

Climate Protection Program EITE Rulemaking RAC 2 Policy Memo

Overview

The Climate Protection Program is designed to significantly reduce greenhouse gas emissions, support Oregon's economy and promote equitable outcomes for environmental justice communities. DEQ aims to incentivize emission reductions at emissions-intensive, trade-exposed (EITE) and direct natural gas (DNG) sources while recognizing the special circumstances those sources face as trade-exposed, and the role they play in supporting Oregon's economy.

DEQ staff have developed initial leanings on some aspects of this rulemaking informed by preliminary listening session with interested parties, meetings with EITE and DNG sources, rulemaking advisory committee member and public comments, discussions with jurisdictions who have EITE programs, and review of emissions data and production levels.

These leanings may change with new information and input as the rulemaking continues.

This memo discusses:

1. Benchmarks of greenhouse gas emissions intensity values
2. Reduction schedules, how many free compliance instruments DEQ distributes over time per widget produced
3. Potential adjustments to reduction schedules
4. Significant production downturns
5. Options to keep production data confidential
6. Use of Community Climate Investments
7. Program review

1. Benchmarks

DEQ staff lean towards creating source-specific benchmarks, and, at the request of sources, source-specific product-differentiated benchmarks. These benchmarks would be greenhouse gas emissions intensity values unique to each EITE or DNG source. They would be a generally static element in the formula DEQ uses to distribute compliance instruments to sources under the program. At the request of a source, DEQ could create unique benchmarks for the different products a source manufactures -- for example, one benchmark for 3/8-inch plywood and a separate benchmark for particle board.

Although using benchmarks across multiple sources rewards the more efficient sources, staff tend to think too many factors play into making accurate comparisons across facilities to create product-wide or industry-wide benchmarks.

Under a source-specific benchmark approach, more efficient sources with less ability to further reduce emissions might apply for a reduction schedule adjustment, discussed below.

Staff lean towards basing benchmarks on average covered emissions data from 2023-2025, with the ability for sources to make the case these data years are not representative. While some commenters argued for the ability to look at years as far back as 2010, DEQ staff currently lean towards using an average of the most recent available data years. By taking the average of the three most recent years, this approach also focuses on the recent production realities at each source while including multiple data points, capturing normal variations and fluctuations in emissions intensity.

DEQ intends to request 2025 data from each EITE and DNG source (sources recently provided DEQ with their 2020-2024 production data) and discuss proposed source-specific units of production and/or process during the summer and fall in support of the September and October rulemaking advisory committee meetings. This will allow sources the opportunity to discuss the proposed unit of production or process with DEQ staff and to consider if they want to request multiple product-differentiated benchmarks.

There may be limited reasons the years from 2023-2025 are abnormal or otherwise not representative of future production. DEQ could allow EITE facilities an opportunity to demonstrate significantly abnormal periods of operation materially impacted the facility, which may justify expanding or changing the data set to include a year or years prior to 2023.

The standard for approving alternative baseline years for the recent few years being abnormal or atypical would be high, such as a shutdown, severe curtailment, or major process or production changes that materially change emissions intensity or emission levels.

While this approach does not provide direct credit to those sources who invested in early emissions reductions, a process to allow reduction schedule adjustments could address that concern. That issue is discussed below. Allowing sources to choose their highest emissions-intensity, as some suggested, could result in many sources having no emissions reduction requirements for a decade or more. Given the urgency of the climate change challenge, and the disproportionate impacts such an approach would have on other entities under the program, that approach seems unlikely to further progress towards the program's goals.

Questions

- a) Is there something non-representative about the most recent years of 2023-2025 when it comes to assessing the current state of production at an individual source or across multiple sources?
- b) Should DEQ incorporate more recent emissions data than 2025 in the benchmarks? What might the advantages or disadvantages be of using the most recent emissions data year, like 2026, in the benchmark?

2. Reduction schedules

DEQ staff lean towards supporting uniform reduction schedules across sources, paired with a process to apply for reduction adjustments. DEQ staff lean toward maintaining the two-year compliance period for all covered entities, with reductions for EITE sources starting in 2030-31 and occurring each compliance period thereafter.

