

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED
04/21/2020 11:24 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Additional methods to verify low- or moderate-income eligibility under solar plus storage rebate program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/22/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Wendy Simons
503-378-6043
wendy.simons@oregon.gov

550 Capitol St NE
First floor
Salem, OR 97301

Filed By:
Wendy Simons
Rules Coordinator

NEED FOR THE RULE(S):

The primary purpose of the proposed rule changes is to provide a list of additional methods in rule by which low- or moderate- income residential customers can provide proof of eligibility to receive preferences in the form of higher rebate rates under the solar plus storage rebate program. The rule changes will align the rules with Department practice. The initial program rules require customers claiming eligibility for a higher rebate rate as a low- or moderate-income residential customer to provide proof of eligibility. While the initial program rules explicitly provide one verification method, the Department has provided additional methods at the request of stakeholders. The Department has published the additional verification methods on its website; the proposed rule changes would add these methods to the program rules. The proposed rule changes would also make clarifications in program rules, including adding a definition of the term "residential customer" and making explicit that for a public entity claiming eligibility as a low-income service provider under the program, an installation receiving a rebate must be located at a public building where the public entity provides social services to low- or moderate-income individuals, or provides emergency shelter and/or communications in disaster situations. Lastly, the proposed rule changes would correct typographical errors.

The 2019 Legislative Assembly adopted House Bill 2618, codified as Oregon Laws Chapter 655, which created an incentive program offering rebates for solar electric systems and paired solar and energy storage systems. Contractors installing eligible systems apply for rebates on behalf of their customers, using an online system customized by the Department to reserve funds in anticipation of the installation of an eligible system. Once a system installation is complete, the contractor applies to receive the rebate. Both the customer and the contractor sign a statement that the customer has received the full amount of the rebate as a reduction in the cost of the purchase, construction or installation of the system. The legislation directs the Oregon Department of Energy to implement the program, which includes granting the Department authority to adopt rules establishing policies and procedures for the administration and enforcement of the program. The legislation also grants the Department authority to establish preferences in rule

for providing rebates to low- or moderate-income households and low-income service providers.

The initial program rules include a general requirement for low- or moderate-income residential customers claiming a preference to provide proof of eligibility, while specifically providing one method for income verification in rule: the Department is required to maintain a list of programs administered by the Oregon Housing and Community Services Department for which eligible participants would also automatically qualify as eligible to receive a preference under the solar plus storage rebate program. The proposed rule changes would align the rules with Department practice by including a list of OHCS programs in rule, and adding two additional methods of verifying eligibility for a preference: (1) the customer provides the Department with a notice of eligibility received within the last seven months for one of three listed programs administered by the Oregon Department of Human Services or the Oregon Health Authority, or (2) the customer provides the Department with an Oregon Department of Revenue tax transcript for each tax filer in the household for the most recent tax filing year immediately preceding the current year, or the transcript for the year prior if the tax return for the most recent tax filing year has not yet been filed. The legislation became operative January 1, 2020, which was the starting date for the program, and sunsets on January 2, 2024.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Laws 2019, Chapter 655 (House Bill 2618):

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2618>

Oregon Administrative Rules, Chapter 330 Division 240:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=5704>

FISCAL AND ECONOMIC IMPACT:

The Department anticipates the proposed rule changes will have minimal fiscal impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed rule changes do not affect the character of the program, which is an incentive program granting rebates for solar electric systems and paired solar and storage systems. Neither the initially-adopted program rules, nor the proposed rule changes, create any regulatory requirements for public bodies or members of the public. Under the program, a contractor applies for a rebate on behalf of a household or low-income service provider who in turn receives the benefit of the rebate in the form of a reduction in the cost of an eligible system. The contractor applying for the rebate on a household's or low-income service provider's behalf is required to submit information to the Department to prove that the customer is eligible to participate in the program, and later, that an eligible project has been completed.

