

BPS 010 Incentives and Penalties

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 (excludes parking garage area)	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 operation & maintenance and energy management plans by their compliance date. They must also **meet EUI** 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 dates.

This guidance gives more detail about early compliance incentives and penalties for non-compliance. Additional guidance documents are available on the OR BPS website:

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

OR BPS Incentives

Oregon House Bill 3409 directs the Oregon Department of Energy to establish an early compliance incentive program. Two million (\$2M) in state funding has been allocated to this program to help building owners offset costs associated with compliance, such as energy benchmarking and reporting or performing an energy audit.

Tier 1 and Tier 2 building owners may receive an incentive of up to \$0.85 per square foot of gross floor area with caps of \$10,000-\$50,000 per building based on building type and size.

Final rules were filed with the Secretary of State on August 5, 2025, establishing the Oregon Building Performance Standards Incentive Program. Please see the [OR BPS Incentive Program rulemaking website](#) for more information.

Twelve million (\$12M) in funds for OR BPS compliance has been obtained through a federal Climate Equity and Resilience Through Action (CERTA) grant. The Building Emissions/Energy Reduction Incentive (BERI) program is under development. Incentives are geared toward offsetting the implementation costs of energy efficiency measures. Funds are expected to be disbursed in stages with the application period for the first installment expected to open in early 2026.

OR BPS Penalties

[Oregon House Bill 3409](#) also gives authority to assess civil financial penalties. Penalties are only assessed on Tier 1 buildings that have not complied with this standard. Penalties are capped at a maximum value of \$5,000, plus one dollar per square foot of Gross Floor Area per year, based on the duration of any continuing violation. A new set of penalties may be assessed for each compliance period.

Before assessing penalties, OR BPS staff will notify the building owner about their noncompliance via the following procedures:

- Issue *Notice of Violation and Opportunity to Correct (NOVC) (first notice)* to the building owner after a failure to submit documentation that demonstrates compliance with this standard by the scheduled reporting date:
 - Specify which reports are needed to reach compliance.
 - Specify a new date for reaching compliance, at least seven calendar days from receipt of the *Notice of Violation and Opportunity to Correct*.
- Issue *Notice of Violation and Intent to Assess Civil Penalties (NOVI) (second notice)* to the building owner after a failure to submit documentation that demonstrates compliance with this standard by the date specified in the *Notice of Violation and Intent to Assess Civil Penalties (NOVI)*:

- Specify which reports are needed to reach compliance.
- Describe how penalties are calculated for non-compliance.

Assessment of Civil Penalties proceeds if the building owner does not respond to the *Notice of Violation and Intent to Assess Civil Penalties* within 30 days. Responses from the building owner can include any of the following:

- Submitting compliance documents.
- Submitting a noncompliance mitigation plan, with a successful plan reducing civil penalties to no more than 30 percent of \$5,000, plus a daily amount equal to \$0.20 per square foot of Gross Floor Area per year.
- Submitting a **Form X: Exemption Application** or requesting a hearing within 30 days after being denied an exemption.
- Requesting a hearing to challenge or mitigate penalties.

Note that a building owner may choose to pay civil penalties rather than pursuing compliance and may notify OR BPS of that intent at any time.

Once any penalties are assessed, they are due in 30 days. Interest and late fees may start to accrue if penalties are not paid within 180 days, although the maximum penalty is still limited to \$5,000 plus one dollar per square foot of Gross Floor Area per year.