

## BPS 002 – Exemptions and Historic Buildings

### OR BPS Background

The Oregon Building Performance Standard (OR BPS) is a mandatory program that aims to bring awareness about building energy use to owners of existing commercial buildings, and to reduce energy use and utility costs for less efficient buildings. Buildings that must comply with this program are divided into two tiers, based on Gross Floor Area and property type. The table below shows the two tiers covered by the OR BPS program and gives compliance dates.

*Oregon Building Performance Standard Tiers*

Gross Floor Area <i>(excludes parking garage area)</i>	Property Type	Tier / Compliance Date
35,000 to 90,000 square feet	Nonresidential, Hotel, or Motel	Tier 1 / June 1, 2030
90,000 to 200,000 square feet	Nonresidential, Hotel, or Motel	Tier 1 / June 1, 2029
200,000 square feet and greater	Nonresidential, Hotel, or Motel	Tier 1 / June 1, 2028
20,000 to 35,000 square feet	Nonresidential, Hotel, or Motel	Tier 2 / July 1, 2028
35,000 square feet and greater	Multifamily, Hospital, School, University, Dormitory, Barracks, Prison, Residential/Senior Care Facility	Tier 2 / July 1, 2028

**Tier 2** buildings are required to **report Energy Use Intensity and Energy Use Intensity Targets** by their July 1, 2028, compliance date.

**Tier 1** buildings are required to **report Energy Use Intensity and Energy Use Intensity Targets** and submit operations & maintenance and energy management plans by their compliance date. They must also **meet EUIt** or demonstrate an effort to **reduce energy use**. Tier 1 buildings that expect to exceed their energy target must report at least **180 days before** their compliance date, perform **energy audits** and **life cycle cost assessments**, and develop a plan to implement **cost-effective energy efficiency measures** by their June 1, 2028/2029/2030, compliance date.

This guidance gives information about exemptions from OR BPS and requirements for historic buildings. Additional guidance documents for are available on the OR BPS website:

<https://tinyurl.com/ODOE-BPS>

## OR BPS Definitions

Before reviewing exemptions and historic building requirements, here are some terms to understand:

**Agricultural Building:** defined as a structure used for any of the following:

- Storing, maintaining or repairing farm or forestry machinery and equipment
- Raising, harvesting and selling crops or forest products
- Feeding, breeding, managing, and selling livestock, poultry, fur-bearing animals, or honeybees or the produce of livestock, poultry, fur-bearing animals, or honeybees
- Dairying and selling dairy products
- Any other agricultural, forestry, or horticultural use or animal husbandry, or any combination of agricultural, horticultural, or animal husbandry uses, including preparing and storing produce raised on the farm for human use and animal use, preparing, processing, and storing agricultural and forestry products and goods and disposing, by marketing or otherwise, of farm produce or forest products

An agricultural building does **not** include any of the following:

- A dwelling
- A structure used for a purpose other than growing plants in which 10 or more people are present at any one time
- A structure regulated by the State Fire Marshal pursuant to ORS chapter 476
- A structure used by the public
- A structure that is subject to the National Flood Insurance Act of 1968 (42 U.S.C 4001 to 4127), as amended, and regulations promulgated under that Act

**Manufacturing or Industrial Space:** an area of a building defined in accordance with the state of Oregon's adoption of the International Building Code as being in either:

- Factory Group F
- High Hazard Group H

**Historic Building:** defined under the Oregon Structural Specialty Code as any building or structure that is, in whole or in part, either:

- Listed or certified as eligible for listing by the National Register of Historic Places
- Established and maintained under the National Historic Preservation Act of 1966 (P.L. 89-665)
- Approved for listing on an Oregon register of historic places if the National Register of Historic Places ceases accepting nominations
- A locally designated landmark protected by ordinance

**Certificate of Occupancy:** a document issued by a local government agency or building department certifying a building's compliance with applicable building codes and other laws and indicating it to be in a condition suitable for occupancy.

**Physical Occupancy:** a building does not have physical occupancy and is considered unoccupied when 50 percent or more of the Gross Floor Area is not leased or is otherwise vacant, where the space is used by an owner or tenant regardless of occupant density and frequency of use.

**Financial Hardship:** a building or building owner is undergoing financial hardship if any of the following apply:

- The building has been on a city or county tax lien sale list over the 24 months before the OR BPS compliance date
- A court-appointed receiver controls the building due to financial distress
- A financial institution owns the building due to borrower's default
- The owner acquired the building via a deed in lieu of foreclosure within the 24 months before the OR BPS compliance date
- The building has a senior mortgage that is subject to a notice of default

**Conditioned Space:** cooled, heated, OR indirectly conditioned space where:

- **Cooled space** is an enclosed area cooled by a system with sensible output capacity of at least 3.4 Btu/hr-ft<sup>2</sup>.
- **Heated space** is an enclosed area heated by a system with output capacity greater than 8 Btu/hr-ft<sup>2</sup> in climate zone 4C, and greater than 12 Btu/hr-ft<sup>2</sup> in climate zone 5B.
- **Indirectly conditioned space** is an area inside a building that is heated or cooled indirectly by adjacent spaces if EITHER:
  - Air is transferred naturally or mechanically into indirectly conditioned space from conditioned space at a rate exceeding three air changes per hour, OR
  - Thermal resistance (product of U-factor and surface area) between conditioned and indirectly conditioned areas is less than the thermal resistance between conditioned and outdoor, unconditioned, or semi-heated areas.

