NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

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ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Amending State Agency Savings Program to implement changes under House Bill 3409 (2023)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/25/2026 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: 09/23/2026
TIME: 1:00 PM
OFFICER: Wendy Simons

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 503-446-4951
CONFERENCE ID: 289211677
SPECIAL INSTRUCTIONS:
This hearing will take place remotely. Hearing materials will be provided on the Oregon Department of Energy rulemaking webpage: https://www.oregon.gov/energy/get-involved/Pages/rulemaking.aspx.

Rulemaking page for State Agency Energy Savings program: https://www.oregon.gov/energy/get-involved/Pages/SA-Energy-Savings-Program-Rulemaking.aspx

The rulemaking webpage includes a link to use for joining the meeting by phone.

NEED FOR THE RULE(S):

The Oregon Legislature adopted amendments to the State Agency Energy Savings program under Oregon Laws 2023, chapter 442 (House Bill 3409, sections 19-21), codified in ORS 469.752-.756. House Bill 3409 increased the amount of energy cost savings that a state agency may retain from 50 percent to 100 percent for energy efficiency, cogeneration, and renewable energy generation projects. The state agency's net energy cost savings would go into a revolving fund to be administered by the agency and used for energy efficiency, technology, or infrastructure improvements, rather than reverting to the General Fund as usually required. Additionally, the bill removed the requirement that state agencies provide the utility serving their location the "right of first refusal" to construct or purchase power from a project under the program.

This program was established in 1991, with the most recent rulemaking activity occurring in 1994. To ODOE's knowledge, no state agencies have taken advantage of this program since its inception. The proposed rule language changes would implement the changes made by House Bill 3409 and make a number of updates to streamline reporting and notification requirements and to reflect current state procurement requirements and practices.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Laws 2023, chapter 442 (House Bill 3409):
https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3409
Oregon Revised Statutes 469.752 - 469.756: https://www.oregonlegislature.gov/bills_laws/ors/ors469.html
Oregon Administrative Rules, Division 330-118:
https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1109

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

The Oregon Department of Energy expects that the adoption of these rules will have no effect on racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

The Oregon Department of Energy expects that the adoption of these rules will have minimal fiscal and economic impact. The program implemented by the rules, the State Agency Energy Savings program, applies to all Oregon state agencies although participation is voluntary. State agencies that choose to participate will benefit by their ability to deposit energy cost savings in a revolving fund for future energy-saving projects while retaining their current budget allocation for energy costs. However, participation will require staff hours to fulfill the notification, reporting, and other administrative costs associated with program participation. The Department anticipates that state agencies will only choose to participate in the program if energy cost savings outweigh these notification, reporting, and administrative costs. Conversations with stakeholders indicate that state agency buildings have a substantial backlog of potential cost-effective energy projects. The program has the potential to increase the number of these projects implemented in the state, causing lower energy bills for state agencies and potentially saving General Fund dollars over time.

ODOE worked with rulemaking advisory committee participants to streamline notification, reporting, and administrative requirements for program participants. However, the economic and administrative impacts for an agency to participate will not be fully apparent until agencies attempt to implement eligible projects and establish revolving funds as provided in these rules. Administrative costs will likely differ among agencies, while initial projects could require more work hours than later projects which will benefit from the learnings in early projects. Some agencies already have experience operating revolving funds for other purposes, while revolving funds will be new for others. ODOE anticipates that future rulemaking may be necessary to fine tune the administrative aspects of the program and keep program implementation costs as low as possible while preserving participant accountability.

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 affect state agencies that undertake projects that either save or generate energy. All state agencies are eligible to participate in the program and could benefit from these rules, although no state agencies are required to participate. The intention of the State Agency Energy Savings program implemented by the rules in Division 330-118 is to encourage state agencies to undertake actions such as boiler replacements, transportation energy-saving projects, and employee behavioral change programs. The energy cost savings from these actions would be transferred into a revolving account controlled by the state agency rather than deducted from the agency's future budgets for energy costs for the life of the project. ODOE anticipates that agencies would only decide to participate if the energy cost savings outweighed the administrative costs associated with program participation, such as meeting notification and reporting requirements, administering the revolving fund, and incurring additional administrative work and communications with budget and finance staff within and outside the agency.