In the case of a low- or moderate-income household or a low-income service provider, additional documentation is required to prove the participant's eligibility to receive a preference under the program in the form of a higher rebate rate. As required under the initial rules, the Department has maintained a list of income-limited programs administered by the Oregon Housing and Community Services Department, and verified with OHCS that a household claiming eligibility for a preference as a low- or moderate-income residential customer has qualified as a recipient of a relevant

OHCS program. The proposed rule changes align the rules with Department practice by providing additional methods in rule for a low- or moderate-income household to provide proof of eligibility for a preference under the program. Under these additional methods, the household may choose to provide proof of eligibility by providing documents showing either: (1) eligibility for certain income-limited programs administered by the Oregon Department of Human Services or the Oregon Health Authority, or (2) an income tax transcript from the Oregon Department of Revenue. The customer rather than DHS, OHA or DOR provides the required documentation to the contractor, who submits the information to the Department as part of the rebate application. The Department will continue to verify eligibility with OHCS for a household basing its eligibility for a preference under the solar plus storage rebate program upon previously-established eligibility for an OHCS program. Given the addition of alternatives, the Department anticipates that the total number of households using this latter method will be fewer than the initial estimate of approximately 70 households. The Department consulted with OHCS in the initial rulemaking for the program and created an interagency agreement with OHCS for this work.

(2) (a) The Department estimates that approximately 40 small businesses selling equipment and installation services for solar and energy storage systems are affected by the rules for this program. However, the program rules are intended to create additional business opportunities for these small firms by allowing them to offer reduced costs to their customers. The proposed rule changes do not create any additional compliance obligations for small businesses; rather, the proposed rule changes provide additional methods for residential customers to provide proof for a preference under the program, which could expand the number of potential customers.

(b) Affected small businesses are required by the initially-adopted program rules to submit documentation to the Department proving eligibility for rebates under the program; however, most of the documentation consists of information already obtained, generated, and stored in the normal course of business. Existing program rules require the contractor to include information about whether a customer will claim preference as a low- or moderate-income residential customer. The proposed rule changes add a requirement in rule for contractors to provide customers' documentation of eligibility to the Department. Contractors may incur a minimal amount of additional work coordinating with customers to ensure that appropriate documentation is provided to the Department; however, the two additional verification methods have expanded the pool of potential customers.

(c) The Department does not anticipate that the proposed rule changes will require increased expenditures on supplies and services, nor that the rule changes will require additional administrative time beyond the minimal number of labor hours required under the initial program rules to apply for and receive rebates on behalf of their customers.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department has received requests from solar installers and their customers requesting the additional verification methods in the proposed rule changes. Representatives of the solar photovoltaic and energy storage installation industries, most of which would qualify as small businesses under Oregon statute, were consulted and provided input to the Legislature in developing House Bill 2618 and participated in the stakeholder process conducted by the Department to develop the initial rules to implement the legislation.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed rule changes do not create any compliance obligations for public agencies nor for Oregon businesses. The proposed rule changes align program rules with Department practice to provide additional methods to verify eligibility to receive a preference as a low- or moderate-income residential customer, in the form of a higher rebate rate. These changes were requested by potential applicants for the program, and expand access to the program for potential residential customers who would qualify for a higher rebate rate under the program. Under the initial eligibility pathway, the Department was able to verify eligibility and provide preferences to households with up to 60 percent of

the state median income. By adding the two additional verification methods, the Department is able to verify eligibility for households up to 100 percent of the state median income. In order to minimize administrative burden, the proposed rule changes rely upon existing documentation and qualifications to prove eligibility for this program rather than creating new or separate certification processes.

HOUSING IMPACT STATEMENT:

As required under ORS 183.530 and 183.534, the Department has considered the potential impact of these rules and believes these rules will cause no impact to the following costs for developing a typical 1,200 square foot detached single-family dwelling on a 6,000 square foot parcel of land:

- (1) materials and labor costs
 - (2) administrative construction or other costs
 - (3) land costs, or
 - (4) other costs.
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RULES PROPOSED:

330-240-0010, 330-240-0030, 330-240-0060, 330-240-0160

AMEND: 330-240-0010

RULE SUMMARY: Adds definition of "residential customer" for clarity.

