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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

06/26/2024 11:02 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Oregon Community Heat Pump Deployment Program Amendments

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/22/2024 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.

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)

In 2023, Section 73 of HB 3409 adjusted the annual reporting requirements for entities awarded a grant under the program. Rule 330-270-0060 reflects this adjustment. Other amendments are needed to improve the clarity of the rules and to allow for allocation of the entirety of the fund. Additionally, a rule is added that allows for an amendment to a performance agreement, which will allow for adaptability of the program, when necessary.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Laws 2022, Chapter 86, Sections 14 to 18.

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2022orLaw0086.pdf

House Bill 3409, Section 73

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3409/Enrolled>

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

The rule amendment may have a slightly positive impact on racial equity in this state. One of the proposed amendments will ensure full distribution of funding available to program grantees who administer the program for more than one region or federally recognized Indian tribe in Oregon. This will enhance the funding available to be provided as financial assistance for the purchase and installation of heat pumps.

The underlying statute and the rules require that program grantees prioritize financial assistance to, amongst others, environmental justice communities. The definition of environmental justice communities is broad, but includes communities of color, tribal communities, and communities experiencing lower incomes. While the highest percentage

of all Oregonians in poverty, due to population demographics, self-identify as White (78%), the highest rates of poverty occur among Oregon's American Indian (29%), Black (36%), and Pacific Islander (36%) communities and communities of Hispanic origin (28%) (Oregon Housing and Community Services, 2016). As a result of this prioritization of financial assistance and the additional financial assistance this rule will release, it is expected that the amendment would result in a small positive impact to racial equity in the state.

Data source

Oregon Housing and Community Services, 2016, <https://www.oregon.gov/ohcs/data-research/Documents/rental-housing/oregon-poverty-population-characteristics.xls>

FISCAL AND ECONOMIC IMPACT:

There is expected to be a positive impact to grantees who administer the program for more than one region or federally recognized Indian tribe in Oregon and to the recipients of program financial assistance from those grantees. Previously, 30 percent of the total program funding was split equally between each region and tribe in Oregon, which came out to 1.5 percent per region or tribe. A program grantee was only eligible to receive up to 1.5 percent, even when administering the program for multiple regions or tribes. The new language divides the 30 percent equally and allocates the resulting percentage to each region and tribe rather than limiting the allocation by the program grantee. This will allow program grantees to receive and disburse all funds intended for each region or tribe, which will allow more heat pumps to be purchased and installed in more homes, resulting in a positive impact for homeowners.

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 allow program grantees to use up to 15 percent, or a lesser amount, as specified in a performance agreement, of the awarded grant funds for program related administrative expenses and marketing costs. Releasing additional program funds to grantees who administer the program for multiple regions or tribes will increase the total amount of the awarded grant funds, which will also increase the amount allowable for use on administrative expenses and marketing costs. This may result in a positive impact for program grantees and to the recipients of program financial assistance from those grantees.

(2)(a) HVAC contractors or contractors such as electricians associated with the work may be positively impacted by increased demand for heat pumps as a result of the additional funding.

(b) It is not expected that contractors will be required to report or incur additional administrative costs as a result of the rules.

(c) Contractors are not expected to incur costs associated with professional services, equipment supplies, labor, or administration to comply with these rules.

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

Small businesses were not involved in the development of these rules.

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

Statute requires an Advisory Council made up of grant/program administrators for the Community Heat Pump Deployment Program. The agency consulted with the members of the Advisory Council and accepted written comments to get feedback on proposed rules rather than consulting a rules advisory committee.

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:

330-270-0020, 330-270-0030, 330-270-0060, 330-270-0080

AMEND: 330-270-0020

RULE SUMMARY: The rule amendment allows for the grant allocation criteria to be adjusted for situations where an alternative boundary has been proposed that combines more than one region. This would not decrease the funding allocated to each region or tribe but would ensure that all available grant funds are allocated.