The rules will affect state agencies with budgeting and financial oversight responsibilities, including the Oregon Department of Administrative Services and Treasury Department, which would be required to work with state agencies that choose to use the program. DAS and Treasury Department will incur work related to adjusting participating agencies' budgets and establishing revolving fund accounts as specified in the rules.

The rules will not affect units of local government. The program implemented by the rules may create additional business opportunities for firms that provide energy services for state agencies.

(2) Effect on small businesses:
(a) This program does not subject any small businesses to regulatory requirements. However, the program is intended to increase the incentive for state agencies to implement energy-saving or energy generation projects, meaning that small businesses that contract with state agencies to provide such services could experience greater demand.
(b) Participation by state agencies in the program is voluntary. However, agencies that choose to participate would need to notify ODOE of their planned projects, submit ongoing reporting showing energy savings, and follow existing agency and statewide guidelines and requirements for establishing and administering their revolving fund. Additional work will occur for early projects as agency and state budget and finance staff at DAS and Treasury Department learn about the program and how to account for the impacts of participating projects in state agency budgets.
(c) Participation in the program, and hence compliance with program rules, is voluntary for state agencies. However, ODOE anticipates that state agencies will only choose to go forward with eligible projects that are likely to achieve sufficient energy cost savings to cover any expected administrative costs. ODOE does not expect that agencies will incur additional expenses for professional services, equipment, or supplies to meet the requirements in rule for notification, reporting, and administering the revolving fund. However, these tasks will incur an unknown amount of labor and administration for current agency staff and budget and finance staff at DAS and Treasury Department.

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

Small businesses are not subject to any compliance requirements under these rules, and the Department did not directly involve small businesses in the development of the proposed rule changes. However, the Department consulted state agency facilities managers and Energy Trust of Oregon staff who engage frequently with small businesses that contract to implement energy efficiency and generation projects.

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:
330-118-0000, 330-118-0010, 330-118-0020, 330-118-0025, 330-118-0030, 330-118-0040, 330-118-0050, 330-118-0055, 330-118-0070, 330-118-0080, 330-118-0090

AMEND: 330-118-0000

RULE SUMMARY: Changes rate for state agency retention of energy cost savings from 50 to 100 percent; implementing change made by House Bill 3409 (2023).

CHANGES TO RULE:

330-118-0000
Purpose ¶

OAR 330-118-0000 through 330-118-0090 allows state agencies to retain and spend ~~5~~100 percent of the net savings from energy projects pursuant to ORS 469.752 to 469.756.
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

AMEND: 330-118-0010

RULE SUMMARY: Amends definitions for terms used in Division 118: updates reference to relevant office within Oregon Department of Administrative Services; adds definition of "Director" which refers to ODOE director; updates the definition of "electric utility" to clarify that projects in consumer-owned utility service territories are eligible; clarifies that transportation projects that improve energy efficiency are eligible in addition to projects saving vehicle miles traveled; clarifies that performance measures for individual projects will be established by the implementing state agency; and renumbers existing definitions.

CHANGES TO RULE:

