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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

09/26/2024 4:57 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establishment of Oregon Building Energy Performance Standards program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/15/2024 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.

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Filed By:
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/13/2024

TIME: 10:00 AM

OFFICER: Wendy Simons

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 650-479-3208

CONFERENCE ID: 26607317362

SPECIAL INSTRUCTIONS:

Password for joining online hearing: energy

Please see ODOE rulemaking page for more information on joining the hearing: <https://www.oregon.gov/energy/Get-Involved/Pages/BPS-Rulemaking.aspx>

NEED FOR THE RULE(S)

The proposed rules in Division 330-300 implement state Building Energy Performance Standards as required by House Bill 3409 (2023), Sections 8 through 17, codified in Oregon Revised Statutes 469.275-469.291. House Bill 3409 directed the Oregon Department of Energy to adopt rules that specify state energy performance standards for covered commercial buildings, using the American National Standards Institute's standards for Energy Efficiency in Existing Buildings (ANSI/ASHRAE/IES Standard 100) as an initial model. The standards are commonly referenced as "ASHRAE Standard 100."

The proposed rules would adopt the 2024 ANSI/ASHRAE/IES Standard 100 as the building energy performance standard for Oregon, including a reference in the rules to Oregon-specific amendments. A draft version of the Oregon-specific amendments is published on the Building Performance Standards Rulemaking webpage on the Oregon Department of Energy website and the Department invites public comment on those draft amendments

(<https://www.oregon.gov/energy/Get-Involved/Pages/BPS-Rulemaking.aspx>). Once the permanent building energy performance standard rules are adopted, the Department will publish an Oregon-specific version of ASHRAE Standard 100 which integrates the Oregon amendments into the national standard on the Building Energy Performance Standards webpage on the ODOE website (<https://www.oregon.gov/energy/save-energy/Pages/BPS.aspx>).

The rules and accompanying amendments are needed to establish a building energy performance standard that meets the requirements in HB 3409. While the national standard sets performance targets based on greenhouse gas emissions and energy consumption, the Oregon performance targets are based only on site-based energy consumption. Additional Oregon-specific amendments customize: the definitions of covered and excluded buildings and other relevant terms; references to Oregon statutes, regulations, and regulatory bodies; eligible professional certifications for persons performing certain compliance-related activities; reporting requirements for Tier 1 and Tier 2 buildings; and the conditional and investment criteria compliance pathways. Compliance measurements are based upon a building's energy use intensity (EUI) which is calculated by dividing the net energy the building consumes in one year by the building's gross floor area, excluding parking garage space, and normalized for weather. The rules will require energy utilities serving covered commercial buildings to provide aggregated energy use information upon receiving a request from a building owner, enabling owners of buildings having multiple tenants with separate meters to calculate energy use intensity. The requirement would apply to gas utilities and electric utilities whose sales make up three percent or more of all electricity sold to retail electricity consumers in Oregon.

As directed by HB 3409, the Department used the following guidelines in drafting the Oregon-specific amendments to Standard 100:

- develop energy use intensity targets that are not more stringent than the average EUI for each occupancy classification of covered commercial buildings, with adjustment for unique energy-using features
- consider regional and local data identifying building energy use such as benchmarking under the Energy Star program
- consider and align the energy performance standards with existing federal and local programs to avoid duplicative work by building owners and regulators
- develop EUI targets for two or more climate zones; and
- develop EUI targets that exclude energy delivered for electric vehicle charging.

The owner of a covered Tier 1 building, which includes non-residential and hotel/motel buildings 35,000 square feet and over, can comply with the building energy performance standards through multiple compliance pathways:

- (1) meet the applicable energy use intensity target for its occupancy classification
- (2) meet the measurement and verification requirements of the investment criteria pathway, which allows a building owner to demonstrate compliance by implementing an optimized bundle of energy efficiency measures as documented by an energy audit and by performing life-cycle cost analysis to capture all costs and benefits for energy, operations, and maintenance
- (3) receive conditional compliance status based upon a demonstration that the owner has implemented energy use reduction strategies; or
- (4) demonstrate that the building is exempt from the standard.

The energy use intensity targets in the Oregon amendments to ASHRAE Standard 100 are based on the Commercial Buildings Energy Consumption Survey (CBECS) and Commercial Building Stock Assessment (CBSA) data sets and EUI trends demonstrated in those data sets.

The owners of covered Tier 1 buildings 200,000 square feet and over will need to comply with the standards by June 1, 2028; owners of covered buildings 90,000 square feet and over will need to comply with the standards by June 1, 2029;

and owners of covered buildings 35,000 square feet and over will need to comply with the standards by June 1, 2030.