CHANGES TO RULE:

330-240-0010

Definitions for Division 240

- (1) "Completion date" means the date as of which a solar electric system or paired solar and storage system has passed its final inspection by the authority having jurisdiction. ¶
- (2) "Contractor" has the definition given in Oregon Laws 2019 Chapter 655 Section 1(1) and means a person whose trade or business consists of offering for sale solar electric systems or paired solar and storage systems or of providing construction, installation, or design services for solar electric systems or paired solar and storage systems. ¶
- (3) "DC" means direct current electricity. ¶
- (4) "Department" means the Oregon Department of Energy. ¶
- (5) "Director" means the director of the Oregon Department of Energy. ¶
- (6) "Eligible project cost" means the costs allowed for determining the rebate, including solar photovoltaic modules, mounting structure and hardware, associated electrical equipment, energy storage system equipment, and labor costs. ¶
- (7) "Energy storage system" has the definition given in Oregon Laws 2019 Chapter 655 Section 1(3) and means commercially available technology that is capable of retaining energy, storing the energy for a period of time, and transmitting the energy after storage. ¶
- (8) "Household" means all individuals who reside in the place of residence, including all family members and roommates who are not related and not part of a separate lease agreement. ¶
- (9) "Ineligible project cost" means the costs not allowed for determining the rebate, including, but not limited to, financing charges, maintenance costs, service contracts, extended warranties, reroofing, or costs for auxiliary distribution systems such as electric vehicle charging stations. ¶
- (10) "Low- or moderate-income residential customer" means a residential electrical utility customer whose household income is less than or equal to 100 percent of state median income adjusted for household size. ¶
- (11) "Net cost" has the definition given in Oregon Laws 2019 Chapter 655 Section 1(5) and means the actual cost of the purchase, construction, and installation of a solar electric system or a paired solar and storage system, minus any incentive received for the system from the electric utility serving the customer for which the system is

installed. ¶

(12) "Paired solar and storage system" has the definition given in Oregon Laws 2019 Chapter 655 Section 1(6) and means a solar electric system and an energy storage system purchased, constructed, and installed together by the same contractor and paired such that the energy storage system is capable of providing storage capacity for electrical energy produced by the solar electrical system. ¶

(13) "Program" means the solar plus storage rebate program established by Oregon Laws 2019, chapter 655 (House Bill 2618). ¶

(14) "Purchase date" means the date that a contract for purchase of a solar energy system or paired solar and storage system is signed by both the contractor and the customer for which the system is installed. ¶

(15) "Residential customer" means the owner-occupant of a residential dwelling. ¶

(16) "Residential paired solar and storage system" means a set of standalone components necessary to collect and deliver solar and storage energy to a dwelling. Systems qualifying for residential rebates may not be part of a larger system or share components such as racking with other solar electric or paired solar and storage systems. ¶

(167) "Residential solar electric system" means a set of standalone components necessary to collect and deliver solar energy to a dwelling. A system qualifying for a general residential or low- or moderate-income residential rebate may not be part of a larger system or share components such as racking with other solar electric or paired solar and storage systems. ¶

(178) "Solar electric system" has the definition given in Oregon Laws 2019 Chapter 655 Section 1(7) and means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy. ¶

(189) "Utility incentive" means financial assistance that lowers the capital cost of a solar electric system or paired solar and storage system and that is provided directly from an electric utility as defined in ORS 757.600 or from funds provided by the Energy Trust of Oregon pursuant to ORS 757.612.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2019 chapter 655 (House Bill 2618)

Statutes/Other Implemented: Oregon Laws 2019 chapter 655 (House Bill 2618)

AMEND: 330-240-0030

RULE SUMMARY: Adds clarification that project for an entity claiming eligibility as a low-income service provider under OAR 330-240-0070 (3) must be installed on a building that provides social services to low- or moderate-income individuals or provides emergency services, as described in OAR 330-240-0070 (3).