330-118-0010
Definitions ¶

~~As used in Chapter 487, Oregon Laws 1991 and in these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise~~The following definitions apply in Oregon Administrative Rules Division 330-118:¶
(1) "Baseline Energy Budget" means the expenditure limitation amount budgeted for energy costs by the agency immediately prior (i.e., the weather-normalized previous twelve months if available) to installation of the project.¶
(2) "~~Budget and Management Division" means the~~Chief Financial Office" means the Chief Financial Office of the Oregon Department of Administrative Services~~ Budget and Management Division~~.¶
(3) "Cogeneration" has the meaning given that term in ORS 758.505(2).¶
(4) "Department" means the Oregon Department of Energy.¶
(5) "Director" means the director of the Oregon Department of Energy.¶
(6) "Efficiency of Energy Use" means the ratio of output (work done) to input (energy used).¶
(~~6~~7) "Electric Utility" means an electric company or consumer-owned utility ~~which is regulat~~that is engaged ~~by~~in the ~~state or the Federal Energy Regulatory Commission that provides~~business of distributing electricity to retail electric~~ power to~~ity consumers in this state.¶
(~~7~~8) "Energy Cost savings" means the dollar savings based on the annual monitored savings from the project calculated as follows:¶
(a) For projects which do not sell energy or power to an electric utility or the Bonneville Power Administration, energy savings times the last rate in effect or fuel cost during the monitored savings period;¶
(b) For projects which sell energy or power, the amount of energy or power delivered to one or more electric utilities or the Bonneville Power Administration as a result of the project times the rates(s) stated in the energy or power sales agreement(s);¶
(c) For projects which do not either sell or use all of their energy or power savings or production, the energy cost savings shall be the sum of amounts proportionally calculated as in subsection (a) and (b) of this section.¶
(~~8~~9) "Energy Savings" means the amount of energy not used as a result of the project as compared to a prior period. Prior period energy use may be adjusted for changes in building use or occupancy.~~ Energy savings result from the efficiency of energy use.~~ Energy savings shall be measured in millions of Btus (MMBtus), and may be the result of vehicle, aircraft or vessel miles not travelled or more efficient or less energy-intensive use of vehicles, aircraft or vessels.¶
(~~9~~10) "Gas Utility" means a public utility as defined in ORS 757.005(1)(a)(A) which provides natural gas service to consumers.¶
(1~~0~~1) "Infrastructure Improvements" means improvements to facilities, buildings, equipment and other components which make up and support the physical structure of the agency.¶
(1~~1~~2) "Monitored Savings" means measurements of actual energy savings or the miles reduced per vehicle, and may include, but not be limited to, energy accounting systems, energy bill comparisons, and metering. Subject to the approval of the Department, engineering estimates may be used in cases where measurement of actual savings is not practical.¶
(1~~2~~3) "Net Savings" means the operating savings and the energy cost savings, after debt service, leases, operations and maintenance costs, service contracts, insurance, fuels and their transport and storage, transmission, and other recurring direct costs, resulting from a project. Net savings shall accrue only during the savings period.¶
(1~~3~~4) "Operating Savings" means reduction or elimination of: labor or service contracts; demand charges; chemicals; maintenance of energy consuming conversion and distribution equipment; replacement equipment; and lubricants and maintenance expenses in the case of vehicles, aircrafts, and vessels; providing each item is $1,000 or more annually.¶
(1~~4~~5) "Performance Measures" means performance measures, ~~as required by Executive Department~~established

for a project by the state agency, that address energy use in buildings, facilities, and transportation. Wherever possible the performance measures should be based on monitored savings, or metered power and energy production.¶
(1~~5~~6) "Project" means a state agency's effort toward the improvement of the efficiency of energy use, development of cogeneration facilities or use of renewable resources by or at state facilities. For the purposes of these rules, a project includes only those agency activities which the agency is pursuing under the authority of ORS 469.754.¶
(1~~6~~7) "Renewable Resources" has the meaning given that term in ORS 758.505(9)(a).¶
(1~~7~~8) "Revolving Fund" means a fund in the State Treasury, or a separate account or fund in the General Fund in the State Treasury, that by law is dedicated, appropriated or set aside for the purposes listed in ORS 469.754(3). "Revolving fund" does not have the meaning used in 291.002 or the State Accounting Manual, Section 21 05 01(4) self-sustaining accounts.¶
(1~~8~~9) "Savings Period" means:¶
(a) For energy efficiency projects without an energy or power sales contract with an electric utility or the Bonneville Power Administration, the expected useful life of the project;¶
(b) For energy efficiency, cogeneration or renewable resource projects which provide energy or power pursuant to a contract with an electric utility or the Bonneville Power Administration, the term of the contract or the expected useful life of the project whichever is greater; or¶
(c) For cogeneration and renewable resource projects without an energy or power sales contract with an electric utility or the Bonneville Power Administration, the expected useful life of the project;¶
(d) For projects which provide energy or power to any combination of the state agency, an electric utility or the Bonneville Power Administration, the longest term of any energy or power sales contract or the expected useful life of the project, whichever is greater.¶
(~~19~~20) "Service" has the meaning given that term in ORS 856.010.¶
(2~~0~~1) "State Agency" has the meaning given that term in ORS 278.005¶
(2~~1~~2) "State Facility" means the land and all buildings, structures, improvements, machinery, equipment or fixtures, and tangible personal property including, but not limited to vehicles, aircraft, vessels as defined by ORS 278.005, moveable machinery and equipment, and moveable fixtures, which are erected or operated on, above or under the land, which is owned, leased, controlled or possessed by a state agency.¶
[Publications: Publications referenced are available from the agency.]
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

AMEND: 330-118-0020

RULE SUMMARY: Removes rule language referring to "right of first refusal," which refers to a requirement that was removed from the program by HB 3409 (2023). Clarifies that projects using funds from multiple sources, including dedicated funds and/or federal funds in addition to state General Funds, may only deposit into the revolving fund the share of energy savings attributable to General Fund expenditures.

