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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

10/17/2023 3:47 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Renewable Energy Development Grant Amendment

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2023 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.

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NEED FOR THE RULE(S)

HB 3409 added an exemption to the renewable energy development grant program requirement that construction begin within 12 months of the performance agreement being executed. The rulemaking will align the program rules with the legislation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 3409 (2023) <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB3409>

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

The rule amendment is unlikely to impact racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

There is expected to be a positive fiscal impact to those grantees of the program whose construction projects were delayed due to supply chain or workforce disruptions or shortages related to the COVID-19 pandemic.

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).

Only those organizations who were awarded a grant by the program for the construction of a project that was delayed due to supply chain or workforce disruptions or shortages related to the COVID-19 pandemic will be affected by the rules. These include non-profits, public bodies and large and small businesses.

It is estimated that around 2 or 4 small businesses (solar installers) or non-profits could be positively impacted by the rule amendment. They may be expected to provide documentation to demonstrate they meet the exemption requirements, though the cost is expected to be minimal.

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

Small businesses were not involved in the development of these rules, the rules seek to include a new exemption included in recent changes to the legislation.

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

The scope of this rule amendment is limited to aligning program rules with statute. A rules advisory committee was not involved in the development of these rules as the rule amendment does not expand upon the statutory language, the amendment just reflects the current legislative language.

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.

AMEND: 330-200-0080

RULE SUMMARY: The rule amendment incorporates a recent legislative change that waives the requirement for a Renewable Energy Development grant recipient to begin construction of their project within the first year of their performance agreement if construction was delayed due to supply chain or workforce shortages due to the Covid-19 pandemic and construction began between March 1, 2020, and March 31, 2022.

CHANGES TO RULE:

330-200-0080
Performance Agreement ¶¶

- (1) The department may offer a performance agreement to the applicant if it determines that the renewable energy production system is technically feasible and capable of operating in accordance with the representations made by the applicant. The offer will include a copy of the performance agreement and a deadline for acceptance.¶¶
- (2) The performance agreement will be based on information provided by the applicant.¶¶
- (3) The grant provided for in the performance agreement may not exceed 35 percent of the cost of the project and may not exceed \$250,000 per system.¶¶
- (4) The department will reduce the amount of grant awarded to an applicant if, when combined with other government incentives or grants available to the applicant, the total amount of incentives and grants exceeds 75 percent of the total system cost. The department will not include loans or loan guarantees in this calculation.¶¶
- (5) The department may offer a grant that is less than the amount requested in the application, pursuant to statute and applicable rules.¶¶
- (6) Applicants will have 30 calendar days from the date of the notice to accept the performance agreement. An applicant's failure to accept the offer of a performance agreement by the deadline may cause rejection of the renewable energy development grant application.¶¶
- (7) In place of applicants who do not enter into a performance agreement within 30 calendar days of the department's offer, the department may select alternative applicants from the supplemental list, in order of their ranking. Selected applicants will have to complete a technical review.¶¶
- (8) The performance agreement must include the following terms and may include additional terms.¶¶
 - (a) The maximum amount of the renewable energy development grant and the entity to which funds will be

disbursed.¶

(b) A listing of the documentation that the grantee must provide to the department prior to the disbursement of grant funds including, but not limited to:¶

(A) An account of system costs.¶

(B) Proof that the owner or owners of the system location are current on their property taxes for that location, if appropriate.¶

(c) The amount by which the department may reduce the grant amount in response to changes in actual system cost.¶

(d) The maximum duration of the performance agreement.¶

(e) The requirement that the grantee install or construct the renewable energy production system substantially as described in the renewable energy development grant application.¶

(f) The requirement that installation or construction of the system begin within 12 months after the date that the performance agreement is signed by all parties. The performance agreement must include details of the work that must be completed within 12 months to meet this standard. If construction does not begin within 12 months, the performance agreement and grant are void. The performance agreement must include detailDepartment shall waive the requirement that construction begin within 12 months if the work that must be completed within 12 months to meet this standardDepartment finds that:¶

(A) Construction was delayed because of supply chain or workforce disruptions or shortages related to the COVID-19 pandemic; and¶

(B) Construction began between March 1, 2020, and March 31, 2022.¶

(g) The requirement that the grantee be the owner, contract purchaser or lessee of the system at the time of installation or construction of the system.¶

(h) The requirement that the system be located in Oregon.¶

(i) The requirement that the grantee make periodic reports to the department on the status of the system during system development and during installation or construction of the system.¶

(j) The requirement that the applicant obtain all applicable licenses, permits or other authorizations that are required within the jurisdiction of the system and must comply with applicable federal, state and local laws and regulations.¶

(k) The requirement that the grantee allow the department to inspect the system or its proposed location at any time during construction to verify compliance with the performance agreement. The department will schedule inspections during normal working hours, following reasonable notice to the applicant.¶

(l) The terms under which the performance agreement may be transferred, upon notification and agreement of the department.¶

(m) Reporting requirements during the first five-years of system operation, including information on jobs, quantity of energy produced annually and other information outlined in the performance agreement.-¶

(n) A provision allowing the performance agreement to be terminated for reasons stated in the agreement and subject to terms described in the agreement.¶

(o) A provision that if the director determines that the applicant has violated the provisions of the performance agreement or ORS 469B.250 to 469B.265, the applicant will be liable to the department for up to 100 percent of grant moneys disbursed to the applicant.¶

(9) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to completion.¶

(10) The renewable energy development grant will be awarded upon signature of the performance agreement by all parties. The grant funds will be disbursed upon verification that the applicant has complied with the applicable terms of the performance agreement including completion and commissioning, if required, of the system.

Statutory/Other Authority: ORS 469B.250 - 469B.265

Statutes/Other Implemented: ORS 469B.250 - 469B.265