CHANGES TO RULE:

330-240-0030

Project Eligibility

- (1) To be eligible for a rebate for the sale, construction, or installation of a solar electric system or a paired solar and storage system, the system must meet the following requirements: ¶
- (a) The solar electric system or paired solar and storage system must be installed by an eligible contractor. The contractor may use subcontractors in the construction or installation of a solar electric system or paired solar and storage system; however, all firms and individuals working on the construction or installation of a solar electric system or paired solar and storage system, whether working on behalf of the contractor or a subcontractor, must hold any license, bond, insurance or permit required for the work performed. ¶
- (b) In the case of a paired solar and storage system, the solar electric system and energy storage system must be purchased together from the same eligible contractor. ¶
- (c) In the case of a paired solar and storage system, the solar electric system and associated energy storage must be constructed and installed together by the same eligible contractor or a subcontractor working for the eligible contractor, as provided in subparagraph (a), such that the energy storage system is capable of providing storage capacity for electrical energy produced by the solar electric system. ¶
- (d) In the case of a paired solar and storage system, the system must include a minimum of one kilowatt DC of solar electric nameplate capacity for every five kilowatt-hours of battery storage. ¶
- (e) The purchase contract for a solar electric system or paired solar and storage system must be signed on or after January 1, 2020. ¶
- (f) A contractor must submit a reservation application before starting construction or installation of a solar electric system or paired solar and storage system in order to be eligible for a rebate. ¶
- (g) The solar electric system or paired solar and storage system must be installed on real property in Oregon. ¶
- (h) The solar electric system or paired solar and storage system must benefit a residential customer or a low-income service provider as defined in these rules. ¶
- (i) The solar electric system or paired solar and storage system must consist of new equipment. ¶
- (j) In the case of a solar electric system, the system must contain all components necessary to convert and deliver solar energy into electrical energy for use in a dwelling or commercial application. ¶
- (k) Equipment purchased for a solar electric system or a paired solar and storage system must include a manufacturer warranty covering the following: ¶
- (A) The photovoltaic inverters for a minimum of five years against manufacturer's defects ¶
- (B) Photovoltaic modules for a minimum of 20 years against degradation of performance below 80 percent of original output under standard test conditions ¶
- (l) All installations of a solar electric system or paired solar and storage system must include a total system workmanship warranty that covers the installation of solar panels, inverters, racking, patented roof protection systems, roof penetrations, batteries, electrical and mechanical parts, and wiring for the duration of at least five years. ¶
- (m) Any equipment installed as part of a solar electric system or paired solar and storage system must meet industry standards and the technical specifications provided in these rules. ¶
- (n) The solar electric system or paired solar and storage system must have received all applicable electrical and structural permits from the local jurisdiction and must pass all final inspections conducted by the authority having jurisdiction. ¶
- (o) The solar electric system or paired solar and storage system must follow electric utility-specific rules and regulations. ¶

(p) The Total Solar Resource Fraction ("TSRF") shall be calculated for each PV array and provided to the Department for reporting in the Department's designated software system. All installations must meet the following minimum performance standards. ¶¶

(A) For on-site shade analysis the TSRF must be 75 percent or greater at all points on the PV array. ¶¶

(B) For remote shade analysis the TSRF must be 80 percent or greater for the roof plane where the PV array is located. ¶¶

(C) The Department reserves the right to request documentation from a solar site analysis tool and to conduct independent verification of TSRF values. ¶¶

(q) Under no circumstances will more than one rebate be issued under the program for the same solar electric system or paired solar and storage system.¶¶

(r) A solar electric system or paired solar and storage system installed for a low income service provider who is eligible under 330-240-0070 paragraph (3) must be installed on a public building that provides social services to low- or moderate-income individuals, or provides emergency shelter and/or communications in disaster situations.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2019 chapter 655 (House Bill 2618)

Statutes/Other Implemented: Oregon Laws 2019 chapter 655 (House Bill 2618)

AMEND: 330-240-0060

RULE SUMMARY: Adds methods for residential customers to prove eligibility for the low- or moderate-income residential customer rebate rate.

