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PERMANENT ADMINISTRATIVE ORDER

DOE 5-2025
CHAPTER 330
DEPARTMENT OF ENERGY

FILED
08/04/2025 5:25 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Establishing an incentive program for early and voluntary compliance with state Building Performance Standards

EFFECTIVE DATE: 08/05/2025

AGENCY APPROVED DATE: 08/04/2025

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RULES:

330-300-0100, 330-300-0110, 330-300-0120, 330-300-0130, 330-300-0140, 330-300-0150, 330-300-0160, 330-300-0170

ADOPT: 330-300-0100

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0100 is a statement of purpose for rules 330-300-0100 through 330-300-0170 which implement the incentive program for early and voluntary compliance for the Oregon Building Performance Standards program. No changes to the draft rules published in the hearing notice.

CHANGES TO RULE:

330-300-0100

Purpose: Building Performance Standards Incentive Program

The purpose of the rules in 330-300-0100 through 330-300-0170 is to implement the early compliance incentive program for the Building Performance Standard adopted under House Bill 3409 (2023), section 14 (2), codified as ORS section 469.285, and House Bill 3409 (2023) section 17, codified as ORS section 469.291. The rules provide procedures for: covered commercial building eligibility, incentive amounts, application process, Department review of an application, incentive payment process and incentive program compliance.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

ADOPT: 330-300-0110

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0110 lists definitions applicable to the Building Performance Standards Incentive program for early and voluntary compliance outlined in OAR 330-300-0100 through -0170. The Department made the following changes to the definitions in response to public comments received during the public comment period: amended the rule title to clarify that the definitions apply to OAR 330-300-0100 through -0170; added a definition for "Multifamily Affordable Housing;" deleted a definition referencing Energy Trust of Oregon service territory and added a definition for "Qualified Utility Territory" which is the same as the definition for that term in the 2024 ASHRAE 100 national standards for energy efficiency in existing buildings with additional Oregon amendments as published by the Oregon Department of Energy (referenced in OAR 330-300-0010).

CHANGES TO RULE:

330-300-0110

Incentive Program Definitions Applicable to 330-300-0100 through 330-300-0170

(1) "Covered commercial building" means a Tier 1 building or Tier 2 building as defined in ORS section 469.275. ¶

(2) "Department" means the Oregon Department of Energy. ¶

(3) "Director" means the director of the Oregon Department of Energy. ¶

(4) "EUI" means Energy Use Intensity as defined in ORS section 469.275. ¶

(5) "EUI_t" means Energy Use Intensity target as defined in ORS section 469.275. ¶

(6) "GFA" means Gross Floor Area as defined in ORS section 469.275. ¶

(7) "Multifamily affordable housing" means a residential building for which the building owner provides proof of qualification under one or more of the following programs administered by Oregon Housing and Community Services: ¶

(a) A housing capital funding offering issued through a Notice of Funding Availability ¶

(b) Low Income Housing Tax Credits ¶

(c) Oregon Multifamily Energy Program ¶

(d) Conduit/Pass-Through Revenue Bond Financing Program ¶

(e) Local Innovation and Fast Track Housing Program ¶

(f) Loan Guarantee Program and General Guarantee Program ¶

(g) Oregon Rural Rehabilitation Loan Program ¶

(8) "Multifamily Residential Building" means a covered multifamily building on contiguous property, containing sleeping units or more than five (5) dwelling units where occupancy is primarily permanent in nature. ¶

(9) "Qualified utility territory" means any of the following: ¶

(a) a consumer-owned or investor-owned gas utility ¶

(b) a consumer-owned or investor-owned electric utility with greater than 50,000 customers and that makes sales of electricity to retail electricity consumers in an amount that equals three percent or more of all electricity sold to retail electricity consumers in Oregon. ¶

(10) "Rural area" means any geographic areas in Oregon ten or more miles from the centroid of a population center of 40,000 people or more, as defined by the Oregon Office of Rural Health.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

ADOPT: 330-300-0120

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0120 provides eligibility criteria for covered commercial buildings for consideration under the Building Performance Standards Incentive program. In response to questions and comments received during the public comment period, the Department has clarified that buildings that are exempt from the Building Performance Standard program are not eligible for the incentive program.