DEQ staff are looking at reduction schedules of 1-2.5% per year. Staff are considering starting these in 2030-31, with the initial EITE compliance period of 2028-29 having no reductions from the benchmark. This allows more time for EITE sources to come into the program and recognizes some emissions reduction strategies take years to implement, though some EITE sources are already implementing strategies to reduce emissions.

Direct comparisons across jurisdictions are imprecise, as jurisdictions have different programs, baseline years and regulate different EITEs. With those caveats, Washington's program includes a 6% reduction from baseline in the 2031-2034 period, building on a 3% reduction in 2027-2030. Colorado requires a 20% reduction from its EITEs by 2030 from its baseline. California reduces allowances by 3-4% a year and in 2023 industrial emissions were down 16% from the 2015-19 average. Quebec requires an average 2.3% annual decline.

Some comments also argued the program should not set reduction schedules beyond the first few compliance periods. As some investments or contracts are many years in the making, this would reduce certainty and disincentivize long-term investments. DEQ staff currently lean against this as certainty is important for sources in determining longer term compliance strategies, while still allowing for potential reduction adjustments.

Finally, although process and combustion emissions are fundamentally different, some sources may find it easier to reduce one type, and others another type. Technological changes such as new, lower-emission f-gases or more cost-efficient boiler replacements may come to market. Rather than select a certain technology or determine which technologies might be more readily available, DEQ staff lean towards a standardized approach, with an ability for sources to petition DEQ if a source believes all feasible emissions reductions have been made.

Questions

- a) Should any reductions start before the 2030-31 compliance period? Why or why not?
- b) What are your thoughts on an annual reduction of between 1-2.5% for all EITE sources? Does this approach adequately incentivize emission reductions at EITE sources while allowing for production growth?

3. Adjustments to reduction schedules

DEQ staff lean towards including a process for allowing sources to apply for adjustments to reduction schedules if further reductions are not feasible.

Sources would apply to DEQ for a reduction schedule adjustment, and DEQ would decide whether to grant an adjustment and the scale of such an adjustment.

As requested by many commenters, an application could include items similar to the Washington adjustment process or a best available emissions reduction process. For example:

- An analysis of all potential emissions reduction measures and scale of emissions reductions from those measures
- An analysis of reduction strategies implemented at facilities conducting similar operations, and related emissions reductions
- An economic assessment, including:
 - Capital expenses, operating expenses, financial incentives, and net present value
 - The value of no-cost compliance instruments
- A review of environmental and health impacts if the strategy were implemented, including air contaminant impacts to nearby communities
- Energy impacts to the source if the strategy were implemented, including:
 - Change in energy consumption
 - Change in fuel use
- A timeline for implementation of reduction strategies
- Identification of feasible and infeasible measures, and rationale for those considered infeasible

DEQ staff lean towards requiring at least one compliance period with reductions (2030-31) before allowing sources to apply for adjustments. After that, in 2031 sources could apply for adjustments for the 2032-33 compliance period if they meet the criteria.

DEQ staff lean towards applying the adjustments to only the following compliance period, while allowing sources to re-apply in future compliance periods. New technologies and other factors continue to emerge, requiring reassessment over time. DEQ acknowledges that submitting requests every two years may seem tedious. However, the process should be relatively straightforward if conditions haven't changed.

Questions:

- a) What are your thoughts on a reduction schedule adjustment process? What do you see as the potential advantages or disadvantages of DEQ's proposed approach?
- b) If DEQ creates a reduction schedule adjustment process, what should sources be required to demonstrate to be eligible? Should any parts of the application require outside certification?
- c) If DEQ creates a reduction schedule adjustment process, what should an analysis of potential reductions include? Are there items missing from the list above, or are items unnecessarily included?
- d) Should any potential adjustments apply only to the forthcoming compliance period, or should DEQ have the discretion to include a longer adjustment, perhaps up to four years? What might the advantages or disadvantages of providing DEQ with this level of flexibility?

