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FILING CAPTION: Establishing Energy Efficient Technologies Information and Education Grant Program under House Bill 3409

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RULES:

330-290-0000, 330-290-0010, 330-290-0020, 330-290-0030, 330-290-0040, 330-290-0050, 330-290-0060, 330-290-0070, 330-290-0080, 330-290-0090, 330-290-0100, 330-290-0110

ADOPT: 330-290-0000

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0000 includes a statement of the purpose and application of Division 290 in Oregon Department of Energy administrative rules.

CHANGES TO RULE:

330-290-0000

Purpose and application of rules in Division 290

(1) The purpose of these rules is to implement a grant program to provide education and training to contractors, subcontractors, technicians, community-based organizations and other installers of energy efficient appliances for heating and cooling and to other workers in industries related to construction and energy appliance installation to fulfill the requirements of Oregon Laws 2023, Chapter 442, section 4.¶

(2) These Division 290 rules apply to all applicants for grants under the program established to fulfill the requirements of Oregon Laws 2023, Chapter 442, section 4. The rules provide procedures for submitting applications, department review and selection of grant awardees, the development of performance agreements, and reporting and compliance requirements.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0010

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0010 includes definitions for terms used in Division 290 of Oregon Department of Energy administrative rules.

CHANGES TO RULE:

330-290-0010

Definitions

(1) "Department" means the Oregon Department of Energy.¶

(2) "Director" means the director of the Oregon Department of Energy.¶

(3) "Environmental justice communities" means communities meeting the definition of environmental justice communities under Oregon Revised Statutes 2023 Edition, 469A.400(5). The definition includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.¶

(4) "Disadvantaged communities" as outlined in presidential Executive Order (EO) 14008, signed January 27, 2021, means a census tract identified by version 1.0 of the Climate and Economic Justice Screening Tool (CEJST) as being economically disadvantaged and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care. A community qualifies as "disadvantaged" if the census tract is above the threshold for one or more environmental or climate indicators and the tract is above the threshold for the socioeconomic indicators.¶

(5) "Climate and Economic Justice Screening Tool (CEJST)" means version 1.0 of the screening tool available online at <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5> and developed by the Council on Environmental Quality as directed by presidential Executive Order 14008, consisting of an interactive map identifying disadvantaged communities.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0020

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0020 describes the purpose of contracts to be awarded under the Energy Efficiency Training Grant program in Division 290.

CHANGES TO RULE:

330-290-0020

Contracting under the program

(1) The Department may contract with eligible entities, as specified in OAR 330-290-0030(1), to provide needed information, assistance, training and support to contractors and/or training providers.¶

(2) Eligible entities entering into a contract with the Department under these rules shall use financial assistance under the contract for the development and delivery of training related to energy efficient technologies and incentives as outlined in the funding opportunity announcement.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0030

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0030 provides a non-exclusive list of eligible entities and clarifies the role of a lead applicant in relation to any organizations that may partner with the lead applicant in applying for and implementing a grant under the program.

CHANGES TO RULE:

330-290-0030

Eligible grant recipients

(1) Funding from this grant program is available to locally and culturally connected organizations for training programs in one or more training paths identified in the funding announcement including but not limited to:

(a) Community-based organizations;

(b) Labor organizations;

(c) Pre-apprenticeship/apprenticeship programs;

(d) Training centers; and

(e) Community colleges.

(2) Eligible entities may form partnerships with other eligible entities, but the entity awarded a grant shall take a lead role in administering the grant funds, including record-keeping and reporting, and providing financial assistance.

(3) A partner entity may assist the entity awarded a grant by providing, or assisting in the provision of:

(a) financial assistance to program participants;

(b) development of training materials; and/or

(c) delivery of training material.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0040

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0040 requires the Oregon Department of Energy to announce the availability of grant funds by issuing one or more funding opportunity announcements and enumerates the information that applicants will be required to provide in their applications. The permanent rules include a correction to a typographical error in (3)(j) of the draft rules published in the hearing notice.