CHANGES TO RULE:

330-240-0060

Low- or Moderate-Income Residential Customer Eligibility

(1) In order to qualify for the rebate rate offered under the program for low- or moderate-income residential customers, the homeowner where the installation will be located must provide proof of eligibility.¶

~~(2) The Department will maintain a list of income-limited programs which are administered by state or local public agencies or non-profit organizations and whose participants meet the eligibility requirements of the program. The Department will provide a form listing the qualifying programs to contractors. A homeowner may certify that the owner(s) of the property where the installation will occur is currently qualified for one or more of the progra~~ Proof of eligibility shall be provided in the following ways:¶

(a) A homeowner will be considered eligible if the Department verifies with the Oregon Housing and Community Services Department that the homeowner is eligible for one of the following Oregon Housing and Community Services Department programs: ¶

(A) Low Income Home Energy Assistance Program (LIHEAP) ¶

(B) Oregon Energy Assistance Program (OEAP) ¶

(C) Low Income Weatherization Assistance Program (LIWAP) ¶

(b) A homeowner will be considered eligible if the homeowner provides the Department an eligibility notice for the homeowner's household that has been received in the past seven months for one of the following Oregon Department of Human Services or Oregon Health Authority programs: ¶

(A) Supplemental Nutrition Assistance Program (SNAP) ¶

(B) Oregon Health Plan (OHP) (Medicaid) ¶

(C) Children's Health Insurance Program (CHIP; this option is available only for households consisting of six or fewer people) ¶

(c) A homeowner will be considered eligible if the homeowner provides the Department with an Oregon Department of Revenue tax transcript for each tax filer residing at the household for the most recent tax filing year immediately preceding the current year, or the transcript for the year prior if the tax return for the most recent tax filing year has not yet been filed, that demonstrates their household income is less than or equal to 100 percent of state median income adjusted for household size.¶

(2) The Department will provide low- or moderate-income eligibility certification forms to contractors. For each installation where the customer claims ~~eligible~~. ~~The contractor and~~ ~~gibility for the rebate rate for low- or moderate-income residential customers~~, all legal owners of the property must sign the form, certifying that the information is accurate. The contractor must submit ~~the form, or a scanned copy of the form, to the Department as part of the reservation application. The Department will verify the homeowner's eligibility with the administering agency of the programs certified by the homeowner and accompanying documentation under paragraph (1)(b) or paragraph (1)(c), if applicable, to the Department as part of the reservation application.~~

Statutory/Other Authority: ORS 469.040, Oregon Laws 2019 chapter 655 (House Bill 2618)

Statutes/Other Implemented: Oregon Laws 2019 chapter 655 (House Bill 2618)

AMEND: 330-240-0160

RULE SUMMARY: Corrects typographical errors.

CHANGES TO RULE:

330-240-0160

Audits and Inspections; Compliance

- (1) The Department reserves the right to conduct a physical inspection of all installations and to audit all documentation relating to an installation for which a reservation is made under the program before or after a rebate payment is made to the contractor. ¶
- (2) The Department must provide at least 15 days advance notice before performing a physical inspection of an installation. The owner of the property or the contractor must be present and must provide safe access to inspect the installation. Department inspectors will not inspect areas that they deem to present an unreasonable risk to personal safety. ¶
- (3) The Department will provide a written determination within 30 days to the contractor based upon the inspection. ¶
- (4) If the Department determines that the installation does not meet project eligibility criteria under the program or the project installed does not match the project description entered by the contractor when making a request for a rebate, the contractor will have 30 days from the date they received written notice from the Department to correct and provide proof of correction for any discrepancies found by the Department or to provide written explanation or justification. ¶
- (5) The Department must provide a final determination in writing within 15 days regarding the contractor's written response to the Department's initial determination after an inspection. ¶
- (6) The Department may deny a rebate if a contractor does not resolve issues found in an inspection or in an audit ~~in a~~ within the time limit established under program rules. ¶
- (7) Pursuant to the procedures for a contested case under ORS chapter 183, the Director may order the revocation of a rebate or portion of a rebate under the program if the Director finds that the rebate was obtained by fraud or misrepresentation, or by mistake or miscalculation. As soon as the order of revocation becomes final, the Department shall proceed to recover the rebate or portion of the rebate that is subject to the order of revocation. All moneys provided to a contractor attributable to the fraudulently or mistakenly obtained rebate or portion of the rebate shall be forfeited.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2019 chapter 655 (House Bill 2618)

Statutes/Other Implemented: Oregon Laws 2019 chapter 655 (House Bill 2618)