administrative Rule [340-273-0410\(4\)](#) is the main basis for this rulemaking:

(4) The EQC recognizes that EITE sources may face competition from sources operating outside of Oregon and not subject to these rules. Avoiding leakage of emissions and economic activity to other jurisdictions as a result of the cost of compliance with this division of rules is a critical objective of this division of rules.

To achieve this objective while hastening investments to decarbonize manufacturing in Oregon, DEQ staff will work to develop a proposed baseline emissions intensity value for each covered EITE source and covered DNG source for the second and subsequent compliance periods from data provided by each covered entity.

DEQ staff anticipates that the proposed baseline emissions intensity value would calculate the number of metric tons of CO<sub>2</sub>e emitted per unit of applicable product or operational process for each covered entity, and then DEQ staff would propose to establish an annual decline from the proposed baseline emissions intensity value for all such covered entities.

Each calendar year DEQ could propose to distribute to each covered EITE source and covered DNG source compliance instruments from the annual cap equivalent to the applicable emission intensity target times the number of applicable units using emissions and production data from the previous calendar year.

DEQ staff will develop this proposal for potential adoption by the EQC.

Oregon Administrative Rule [340-273-0410\(5\)](#) describes how compliance instruments are currently set to be distributed to EITE and DNG sources beginning in 2028.

(5) For the second and subsequent compliance periods, DEQ will distribute compliance instruments to each covered EITE source and covered DNG source equal to the covered entity's average covered emissions for 2022 through 2023 multiplied by the emission reduction target in OAR 340-273-9000 Table 8 for each year of the compliance period.

If DEQ does not have emissions data for a covered EITE source or covered DNG source for either or both 2022 and 2023, DEQ will replace the missing year(s) with the most recent calendar year(s) of emissions data that is available from calendar years 2017 through 2024. If DEQ only has one year of emissions data for a covered EITE source or covered DNG source between 2017 and 2024, DEQ will distribute the number of compliance instruments equal to the covered entity's covered emissions for that one year. If DEQ does not have any emissions data for a covered entity from 2017 through 2024, DEQ will distribute compliance instruments equal to the covered entity's 2024 covered emissions.

In other words, the allocation of instruments to EITEs would be based on their average emissions during a historic period (generally 2022-2023). The allocation would be equal to 100% of those average emissions during each of the two years of the first compliance period. The allocation would then decline as described in the reduction schedule on page 8.

Oregon Administrative Rule [340-273-0410\(6\)](#) describes treatment of new EITE and DNG sources:

- (6) A covered EITE source or covered DNG source that begins operations in 2025 or any subsequent year will not incur a compliance obligation for covered emissions occurring until the first year of the next compliance period after they become a covered entity.
  - (a) For any covered EITE source or covered DNG source that begins operations in 2025 or any subsequent year, DEQ will use the most recent year(s) of available data to calculate a covered emissions baseline, up to two years.
  - (b) A covered EITE source or covered DNG source that begins operations in 2025 or any subsequent year will not receive a distribution of compliance instruments until the first year of the next compliance period after becoming a covered entity.
  - (c) Beginning in the first year of the next compliance period after becoming a covered EITE source, the EITE source will receive a distribution of compliance instruments equal to the covered EITE source's emissions baseline, as described in subsection (a), multiplied by an emission reduction target of 1. The emissions reduction target will decrease by 0.03 per year until this target reaches an equivalent emissions reduction to the emissions reduction target for that calendar year outlined in Table 8.
  - (d) Beginning in the first year of the next compliance period after becoming a covered DNG source, the DNG source will receive a distribution of compliance instruments equal to the covered DNG source's emissions baseline, as described in subsection (a), multiplied by an emission reduction target of 1. The emissions reduction target will decrease by 0.05 per year until this target reaches an equivalent emissions reduction to the emissions reduction target for that calendar year outlined in Table 8.

## Reduction schedule

The current reduction schedule is in [Oregon Administrative Rule 340-273-9000\(8\)](#). It outlines a 5% reduction in compliance instrument distribution every two years. This rulemaking will include reviewing any potential adjustments to this schedule.

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

## Additional information

For updates on the EITE rulemaking, please [subscribe for email updates](#) and visit the [EITE rulemaking web page](#).

Please visit the [program web page](#) for more information on the Climate Protection Program.

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