**Semi-heated Space:** an enclosed area heated by a system with output capacity of at least 3.4 Btu/hr-ft<sup>2</sup> but less than the heated space threshold, it is not considered to be conditioned or unconditioned space.

**Unconditioned Space:** space that is not cooled, heated, indirectly conditioned, or semi-heated.

## Exemptions from OR BPS

Exemptions from OR BPS are available for either Tier 1 or Tier 2 buildings. To request an exemption, submit **Form X: Exemption Application**. This form can be submitted no later than 180 days before the building compliance date. OR BPS staff will review this application and notify the building owner as to whether the exemption has been approved or denied. Approved exemptions are only good for the current five-year compliance cycle. If an exemption is denied, the building owner must proceed with all OR BPS compliance procedures.

Tier 1 or Tier 2 buildings may request exemptions from OR BPS for any of the situations listed below.

- **At least 50 percent** of a building's area is **manufacturing or industrial** space.
- A building is used for **agriculture**.
- A building or building owner is undergoing **financial hardship**.
- A building had **no certificate of occupancy** for **at least 12 months** before the compliance date.

For example: If a building owner receives the Certificate of Occupancy 8 months prior to the compliance date and leases the space to their tenant immediately, they are only able to track the energy use for a consecutive 8-month period. Since a minimum of 12 consecutive months of energy use data is required to demonstrate compliance, this example would be a valid reason for exemption.

- A building had **less than 50 percent physical occupancy** over the 12 months before the compliance date.

A building with less than 50 percent of Gross Floor Area used by the owner or leased to tenants would be considered unoccupied and eligible for this exemption.

However, an office building with more than 50 percent of the potential occupants working remotely on any given day would not be eligible for an exemption. Since this building is leased for use as an office, it is considered to be physically occupied even if occupants choose not to be in the office every day.

A worship facility is another example of a building that would not be eligible for an exemption due to low physical occupancy. Even though the building may only be used for services for a few hours a week, the building is being used as intended by the owners or tenants and is therefore considered physically occupied.

- A building with a significant amount of unconditioned and/or semi-heated space may also request an exemption, or be reclassified from Tier 1 to Tier 2, based on its **Gross Conditioned Floor Area** instead of its *Gross Floor Area*:

*Gross Floor Area – Unconditioned Area – Semi-heated Area = Gross Conditioned Floor Area*

The table below lists square footage requirements for exemptions based on *Gross Conditioned Floor Area* for different buildings covered by OR BPS.

<b>Gross Floor Area</b> <i>(excludes parking garage area)</i>	<b>Tier / Property Type</b>	<b>Gross Conditioned Floor Area</b> <i>(excludes parking garage area)</i>	<b>Potential Action</b>
<b>35,000 square feet and greater</b>	Tier 1 / Nonresidential, Hotel, or Motel	<b>up to 20,000 square feet</b>	May apply for exemption
<b>35,000 square feet and greater</b>	Tier 1 / Nonresidential, Hotel, or Motel	<b>20,000 to 35,000 square feet</b>	May apply to reclassify from Tier 1 to Tier 2
<b>20,000 to 35,000 square feet</b>	Tier 2 / Nonresidential, Hotel, or Motel	<b>below 20,000 square feet</b>	May apply for exemption
<b>35,000 square feet and greater</b>	Tier 2 / Multifamily, Hospital, School, University, Dormitory, Barracks, Prison, Residential / Senior Care Facility	<b>up to 35,000 square feet</b>	May apply for exemption

## Historic Buildings in OR BPS

As with other Oregon energy codes and standards, historic buildings are not exempt from OR BPS compliance. Historic buildings must assess and report their energy use just like any other building covered by this standard. If the building does not meet its energy target, it must follow the requirements to perform an energy audit and implement energy efficiency measures.

However, historic buildings do not have to meet any requirements that would compromise the historic integrity of any part of that building. None of the assessment or audit procedures should be invasive or damaging to any building, historic or otherwise. The only requirement that *might* be problematic for a historic building is the implementation of some cost-effective energy efficiency measures (EEMs) in buildings that do not meet their Energy Use Intensity target. Some recommended energy efficiency measures could be damaging to the historic nature of the building.

In this case, a building owner can file a **Form H: Historic Building Documentation** to request an exemption from any requirement to implement a specific energy efficiency measure or to perform any other work that might damage the building's historic integrity. This form can be filed at any time over the OR BPS compliance process.