The owner of a Tier 2 building will be required to complete energy benchmarking under the rules, beginning July 1, 2028. Tier 2 buildings include non-residential and hotel/motel buildings at least 20,000 but less than 35,000 square feet as well as multifamily residential, hospitals, schools, dormitories and university buildings 35,000 square feet and over.

The Oregon-specific amendments include a requirement to report to the Oregon Department of Energy on compliance status every five years, as directed by HB 3409, beginning in 2028 for the largest category of buildings with smaller buildings phased in over the following two years.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 3409 (2023): <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3409>

ORS 469: https://www.oregonlegislature.gov/bills_laws/ors/ors469.html

Oregon-specific draft amendments to ASHRAE Standard 100 (2024 version): <https://www.oregon.gov/energy/Get-Involved/Pages/BPS-Rulemaking.aspx>

Oregon Department of Energy Building Energy Performance Standard webpage: <https://www.oregon.gov/energy/save-energy/Pages/BPS.aspx>

ASHRAE Standard 100: <https://www.ashrae.org/technical-resources/bookstore/standard-100>

Commercial Buildings Energy Consumption Survey (CBECS): <https://www.eia.gov/consumption/commercial/>

Commercial Building Stock Assessment (CBSA): <https://neea.org/data/commercial-building-stock-assessments>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rules implement Building Energy Performance Standards that will apply to a subset of large commercial buildings in Oregon, requiring the owners of covered buildings that do not meet energy use intensity targets to invest in energy-saving measures to reduce energy use. The rules are not expected to affect racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

The proposed rules implementing the Building Energy Performance Standards are expected to have a fiscal impact on the owners of covered buildings, which may include small businesses, state and local governments, and other members of the public. The exact fiscal impact of the rules for a specific building will depend upon whether the building meets the energy use intensity target for its occupancy type. All covered buildings will require resources for energy reporting, development of energy management plans, and operational plans. For a building which does not meet the energy use intensity target for its occupancy type, the exact fiscal impact will depend upon the energy management and investment plans adopted by the building owner to make progress toward meeting the target. Energy audits may be required if a building does not meet its energy target or uses the Investment Criteria pathway.

The costs for energy audits and analysis and for actions to implement operational changes under an energy management plan and to make investments in energy efficiency improvements will depend upon specific factors related to the building's size, use, system complexity, design, construction, and materials. The proposed standard includes cost-effectiveness protections for building owners by limiting required implementation to a cost-effective bundle of energy efficiency measures. Given the wide range of building uses, designs, and conditions, a specific estimate of economic impact is not possible.

The proposed rules could also have an economic impact on energy utilities serving covered commercial buildings. The rules will require energy utilities serving covered commercial buildings to provide aggregated energy use information upon receiving a request from a building owner, enabling owners of buildings having multiple tenants with separate

meters to calculate energy use intensity. The requirement would apply to gas utilities and electric utilities whose sales make up three percent or more of all electricity sold to retail electricity consumers in Oregon.

The Department requests comments from members of the public on whether other options should be considered for achieving the substantive goals for the Building Energy Performance Standards rules as specified by House Bill 3409 (2023) while reducing any negative economic impact of the rules on businesses.

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 rules will affect the owners of covered commercial buildings, including Tier 1 buildings which are non-residential and hotel/motel buildings 35,000 square feet and over and Tier 2 buildings which include non-residential and hotel/motel buildings at least 20,000 but less than 35,000 square feet as well as multifamily residential, hospitals, schools, dormitories and university buildings 35,000 square feet and over. The owners include commercial businesses as well as state and local government bodies. The rules could also affect energy utilities serving covered commercial buildings, requiring those utilities to provide aggregated energy use information upon request to owners of buildings having multiple tenants with separate meters. The requirement would apply to gas utilities and electric utilities whose sales make up three percent or more of all electricity sold to retail electricity consumers in Oregon.

2. (a) The Department estimates that approximately 5,000 buildings in Oregon, within an order of magnitude, meet the criteria for Tier 1 buildings, while approximately 10,000 buildings meet the criteria for Tier 2 buildings. An unknown number of these buildings are owned by small businesses.