CHANGES TO RULE:

330-118-0020
Project Eligibility ¶

(1) Eligible projects include, but are not limited to, the following:¶
(a) Projects which improve efficiency or attain high efficiency of energy use through energy system or process changes, equipment replacement, or waste heat recovery;¶
(b) Projects consisting of measures meeting energy efficiency criteria encouraged or approved by the Department or by the electric or gas utilities providing service to the state facility~~ or the Department~~;¶
(c) Employee awareness campaigns and on-going training; and¶
(d) Projects that meet these eligibility requirements, that began construction or installation after ~~September 30, 1991~~July 27, 2023, and that were not completed prior to final adoption of rules.~~ These p~~¶
(2) Projects are not ~~subject to the provisions of the Offering the Right of First Refusal~~eligible if the payback period for the project exceeds the term of the current state lease for that facility.¶
(~~2~~3) ~~The following projects are not eligible:¶~~
~~(a) A project that saves dedicated funds, which are not transferable to the General Fund; and¶~~
~~(b) A plan of a state agency to improve the efficiency of energy use in a state-rented facility if the payback period for the project exceeds the term of the current state lease for that facility.~~Projects which use funds from multiple sources and which cause energy savings attributable to multiple funding sources, including dedicated funds and/or federal funds as well as General Funds, may only deposit into the revolving fund the share of energy savings attributable to General Fund expenditures. ¶
(~~3~~4) In the event eligibility is unknown or disputed, the party(ies) may petition the Director of the Department for a decision. The Director's decision shall be final.
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

AMEND: 330-118-0025

RULE SUMMARY: Deletes references to rules relating to "right of first refusal" which would be repealed by this rulemaking. Corrects typographical error. Reformats list of exempt project types for clarity.

CHANGES TO RULE:

330-118-0025
Project Notice ¶

(1) Whenever an agency proposes to undertake a project under ORS 469.754 the state agency shall provide a notice to ~~the Department and to the gas and electric utilities which serve the state facility where the project is domiciled and to~~either a mailing list of interested persons developed by the state agency or to a website developed by the Department for this purpose. The notice shall be provided to any requesting person and include a statement of whether the agency intends to rely on the authority in ORS 469.754 and these rules, or whether the agency intends to rely on its own authority to proceed with the project.¶
(2) When a state agency intends to proceed with a project other than listed in section (3) of this rule, the notice shall, in addition to the information above, include:¶
(a) The physical location of the project(s);¶
(b) The anticipated size or size range of the project(s) stated in annual energy (in kWh or Btu) or capacity (in kW, horsepower or pressure), and its anticipated seasonal disposition;¶
(c) Whether the project(s) may provide steam or useful heat, and its anticipated seasonal disposition;¶
(d) A description of how the project(s) could be developed, financed and operated;¶
(e) An intended schedule for completion and operation of the project(s); and¶
(f) The anticipated fuel source(s).¶
(3) ~~If a state agency plans~~The following projects planned by a state agency are exempt from the competitive procurement requirements under OAR 330-118-0040: ¶
(a) a project costing less than $50,000~~,~~; ¶
(b) an energy efficiency project encompassing under 50,000~~0~~ square feet~~,~~; ¶
(c) a project affecting the efficiency of energy use in transportation~~,~~;¶
(d) a renewable resources project which does not generate electricity~~,~~;¶
(e) an~~d~~ employee awareness campaign~~,~~; or¶
(f) a project with a useful life of less than 5 years~~, then they are exempt from OARs 330-118-0030, 330-118-0040, 330-118-0050 and 330-118-0055. Also exempt from these rules are other projects as predesignated by the utilities which serve the state agency. ODOE will maintain a list of such predesignated exempt projects~~.
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

REPEAL: 330-118-0030

RULE SUMMARY: Repeals -0030 because HB 3409 deleted "right of first refusal" requirement for energy generating projects under the program.