CHANGES TO RULE:

330-290-0040

Funding opportunity announcements and application requirements

(1) The department shall announce the availability of grants for education and training for installation of energy efficient technologies by issuing one or more funding opportunity announcements.¶¶

(2) An applicant may apply for a grant by submitting a complete grant application. The application must meet requirements provided by relevant statutes, these rules, and the funding opportunity announcement.¶¶

(3) The application must be submitted using a form specified by the Department and include at a minimum the following information:¶¶

(a) Identification of applicant and partners:¶¶

(b) Name, address, email address and telephone number for the applicant:¶¶

(c) Names and roles of any partners to the application:¶¶

(d) Statement on how the program aligns with the Department's goal to prioritize disadvantaged or environmental justice communities:¶¶

(e) Description of:¶¶

(A) The entity's capacity to administer any grant funds received:¶¶

(B) The objective from the funding opportunity announcement that this program intends to address:¶¶

(C) Information on the current program the funding will be expanding, if applicable:¶¶

(D) The estimated budget for administrative and marketing expenses:¶¶

(E) Other information about the applicant as requested in the application form.¶¶

(f) An explanation of how the program will meet one of the stated program objectives from the funding opportunity announcement:¶¶

(g) Description of how the program will connect workers to prospective employers or pre-apprentice/apprenticeship programs, where appropriate:¶¶

(h) Description of wraparound services that will be available to participants:¶¶

(i) Explanation of how the program will contribute to a sustainable energy efficiency workforce in Oregon; and¶¶

(j) Other information requested by the Department in the funding opportunity announcement.¶¶

(4) The Department will only consider complete applications in its selection and funding allocation process.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0050

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0050 lists the factors the Oregon Department of Energy will use to give preference to eligible applicants for the program. The Department will allocate 40 percent of available funding to programs that provide training to participants from or provide services to disadvantaged communities as identified on the federal CEJST (Climate and Economic Justice Screening Tool) map. The rule also requires the Department to provide resources on its website to assist applicants in demonstrating that the program(s) in their application will serve disadvantaged or environmental justice communities. The permanent rules include the addition of a clarification in section (1), noting that the Department would evaluate applications according to the provisions in the rules and the opportunity announcement.

CHANGES TO RULE:

330-290-0050

Application evaluation and funding allocation process

(1) The Department will evaluate all complete applications for funding to ensure the requirements in statute, rule, and in the funding opportunity announcement are met. In awarding grants, the Department shall evaluate applications according to the criteria in these rules and the funding opportunity announcement. The Department shall give preference to eligible entities with:

(a) Experience in administering state grant programs or programs with similar reporting requirements;

(b) Experience with community program development within disadvantaged or environmental justice communities; and

(c) Connections to community partners.

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

(a) 40 percent of the available grant funding shall be allocated to programs training participants from or providing services to disadvantaged communities as identified on the federal CEJST Map.

(b) 60 percent of available grant funds may be allocated to programs meeting the requirements of the funding opportunity announcement that do not specifically benefit disadvantaged communities; however, programs that demonstrate economic development benefits to participants from disadvantaged or environmental justice communities will receive priority.

(c) The Department shall provide resources on its website to assist applicants in demonstrating that the program(s) in the application will serve one or more disadvantaged or environmental justice community.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

RULE SUMMARY: OAR 330-290-0060 enumerates and provides guidance to applicants about eligible and ineligible costs with regard to the use of grant program funds. In response to a comment received during the public comment period, the Department added language to the permanent rules specifying that: the Department will consider awarding additional administrative costs where an applicant can demonstrate that those costs are essential to implementing a successful program and that, rather than listing ineligible costs in the rules, the Department may provide guidance about ineligible administrative costs in the funding opportunity announcement. Additionally, the Department added language to the permanent rules clarifying that financial assistance costs are to assist trainees with program completion and that the costs for staff to provide training are not included in the administrative cost cap.

CHANGES TO RULE:

330-290-0060

Use of grant funds

(1) An eligible entity may use a percentage, as specified in a performance agreement, not to exceed 15 percent, of the awarded grant funds for program-related administrative expenses and marketing costs.¶

(2) The Department may consider awarding additional administrative costs, in addition to the 15 percent, if an applicant can demonstrate that additional administrative costs are essential to implementing a successful program. The applicant must clearly state how the funds will be used and why additional funding is required. Circumstances where additional funding may be considered by the Department will be stated in the funding opportunity announcement.¶

(3) Eligible administrative and marketing costs include the following costs if they are necessary to administer and market the program:¶

(a) Direct costs to implement and monitor the program including staffing, materials, supplies, and travel; and¶

(b) Other costs the Department determines should be eligible because they are necessary to administer or market the program.¶

(4) The Department may list and provide guidance regarding ineligible administrative and marketing costs in the funding opportunity announcement.¶