CHANGES TO RULE:

330-300-0120

Covered Commercial Building Eligibility

(1) Incentives will be awarded on a competitive basis. To be eligible for an incentive, a covered commercial building must meet the following requirements: ¶

(a) Be a Tier 1 or Tier 2 covered commercial building in Oregon. ¶

(b) If the covered commercial building is a Tier 1 building, the building must have a calculated EUI that is at least 15 units greater than its EUI. ¶

(c) The covered building must meet the requirements established under OAR 330-300-0010, which refers to the ASHRAE 100 2024 national standards for energy efficiency in existing buildings with additional Oregon amendments as published by the Oregon Department of Energy for application in the state of Oregon. ¶

(2) Exempt buildings are not eligible for an incentive. ¶

(3) Applications will be reviewed for completeness and eligibility. ¶

(4) Applications will be selected based on a competitive review process as described in section 330-300-0150.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

ADOPT: 330-300-0130

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0130 provides incentive amounts for a list of possible compliance actions by owners of covered commercial buildings. In response to comments and questions received during the public comment period, the Department added a provision limiting each building owner to a maximum of two incentive awards under the program while allowing the Department discretion to increase the limit based upon available funding.

CHANGES TO RULE:

330-300-0130

Incentive Amounts

(1) An eligible building owner may apply for an incentive of up to \$0.85 per square foot of eligible floor area per building for the following compliance actions: ¶

(a) An eligible building owner may apply for an incentive of \$0.35 per square foot of eligible floor area per building for completing Energy Benchmarking and Reporting; ¶

(b) An eligible building owner may apply for an incentive of \$0.05 per square foot of eligible floor area per building for completing an Energy Management Plan (EMP) and Operations & Maintenance Program (O&M); ¶

(c) An eligible building owner may apply for an incentive of \$0.35 per square foot of eligible floor area per building for completing an Energy Audit; ¶

(d) An eligible building owner may apply for an incentive of \$0.10 per square foot of eligible floor area per building for achieving compliance. ¶

(2) The total amount per incentive award may not exceed the following: ¶

(a) \$50,000 for Tier 1 buildings equal to or greater than 200,000 square feet; ¶

(b) \$35,000 for Tier 1 buildings equal to or greater than 35,000 square feet but less than 200,000 square feet; ¶

(c) \$10,000 for all Tier 2 buildings. ¶

(3) A building owner may receive up to two incentive awards. The Department may, at its discretion, increase the maximum number of awards per building owner based on available funding.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

ADOPT: 330-300-0140

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0140 describes the application process, including the information that building owners are required to submit to the Department as part of an application for an incentive. In response to comments and questions received during the public comment period, the Department added a provision limiting each building owner to a maximum of two applications while allowing discretion for the Department to increase the limit based upon available funding.

CHANGES TO RULE:

330-300-0140

Incentive Application Process

(1) A building owner must submit an incentive application using the Department's designated application procedure. ¶

(2) Prior to the date that the Department will begin accepting applications, the Department will post an announcement on the Building Performance Standard webpage and send an email announcement to applicable Department distribution lists. The announcement will provide the opening date for the application process, application forms, and evaluation criteria. ¶

(3) The following information about the eligible building must be provided to the Department on the incentive application: ¶

(a) Unique Building ID number (UBID) ¶

(b) Building owner name ¶

(c) Building owner mailing address ¶

(d) Covered building address ¶

(e) GFA of the building in square feet, excluding any parking garage area ¶

(f) If the building is a Tier 1 building, the building's EUI and EUI_t, including 12 months of energy usage from utility ¶