CHANGES TO RULE:

330-270-0020

Administration

(1) The Department may contract with one eligible entity for each region and one eligible entity for each federally recognized Indian tribe in Oregon. If awarded a grant for a region with approved alternative boundaries, an eligible entity may receive grant funding for each region within the alternative boundary. An eligible entity may receive grant funding for more than one federally recognized Indian tribe in Oregon or a combination of a region and one or more federally recognized Indian tribes in Oregon.¶

(2) The contracts shall be to provide financial assistance for the purchase and installation of heat pumps and related upgrades to individuals who reside within that region or who are members of that tribe.¶

(3) An eligible entity may partner with other eligible entities, but the entity awarded a grant shall take a lead role in administering the grant funds and providing financial assistance.¶

(4) A partner entity may assist the entity awarded a grant by providing, or assisting in the provision of, financial assistance.¶

(5) The department shall allocate grant funds to grantees based upon the following criteria:¶

(a) ~~Up to one and a half~~ 30 percent of the available grant funding shall be allocated to each eligible entity selected. If an eligible entity does not wish to receive the full one and a half percent they may choose divided equally between, and then a lower percentage and the remaining funds may be distributed according to subsections (b), (c), and (d) of this section of the rule allocated to, each region and federally recognized Indian tribe in Oregon;¶

(b) 30 percent of the available grant funding shall be allocated to the regions based upon the mean average heating zone of the counties in a region multiplied by the number of households that spend greater than six percent of their income on home energy costs and as a result are considered energy burdened;¶

(c) 40 percent of the available grant funding shall be allocated to the regions based upon the mean average cooling zone of the counties in a region multiplied by the number of households that spend greater than six percent of their income on home energy costs and as a result are considered energy burdened;¶

(d) Allocations to eligible entities selected for each federally recognized Indian tribe in Oregon will consist of the allocation of available grant funding under subsection (a) of this section of the rule, plus a proportion of the funding to the regions within a tribe's service area under subsections (b) and (c). This proportion shall be based upon the proportion of occupied housing units in a tribe compared to the total number of occupied households in the regions in the service area of the tribe.¶

(6) Grantees shall, at a minimum, collect and process applications, verify project eligibility, and use grant funds to provide financial assistance to cover eligible purchase, installation, and upgrade costs.

Statutory/Other Authority: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)
Statutes/Other Implemented: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

AMEND: 330-270-0030

RULE SUMMARY: The rule amendment simplifies the alternative boundary rules and clarifies that alternative boundaries cannot result in the division of a region.

CHANGES TO RULE:

330-270-0030

Entity Eligibility

(1) To be eligible to receive a grant, an eligible entity must establish in its application to the Department that it:

(a) Serves or represents:

(A) At least one environmental justice community within a region; or

(B) Members of a federally recognized Indian tribe in Oregon; and

(b) Has the capacity to administer grant funds for the program.

(2) Where an eligible entity serves or represents a community that is located within more than one region, that eligible entity may only apply for a grant for the region within which the greatest percentage of individuals of the community the entity serves or represents reside.

(3) An eligible entity may apply for a grant for one region or tribe and be a partner on an application by another eligible entity for another region or tribe.

(4)(a) An eligible entity that serves a specific geographic area may propose, in consultation with any electric utility that serves the area, that the Department use alternative boundaries to define a region.

(b) ~~Changes to one region's boundary may affect adjacent regions' Alternative boundaries but shall not result in an increase in the number of regions or overlapping of regional boundaries. Changes to one region's~~

(c) Alternative boundaries may not result in a decrease in the number of the division of a regions.

(ed) The Department may approve the use of alternative boundaries if:

~~(A) 51 percent or more of the eligible entity's service-specific geographical area is within the proposed alternative boundaries; and~~

~~(B) There are viable coverage options for other impacted regions.~~

Statutory/Other Authority: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

Statutes/Other Implemented: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

AMEND: 330-270-0060

RULE SUMMARY: The rule amendment adjusts the annual reporting requirements for entities awarded a grant under the program to align with changes to the statute.