CHANGES TO RULE:

~~330-118-0030~~
~~Right of First Refusal~~
~~(1) To exercise their right to first negotiate and right of first refusal the electric and gas utilities which serve the project's domicile must submit a proposal in response to an agency's procurement solicitation.¶~~
~~(2) A state agency shall provide the electric and gas utilities which serve the project's domicile, and any other potential suppliers, timely access to the project site for the audit and planning purposes.¶~~
~~(3) An electric or gas utility which serves the project's domicile that wants to negotiate for or to match any sales of a project's electrical or steam output which may be sold must state such interest in their proposal in response to the agency's procurement solicitation.¶~~
~~(4) A state agency is not obligated by these rules to commit to utility proposals to buy electricity, develop, finance, operate or otherwise act together in energy conservation or cogeneration and renewable resource projects which generate electricity or sell energy or power to electric utilities or the Bonneville Power Administration. These rules do not alter the agency's or utility's rights and obligations under ORS 758.505-758.555 and 18 CFR 292. et seq.~~
~~Statutory/Other Authority: ORS 469.752 - 469.756~~
~~Statutes/Other Implemented: ORS 469.752 - 469.756~~

AMEND: 330-118-0040

RULE SUMMARY: Deletes language relating to the provision granting the agency's utility the "right of refusal" to construct the project which was deleted under HB 3409, specifically language that would have required the agency to notify the agency's utility about procurements related to the project and guidelines for the contractor selection process when a utility exercised the "right of first refusal." Deletes rule language detailing procurement requirements in favor of allowing state agencies to follow applicable agency and state procurement rules and regulations. The Department solicits comments on whether the language in OAR 330-118-0040 is duplicative of existing state procurement requirements and could be repealed with no impact on the program.

CHANGES TO RULE:

330-118-0040
Selection of Project Vendors and Participants ¶

~~(1)~~ Agencies shall undertake competitive procurements for projects. The agency's applicable rules and regulations for competitive procurement and confidentiality shall apply along with additional authorities vested in the agency by ORS 469.752-469.756. Nothing in these rules requires an agency to use a competitive procurement for exempt projects per OAR 330-118-0020(2).~~ A copy of the procurement solicitation shall be sent to the electric and gas utilities which serve the project's domicile and to a list of all interested persons developed by the state agency for this purpose.¶~~
~~(2) Agency procurement solicitations must include:¶~~
~~(a) A description of the preferred state facility(ies) to domicile the project(s);¶~~
~~(b) As applicable, the preferred size or size range of the project(s) stated in annual energy (in kWh or Bts) or capacity (in kW, horsepower or pressure), and its preferred seasonal disposition;¶~~
~~(c) Whether the project(s) must provide steam or useful heat and its preferred seasonal disposition;¶~~
~~(d) A description of any specific problems, needs or issues the project should address;¶~~
~~(e) A preferred schedule for completion and operation of the project(s);¶~~
~~(f) Any limitations or preferences for fuel source(s);¶~~
~~(g) Notification of the agency's rights cited in OAR 330-118-0030(4) and 330-118-0055; and¶~~
~~(h) A complete description of the criteria used for evaluation of proposals.¶~~
~~(3) The criteria used for evaluation shall include but need not be limited to:¶~~
~~(a) Timeliness;¶~~
~~(b) Estimated costs and financing impacts;¶~~
~~(c) Experience;¶~~
~~(d) Risks retained by the agency;¶~~
~~(e) Environmental impacts;¶~~
~~(f) Design feasibility;¶~~
~~(g) Estimated net savings over the life of the project; and¶~~
~~(h) Technical merit.¶~~
~~(4) Proposals in response to agency procurement solicitations must include the following:¶~~
~~(a) A statement of how the applicant proposes to jointly or solely develop, finance, operate or otherwise act together to develop or operate the project;¶~~
~~(b) A technical plan, as appropriate, with a timeline;¶~~
~~(c) A statement of capabilities, experience and operational track record for projects of a similar nature;¶~~
~~(d) A budget with a description of all applicable fees and costs, and proposed payment schedule;¶~~
~~(e) A description of what project-related risks the applicant and other suppliers propose to assume;¶~~
~~(f) The results of a completed technical audit, as appropriate;¶~~
~~(g) A list of benefits the applicant proposes to bring to the project and agency;¶~~
~~(h) A written commitment to participate in the proposed manner according to the proposed terms; and¶~~
~~(i) A description of any limitations that may impair the applicant's ability to fulfill its proposed commitments.¶~~
~~(5) The deadline for accepting proposals after issuance of the procurement solicitation shall not be any sooner than:¶~~
~~(a) Two months for energy efficiency and renewable resource projects which do not generate electricity; or¶~~
~~(b) Three months for cogeneration and electricity generating renewable resource projects.¶~~
~~(6) Proposals received in response to the procurement solicitation shall, in consultation with the Department, be evaluated according to published criteria.¶~~