4. Significant production downturns

While an emissions intensity approach to EITE regulation supports sources as they grow, the approach tends to reinforce the underlying fortunes of a company.

DEQ has received comments that while an emission intensity approach allows for production growth, DEQ should also consider the possibility of how a dramatic production downturn could impact the overall competitiveness of a facility. For some products, when a company is producing more than it has in the past, the company tends to have lower emissions intensity (emissions per unit produced) due to efficiencies and potential economies of scale. Conversely, when there is a significant production downturn, emissions intensity per unit produced can increase as overall production falls, meaning a gap between compliance instruments received and the compliance obligation, and increased financial stress during a downturn.

DEQ staff invite input on how to approach this.

One approach is to rely on the market flexibility mechanisms in the program. Sources could purchase compliance instruments from other more efficient or growing companies, earn community climate investments, or use banked compliance instruments in upswings to be used during future downturns.

A second approach could be to rely on the reduction schedule adjustment process described above, making the case that meeting the default reduction schedule is not feasible.

A third approach, suggested by some commenters, is to allow borrowing against future instruments, perhaps to be paid back in the future with extra instruments. This would require provisions to reduce the compliance instruments distributed to a source for any borrowed instruments, aiming to not reduce instruments distributed to other covered entities.

A fourth approach is to create a separate reserve of compliance instruments to be held aside for downturns and provided at DEQ's discretion. To retain progress towards emissions reduction, this reserve would be taken out of the EITE compliance instruments pool, marginally reducing the upfront compliance instruments distributed to each source.

A fifth approach, suggested by a commenter, could be to adopt a policy of a minimum distribution of compliance instruments regardless of emissions intensity. One potential starting point is the distribution formula currently in OAR 340-273-0410(5), which reads in part:

... 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 ...

One impact of this last approach, which could likely provide more instruments to companies with reduced production than the emissions intensity approach, is a reduction in the number remaining compliance instruments. This would impact other regulated entities, both EITEs and non-EITEs.

Questions

- a) Should DEQ consider a different method for distributing compliance instruments to an EITE if there has been a significant production downturn? Why or why not?
- b) What would be the process for determining whether a reduction in production was significant enough to use an alternative distribution approach?
- c) If yes, should it be one of the approaches discussed above or another? What are the benefits and disadvantages of the different approaches?

5. Privacy of production data

DEQ staff have heard some sources voice an interest in keeping production data confidential. Under an emissions-intensity approach, even if production data are not directly published, limited production data could be determined using emissions, benchmarks, reduction schedules and compliance instrument distribution. DEQ staff reviewed whether any of these could be kept confidential.

Staff's initial assessment is emissions, benchmarks, reduction schedules and compliance instrument distribution may be subject to public information laws and could be released upon request even if DEQ

intended to only publish aggregate data. This holds whether these numbers are written in rule or a Climate Protection Program permit.

DEQ staff are interested in input on this issue, particularly from those sources interested in keeping production data confidential.

For some sources, using a single facility-wide benchmark may be sufficient to mask subsets of production numbers.

Another possibility is for the program to allow sources to use a mass-based benchmark, based solely on overall emissions and not adjusted for production. That option would focus on reductions from those emissions levels. This could protect confidential production numbers, while losing the benefit of expanding allocation to accommodate production growth. One option is using something similar to existing rule language in Oregon Administrative Rule [340-273-0410\(5\)](#), which again reads in part:

... DEQ will distribute compliance instruments to each covered EITE source and covered DNG source equal to the covered entity's average covered emissions for [Year] through [Year] multiplied by the emission reduction target in OAR 340-273-9000 Table 8 for each year of the compliance period....

Questions

- Are there approaches DEQ should consider for those interested in keeping production numbers confidential?
- Is an option of a mass-based benchmark and reduction schedule a worthwhile compromise that could provide assurance of keeping production data confidential while losing the function of expanding allocation to sources whose production levels have increased?
- DEQ is considering presenting the proposed metric of production or process for each EITE source, without a specific benchmark number, at the next advisory committee meeting. What might be advantages or disadvantages of doing this? Do you have any concerns?