CHANGES TO RULE:

330-270-0060

Record keeping, reporting, and compliance monitoring

(1) Grantees and their partners must maintain accurate financial records satisfactory to the ~~e~~Department, which document the receipt and disbursement of all Community Heat Pump Deployment Program funds. Grantees must have an accounting system in place satisfactory to the ~~e~~Department.¶

(2) Grantees and their partners must maintain other Community Heat Pump Deployment Program records satisfactory to the Department.¶

(3) To ensure proper compliance and monitoring of the Community Heat Pump Deployment Program, grantees and their partners must:¶

(a) Provide the Department access to and permit copying of all electronic and hardcopy accounts, documents, audits, and records.¶

(b) Cooperate fully in any inspections or other monitoring actions taken by the Department.¶

(c) Retain and keep accessible all Community Heat Pump Deployment Program records and data as requested by the Department.¶

(d) Conduct and keep records of their own inspection of heat pump installations as specified in the performance agreement.¶

(4) The ~~e~~Department may conduct reviews, audits, inspections and other compliance monitoring as it deems appropriate with respect to each grantee and its partners to verify compliance with the program requirements. Grantees and their partners must cooperate fully with the Department in its compliance monitoring activities.¶

(5) Grantees must require by contract and monitor their partners' compliance with all program requirements including, but not limited to, recordkeeping and retention of records.¶

(6) Grantees and their partners shall notify the electric utility serving the home that a heat pump is being installed and state whether grant funds may be used for necessary electric distribution system upgrades associated with the installation of the heat pump. ¶

(7) Each grantee must provide a report to the Department ~~prior for the period July 1 to June 30~~ for each year with data ~~through~~ by a date specified in the performance agreement. The report shall not include the personal information of the recipients of financial assistance, but must include:¶

(a) A detailed description of the grantee's, and their partner's, use of grant funds;¶

(b) A list of each funding payment the grantee, and their partner(s), has provided, and in the case of loans, a full accounting of the repayment status;¶

(c) The nature and amounts of the administrative expenses and marketing costs the grantee has incurred in providing payments under the program;¶

(d) Any other information required by the Department.¶

(8) In addition to the reporting requirements in (7), each grantee must provide reports during the year at a frequency determined by the Department and specified in the performance agreement. The required information may be different from those outlined in (7).

Statutory/Other Authority: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

Statutes/Other Implemented: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

ADOPT: 330-270-0080

RULE SUMMARY: The rule outlines a procedure for a grantee to request an amendment to a performance agreement and the review process for the request.

CHANGES TO RULE:

330-270-0080

Amendments to Performance Agreement

(1) If a grantee wishes to amend a performance agreement entered into with the Department under OAR 330-270-0050, the grantee must submit a written request to the director.¶

(2) The grantee must describe the proposed change to the performance agreement and the reasons for the change.¶

(3) The grantee must demonstrate that the program operated by the grantee will continue to meet the requirements of statute, rule, and the opportunity announcement.¶

(4) The Department shall evaluate amendment requests to determine whether the proposed change(s) would have affected the outcome of competitive review, which may result in denial of the amendment request.¶

(5) The Department shall decide whether to approve the amendment request.¶

(a) If approved, the Department shall draft an amended performance agreement, which may contain new or amended conditions and requirements. The amended performance agreement shall become effective upon signature by all parties. Decisions to approve amendment requests shall be based on whether the grantee meets the requirements in (3) and whether the Department determines that the proposed changes would not have affected the outcome of the competitive review.¶

(b) If denied, the Department shall notify the grantee in writing. The notice will include the reasons for the denial of the amendment request.¶

(6) If a grantee wishes to amend the boundary of the region that they have previously been awarded a grant for, by proposing an alternative boundary, they must comply with the following requirements:¶

(a) If the proposed alternative boundary would include a new region, the grantee must submit a complete grant application during an open opportunity announcement for that region. If the grantee is subsequently awarded the grant for that region, the Department shall draft an amendment to the grantee's performance agreement that includes the newly awarded funding amount and the newly awarded region in an alternative boundary.¶

(b) If the proposed alternative boundary removes a region from within the boundary identified in the performance agreement, the grantee must repay to the Department all unspent funds that were allocated for the region that the grantee will no longer serve.¶

(c) A grantee may not include a region already administered by another grantee in a proposed alternative boundary.

Statutory/Other Authority: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

Statutes/Other Implemented: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)