~~(7) Upon evaluation, the agency may select project vendors or participants for contract negotiations. The agency reserves the right to reject all proposals. If an agency determines that negotiations are at an impasse, it may terminate negotiations and select another proposal. If an agency judges a proposal from an electric or gas utility which serves the project's domicile to be of equal merit to the highest ranking proposal, the utility's proposal shall be deemed a match and be selected for contract negotiations, all else equal. Upon written notice from the agency the electric and gas utilities which serve the state facility where the project is domiciled shall have the right to match the best offer available to the agency for a period of 30 days. The agency may use competitive negotiations to select the best offer. The utility will have the right to match the best offer whether or not competitive negotiations are use. Should two utilities which serve the project's domicile be judged to have the highest ranking proposals, the agency may select either one.¶~~
~~(8) The agency will notify all persons who submitted proposals the reasons for rejection.~~
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

REPEAL: 330-118-0050

RULE SUMMARY: ODOE proposes to delete -0050; state agencies must follow their own internal rules and guidelines, as well as Department of Administrative Services rules and guidelines, for negotiating and executing contracts with vendors to design and construct projects.

CHANGES TO RULE:

~~330-118-0050~~
~~Negotiating Agreement~~
~~The agency is authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance a project at state-owned or state-rented facilities. Utilities may be vendors. The procedure shall be:¶~~
~~(1) Upon entering into a commitment with a vendor, the agency appoints representative(s) to work with the vendor to develop the project. Within three months the agency representative(s) and the vendor complete a project plan, including commissioning and training; develop a detailed budget; decide the allocation of risks and responsibilities of each party from project development through operation; determine costs to be assumed by the agency and by the vendor; determine length of agreement; set timelines.¶~~
~~(2) The agency and the vendor execute a written agreement within two months of completing the above tasks.¶~~
~~(3) The Department resolves disputes between agency and vendor arising from the project. The director's decision is final.¶~~
~~(4) If changes to the project are made subsequent to the written agreement, the agreement may be amended.~~
~~Statutory/Other Authority: ORS 469.752 - 469.756~~
~~Statutes/Other Implemented: ORS 469.752 - 469.756~~

REPEAL: 330-118-0055

RULE SUMMARY: Rule 330-118-0055 provides a process for the sale of energy by an energy generating project, including provisions for the local utility to have the "right of first refusal" to purchase the energy generated. ODOE proposes to repeal this rule given the removal by HB 3409 of the "right of first refusal."

CHANGES TO RULE:

~~330-118-0055~~
~~Disposition of Steam and Electricity~~
~~(1) An agency is not obligated to sell any or all of a project's energy, power, steam, or any other energy form.¶~~
~~(2) If an electric or gas utility which serves the project's domicile has responded according to OAR 330-118-0030(3) the agency shall initiate an auction for the sales of the electric output or steam which the utility has expressed interest in acquiring. The auction shall be open to all potential buyers of the energy and solicit bids. Upon evaluation of bids, and with consultation with the Department, the agency may select buyer(s) for contract negotiations. The agency reserves the right to reject all proposals. If an agency determines that negotiations are at an impasse, it may terminate negotiations and select another buyer. If an agency judges an offer from an electric or gas utility which serves the project's domicile to be of equal merit to the highest ranking offer, the utility's offer shall be deemed a match and be selected for contract negotiations, all else equal. Upon written notice from the agency at the close of the auction the electric and gas utilities which serve the state facility where the project is domiciled shall have the right to match the best offer available to the agency for a period of 30 days. The agency may use competitive negotiations to select the best offer. The utility will have the right to match the best offer whether or not competitive negotiations are used. Should two utilities which serve the project's domicile be judged to have the highest ranking offers, the agency may select either one. Criteria for selecting buyers of steam and electricity shall include:¶~~
~~(a) Transaction costs;¶~~
~~(b) Risks retained by the agency;¶~~
~~(c) Term; and¶~~
~~(d) Impact on estimated net savings over the life of the project.¶~~
~~(3) Nothing in these rules impairs an agency's rights under any other provisions of law including rights to market energy from qualifying facilities according to ORS 758.505-758.555 and the implementing rules and orders of the Oregon Public Utility Commission, and 18 CFR 292 et. seq. Nothing in these rules affects any authority, including the authority of a state agency or a municipality to regulate utility service or the development and use of electricity, gas or steam.~~
~~Statutory/Other Authority: ORS 469.752 - 469.756~~
~~Statutes/Other Implemented: ORS 469.752 - 469.756~~