6. Use of community climate investment credits

DEQ staff are leaning towards allowing EITEs to use a slightly higher percentage of community climate investment credits (CCI credits) to meet their compliance obligations, perhaps 25%.

Staff are interested in hearing feedback on the idea and rationale in support of certain percentages.

DEQ staff are leaning against changing the length of time CCI credits can be banked or held before use.

The rules currently limit the percentage of an entity's compliance obligation for which they may use CCI credits, per [OAR 340-273-0450\(4\)\(a\)\(B\)](#):

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

Table 5 Covered entity allowable usage of community climate investment credits to demonstrate compliance as described in OAR 340-273-0450(4)	
Compliance period	Allowable percentage of total compliance obligation(s) for which compliance may be demonstrated with CCI credits
Compliance period 1 (2025 through 2027)	15%
Compliance period 2 (2028 through 2029), and for each compliance period thereafter	20%

The rules currently also limit the ability to hold CCI credits indefinitely as per [OAR 340-273-0830](#):

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

- (a) The covered entity uses the CCI credit toward its demonstration of compliance according to OAR 340-273-0450;
- (b) Two demonstration of compliance deadlines described in OAR 340-273-0450(2) have passed since the date DEQ provided written notice of its approval of the CCI credit to the covered entity according to OAR 340-273-0820 and the covered entity has not used the CCI credit in its demonstration(s) of compliance. In such a case, DEQ will cancel the CCI credit. A cancelled CCI credit may not be used toward demonstration of compliance; or
- (c) The covered entity has ceased being a covered entity according to OAR 340-273-0130. When a covered entity ceases to be a covered entity, DEQ will cancel the CCI credit at the time of such cessation. A cancelled CCI credit may not be used toward any demonstration of compliance.

Questions

- a) Should DEQ increase the 20% limit on using CCI credits for EITEs? If so, to what percentage, and why?
- b) Should any increase be available anytime, or only under certain conditions?

7. Program review and evaluation

Some commenters requested inclusion of a formal review of the program or a pause in reductions after a certain date.

DEQ staff currently lean against including anything additional in program's rules, believing current processes in statute and rule to be sufficient.

There are several current requirements for program review and evaluation Those include:

- 1. New rules adopted by Oregon state agencies must undergo a review no later than five years after adoption, per Oregon's Administrative Procedures Act, in [Oregon Revised Statute 183.405](#). This requires agencies to determine whether:
 - (a) Whether the rule has had the intended effect;
 - (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
 - (c) Whether subsequent changes in the law require that the rule be repealed or amended;
 - (d) Whether there is continued need for the rule; and
 - (e) What impacts the rule has on small businesses.

Exceptions to this requirement are in ORS 183.405(6).

- 2. The Climate Protection Program includes program review elements ([340-273-8100](#)) which include in part:
 - a. Annual reports to the Environmental Quality Commission on implementation of the program, starting in 2026
 - b. Reports every two years on community climate investments, with an opportunity for the Environmental Quality Commission to provide input, starting in 2027
 - c. Internal and external audits as necessary on community climate investment contributions and emissions reductions from completed projects
 - d. Reports on the program every five years, including caps, compliance obligations, compliance instruments distributed, compliance instruments submitted, the size of the compliance instrument reserve, community climate investment credits submitted, a summary of trading of compliance instruments, a current list of covered entities, and a description of any enforcement actions taken that involved civil penalties. Such a review must include DEQ's recommendations regarding any potential changes to the program.

Staff also note the Environmental Quality Commission has the authority to approve temporary variances for significant unforeseen events, as it did in November 2025 for a [Washington pipeline break](#).

Additionally, DEQ may extend reporting or demonstration of compliance deadlines for the Climate Protection Program as the agency deems necessary or appropriate ([OAR 340-273-8110](#)).

Currently DEQ staff believe adding even more requirements to revisit the program would be inefficient and would unnecessarily constrain the timeline and content of such a review.

Question

- a) Is there any additional program data on EITE implementation that should be included in the annual report to the EQC or the five-year program review? If yes, what information and why?

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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