(g) Electric and gas utility territory ¶

(h) Evidence of multifamily affordable housing, if applicable ¶

(i) The compliance action(s) for which the building owner is applying ¶

(j) Incentive calculation and final incentive requested ¶

(k) Other information as requested by the Department. ¶

(4) The Department will provide written notice to the building owner once an incentive application has been received. ¶

(5) A building owner may submit a maximum of two applications. The Department at its discretion may increase the maximum number of applications allowed per building owner based upon available funding.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

ADOPT: 330-300-0150

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0150 describes the Oregon Department of Energy's process for reviewing incentive program applications. In response to questions and comments received during the public comment period, the Department made the following changes to the list of building types which would receive priority in the competitive scoring system: deleted provision giving priority to buildings not in Energy Trust of Oregon service territory; added a provision giving priority to multi-tenant buildings not in a "qualified utility territory" (a utility serving a multi-tenant building that is not in a "qualified utility territory" would not be required to provide aggregated energy consumption data for a whole building); added a provision giving priority to multifamily affordable housing; and deleted language providing that the Department may give priority to applications for Tribal buildings, due to tribal buildings being outside the scope of the BPS. The Department also clarified language regarding an applicant's ability to request a contested case in order to appeal a determination by the Department under the program.

CHANGES TO RULE:

330-300-0150

Incentive Program Application Review

(1) The Department shall conduct a competitive review of all submitted applications. ¶

(2) During the competitive review, to maximize the program's benefits to building owners across the state, applications will be selected based on a scoring system and priority will be given to buildings with the highest energy use intensity (EUI), multi-tenant buildings that are served by a utility that is not a qualified utility, smaller buildings, buildings located in a rural area, multifamily buildings, multifamily affordable housing, and other criteria determined by the Department. The applications with the highest scores will be selected first, until funding has been exhausted. ¶

(3) The evaluation criteria will be announced prior to the date in which the Department begins accepting applications. ¶

(4) The Department will provide written notice to the building owner once an incentive application has been approved or denied. ¶

(5) The building owner has 30 days to accept the terms of a performance agreement. If the building owner does not accept the terms within 30 days, the incentive award will no longer be valid, and the Department may offer an incentive to the applicant with the next highest score, subject to available funding. ¶

(6) The building owner may appeal the Department's decision to disqualify the building owner or the Department's determination of the amount of an incentive payment by submitting to the Department a written statement that the building owner wishes to appeal the decision and explaining why the building owner believes the Department's decision is not consistent with HB 3409 (2023) (codified at ORS 469.275 through ORS 469.291) or the Building Performance Standard Incentive Program rules. Such statement must be received by the Department within 30 days of the Department's providing the written notice under section (4), above. The Department shall then provide the building owner with the opportunity to request a contested case, as described in ORS 183.415. If the building owner decides to move forward with a contested case, the Department shall provide the building owner with a contested case notice as described in ORS 183.413.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

RULE SUMMARY: OAR 330-300-0160 describes: the requirement for incentive awardees to enter into a performance agreement with the Department; components of a performance agreement; disbursement of funds; and the process for renegotiating or terminating a performance agreement. The Department has added the following to the list of required information in a performance agreement: the building owner's mailing address and, subject to determination by the Department, copies of utility bills to verify energy consumption data for the covered building.