(b) The activities required to demonstrate compliance or exemption from the standard will vary by building, depending upon the current energy efficiency status of the building. The owner of a covered commercial building that is subject to the rules will be required to report and submit documentation to the Oregon Department of Energy by the initial compliance date based upon gross floor area of the building and every five years thereafter. The required documentation will depend upon whether the building:

(1) has met the applicable energy use intensity target for its occupancy classification

(2) does not yet meet the applicable energy use intensity target but has met the measurement and verification requirements of the investment criteria

(3) does not yet meet the application energy use intensity target but has received conditional compliance based upon energy efficiency actions, or

(4) is exempt from the standard.

Covered buildings 200,000 square feet and over will need to comply with the standards by June 1, 2028; covered buildings 90,000 square feet and over will need to comply with the standards by June 1, 2029; and covered buildings 35,000 square feet and over will need to comply with the standards by June 1, 2030. Smaller covered buildings will need to complete energy benchmarking by July 1, 2028.

Owners of buildings that are either exempt or already meet the applicable energy use intensity target will incur the least cost and reporting, recordkeeping, and administrative work. For building owners following the investment criteria compliance pathway, the owner will need to use a lifecycle cost analysis through an energy audit to create an energy management plan to implement an optimized bundle of energy efficiency measures with a savings-to-investment ration greater than one. Proposed rules require a Level 2 audit, as defined in ANSI/ASHRAE/IES Standard 211. Costs of a Level

2 energy audit range from \$0.06 to \$0.18 per square foot, according to U.S. Department of Energy data from 2020 and the Washington Department of Commerce. Data from ODOE programs aligns with this range and indicates an average whole-building energy audit cost of approximately \$0.14 per square foot. In general, simple-system audits cost more than comprehensive complex system audits and audit costs per square foot are typically higher for smaller buildings. The rules would not require a building owner to pursue energy efficiency measures for which the costs exceed the expected benefits in energy savings for an optimized bundle of measures.

(c) The cost of professional services, equipment, supplies, labor and increased administration required to comply with the rules will vary depending upon the compliance status of the building and characteristics of the building itself. The owners of a Tier 1 building that already meets the applicable energy use intensity target will need to submit documentation to demonstrate that the building already meets the target, while the owner of a building that does not yet meet the applicable target will incur the cost of a professional energy audit as well as costs associated with implementing cost-effective energy efficiency measures to meet the target and in future years will need to demonstrate compliance. The owners of a Tier 2 building will need to gather and report the information required for energy benchmarking.

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

House Bill 3409 (2023) required the Oregon Department of Energy to establish and consult a rulemaking advisory committee with representatives of eligible building owners and tenants of covered commercial buildings, as well as other interests such as public utilities, local governments, and energy efficiency program implementers. The Department convened a rulemaking advisory committee with representatives from these groups which met seven times in addition to three meetings open to the general public to discuss the draft rules and the setting of energy use intensity targets. The RAC members representing building owners and tenants include small businesses among their membership, while other RAC members such as utilities, local governments, and energy efficiency program implementers serve small businesses as customers or constituents. Small businesses are also invited to offer public comment and/or participate in the public hearing for these proposed rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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.

RULES PROPOSED:

330-300-0000, 330-300-0010

ADOPT: 330-300-0000

RULE SUMMARY: OAR 330-300-0000 is a statement of the purpose and applicability of the rules in Division 330-300.

CHANGES TO RULE:

330-300-0000

Purpose and applicability

1. The purpose of the rules in Division 330-300 is to implement the Building Energy Performance Standard adopted under House Bill 3409 (2023), Sections 8 through 17, and codified as Oregon Revised Statutes 469.275-469.291.¶

2. The rules in Division 330-300 apply to the owners of covered commercial buildings as defined in Oregon Revised Statutes 469.275.

Statutory/Other Authority: ORS 469.275-.291, ORS 469.040

Statutes/Other Implemented: ORS 469.275-.291

ADOPT: 330-300-0010

RULE SUMMARY: OAR 330-300-0010 adopts the ASHRAE 100 2024 national standards for energy efficiency in existing buildings for the state of Oregon, with Oregon-specific amendments as posted on the Oregon Department of Energy's website.

CHANGES TO RULE:

330-300-0010

Oregon Energy Efficiency Standards for Existing Buildings

Effective January 1, 2025, the 2024 version of the Energy and Emissions Building Performance Standard for Existing Buildings published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, also referred to as ASHRAE Standard 100 or ANSI/ASHRAE/IES Standard 100 2024, with additional Oregon amendments as published by the Oregon Department of Energy and available on the Department's website, applies in the State of Oregon.

Statutory/Other Authority: ORS 469.275-.291, ORS 469.040

Statutes/Other Implemented: ORS 469.275-.291