AMEND: 330-118-0070

RULE SUMMARY: Makes conforming amendments to change agency retention of energy cost savings from 50 percent to 100 percent, per HB 3409 (2023). Changes recipient of agency notifications and reports to the Oregon Department of Energy rather than the DAS Budget and Management Division. Adds ability for agency to provide notification using a website portal provided by ODOE. Updates reference of approving entity for funds transfer to the DAS Chief Financial Office.

CHANGES TO RULE:

330-118-0070
Retaining ~~Fifty Percent of~~ Net Savings ¶

A state agency that implements a project in accordance with this rule may retain ~~5~~100 percent of the net savings and maintain its baseline energy budget by:¶
(1) Prior to implementation of the project, the agency shall submit to the ~~Budget and Management Division~~Department:¶
(a) Notification in writing or on website portal of their intent to exercise their ~~5~~100 percent savings option, pursuant to ORS 469.754; and¶
(b) Performance measures pertaining to the project.¶
(2) The agency shall send annual reports of monitored savings and net savings for the project to the ~~Budget and Management Division~~Department by September 1 of each year.¶
(3) Upon ~~Budget and Management Division approval, the agency shall transfer from its operations account half the amount of the accrued net savings to the revolving fund. The balance shall be transferred to the State's General F~~approval by the Chief Financial Office, the agency shall transfer the amount of the accrued net savings from its operations account to the revolving fund.
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

AMEND: 330-118-0080

RULE SUMMARY: Makes conforming amendment to change energy savings retention from 50 percent to 100 percent, per HB 3409 (2023). Deletes obsolete language. Updates reference to DAS Chief Financial Office.

CHANGES TO RULE:

330-118-0080
Use of Savings ¶

A state agency shall spend the ~~50 percent of~~ net savings to increase productivity through: Energy efficiency projects; high-tech improvements~~, such as the purchase or installation of new desk-top or lap-top computers or the linkage of computers into systems or networks~~; or infrastructure improvements. The agency shall submit to ~~Budget and Management Division~~the Chief Financial Office a plan for use of the revolving fund through the biennial budget process.
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)

AMEND: 330-118-0090

RULE SUMMARY: Removes references to the Small-Scale Energy Loan Program which is no longer operational.

CHANGES TO RULE:

330-118-0090
Agreements with the Department for Technical Assistance ¶

~~(1) The agency may request an assessment of energy and power marketing opportunities, energy audit and/or engineering study through the Department's Small Scale Energy Loan Program.¶~~
~~(2)~~ The agency may submit written requests to the Department for specific assistance, including but not limited to marketing of energy and power, engineering, architectural, and energy analysis. At the discretion of the Department, the Department and the agency may execute an Interagency Agreement, in accordance with ORS Chapter 190~~, may be executed~~. The Department reserves the right to charge the agency fees for work ~~not covered by Small Scale Energy Loan Program statutes, such as arbitration, technical review, etc.¶~~
~~(3) Any loans with the Small Scale Energy Loan Program must comply with OAR chapter 330, divisions 105 and 110~~such as arbitration, project-related analysis, or technical review.
Statutory/Other Authority: ORS 469.752 - 469.756
Statutes/Other Implemented: ORS 469.752 - 469.756, Oregon Laws 2023 Chapter 442 (HB 3409)