CHANGES TO RULE:

330-300-0160

Incentive Payment Process

(1) Upon selection, each awardee will be required to enter into a performance agreement with the Department which includes, but is not limited to the following components: ¶

(a) Identifying information for building owner and building, including: ¶

(A) Unique Building ID Number (UBID). ¶

(B) Building owner name. ¶

(C) Building owner mailing address; ¶

(D) Covered building address. ¶

(b) Total incentive amount awarded. ¶

(c) For building owners awarded incentives for multiple compliance actions, a list of incentive amounts awarded, broken down by compliance action. ¶

(d) Performance expectations, including deadlines for completion of compliance actions. ¶

(e) Reporting and documentation requirements to demonstrate compliance action completion, including: ¶

(A) If the compliance action is Energy Benchmarking and Reporting, the building owner must submit: ¶

(i) Form A: Application for Oregon BPS compliance or Form G: Grouped Buildings Application for Oregon BPS Compliance ¶

(ii) Form B: Building Activity and Energy Use Intensity Target, and ¶

(iii) Form C: Calculation of Energy Use Intensity. ¶

(B) If the compliance action is an Energy Management Plan (EMP) and Operations & Maintenance Program (O&M), the building owner must submit EMP and O&M checklists using the format provided on the Department's Building Performance Standard webpage and make EMP and O&M documentation available for the Department to review upon request. ¶

(C) If the compliance action is an Energy Audit, the building owner must submit Form E: Energy Audit using the required format as provided on the Department's Building Performance Standard webpage. ¶

(D) If the compliance action is achieving compliance, the building owner must submit either: ¶

(i) An updated Form C: Calculation of Energy Use Intensity demonstrating that EUI is equal to or less than EUI_t, or ¶

(ii) If the Investment Criteria was followed, an updated Form E: Energy Audit or Form L: Life Cycle Cost Assessment attesting that all cost-effective energy efficiency measures have been installed. ¶

(f) Other requirements and expectations to qualify for disbursement, including copies of utility bills to verify energy consumption data for the covered building, as determined by the Department. ¶

(g) Conditions and process in cases of non-conformance by awardee to terms of performance agreement. ¶

(2) To receive an incentive payment, a building owner that has been selected for an incentive must provide evidence that the applicable compliance action has been completed at least one year before the building's compliance date under the Building Performance Standard program. The following are the dates by which compliance actions must be complete in order to receive an incentive payment: ¶

(a) Tier 1 buildings: ¶

(A) Before June 1, 2027, for buildings equal to or greater than 200,000 square feet. ¶

(B) Before June 1, 2028, for buildings equal to or greater than 90,000 square feet but less than 200,000 square feet. ¶

(C) Before June 1, 2029, for buildings equal to or greater than 35,000 square feet but less than 90,000 square feet. ¶

(b) Before July 1, 2027, for all Tier 2 buildings. ¶

(3) A building owner may request incentive payments for each completed compliance action separately. ¶

(4) Building owners must notify the Department as soon as practicable of situations which would delay or prevent the completion of a compliance action under a performance agreement. ¶

(5) The Department may renegotiate a project deadline in a performance agreement at its discretion in cases where awardees have notified the Department of a delay and have submitted a plan for remedying the causes of the delay. The Department may grant a 90-day extension beyond the applicable early compliance date upon request from the building owner. ¶

(6) The following may be causes to terminate a performance agreement: ¶

(a) Failure to notify the Department of project delays in a timely manner. ¶

(b) Failure to submit a plan to remedy the causes of project delays. ¶

(c) Failure to complete one or more compliance actions included in the performance agreement.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291

ADOPT: 330-300-0170

NOTICE FILED DATE: 05/29/2025

RULE SUMMARY: OAR 330-300-0170 describes the criteria and process for the Department director to revoke an incentive awarded under the program. No changes to the draft rules published in the hearing notice.

CHANGES TO RULE:

330-300-0170

Incentive Program Compliance

Pursuant to the procedures for a contested case under ORS chapter 183, the Director may order the revocation of an incentive or portion of an incentive under the program if the Director finds that the incentive 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 incentive, or portion of the incentive that is subject to the order of revocation. All moneys provided to a building owner attributable to the fraudulently or mistakenly obtained incentive, or portion of the incentive shall be forfeited.

Statutory/Other Authority: ORS 469.040, ORS 469.275-469.291

Statutes/Other Implemented: ORS 469.275-469.291