(5) Grantee and partner organizations may use funds to provide financial assistance to program participants, in an effort to ensure program completion, in the following forms:¶

(a) Training and training materials such as textbooks and manuals;¶

(b) Certification exam fees;¶

(c) Travel reimbursement;¶

(d) Wage stipends;¶

(e) Technical assistance;¶

(f) Software licenses;¶

(g) Wraparound services deemed by the Department to be necessary for the successful completion of the program by participants; and¶

(h) Employer engagement and hiring incentives.¶

(6) Eligible costs include costs associated with training material development, including the addition of culturally-specific materials.¶

(7) Staffing associated with providing training to program participants by grantee or partner entity are not considered administrative costs and are therefore not included in the 15 percent cap for administrative costs.¶

(8) The creation of informational material not directly related to the delivery of training under the program is allowable as long as it falls within the following categories and is made available to the Department for public outreach and education:¶

(a) Information on the availability of moneys, programs, rebates and other incentives for acquiring and installing energy efficient appliances for heating and cooling;¶

(b) Materials describing methods, techniques, available incentives and funding available for upgrading electrical panels and wiring to accommodate energy efficient appliances for heating and cooling; and¶

(c) Information to assist contractors and property owners in planning for, installing and operating heat pumps.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0070

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0070 establishes a process for the Oregon Department of Energy to enter into a performance agreement with grant awardees under the program and lists terms that must be included in a performance agreement, including the grant amount, duration of the agreement, record keeping and reporting requirements, reasons for terminating the agreement, and provisions regarding the return of unspent funds.

CHANGES TO RULE:

330-290-0070

Performance agreements

(1) The Department will offer a performance agreement to each grant awardee under the program outlining the terms under which the Department will award funds.

(2) Eligible entities selected to be awarded a grant shall have 30 calendar days from the date on which the performance agreement is provided to the applicant to accept the performance agreement. An applicant's failure to accept the performance agreement by the deadline may cause the rejection of the grant application.

(3) If an eligible entity fails to enter into a performance agreement within 30 calendar days of the date on which the department provided the performance agreement to the entity, the department may select an alternative applicant.

(4) The performance agreement must include the following terms and may also include additional terms:

(a) Maximum amount of the grant and the entity to which funds will be disbursed.

(b) Maximum duration of the performance agreement.

(c) Record keeping, reporting, and compliance monitoring requirements as detailed in the performance agreement or applicable federal law.

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

(e) The grant payment schedule; and

(f) Provisions regarding repayment of unspent funds at checkpoints specified in the agreement and at the end of the of the agreement.

(5) Unspent funds that are repaid may be reallocated by the Department to one or more grantees or deposited in the Energy Efficient Technologies Information and Training Fund for future distribution.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0080

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0080 lists record keeping and reporting requirements for grant awardees and their partner organizations.

CHANGES TO RULE:

330-290-0080

Record keeping and reporting

(1) Grantees and their partners must maintain accurate financial records satisfactory to the Department, which document the receipt and disbursement of funds. Grantees must have an accounting system in place satisfactory to the Department.¶

(2) Grantees and their partners must maintain other program records satisfactory to the Department as specified in each grantee's performance agreement.¶

(3) Grantees shall collect project data and report on project outcomes as stated in the funding opportunity announcement and as specified in each grantee's performance agreement.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0090

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0090 describes compliance requirements under the program, including requirements for grantees and partners to retain and keep accessible program records and to provide the Department access to records, as well as the ability for the Department to conduct review, audits, inspection and other compliance monitoring. The rule would require that each grantee report to the Department on the use of grant funds prior to June 30 of each year of the performance agreement. The Department corrected a typographical error in the permanent rules in (1)(d).

CHANGES TO RULE:

330-290-0090

Compliance and monitoring

(1) To ensure proper compliance and monitoring of the 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 program records and data as requested by the Department; and

(d) Keep records of program participants as specified in the performance agreement.

(2) The 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.

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

(4) Each grantee must provide a report to the Department prior to June 30 of each year with data through 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) The nature and amounts of the administrative expenses and marketing costs the grantee has incurred in providing payments under the program; and

(c) Any other information required by the Department.

(5) In addition to the reporting requirements in section (4), 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 items outlined in section (4).

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0100

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0100 provides a process for remedying unsatisfactory performance by a grantee under a performance agreement. The Department must issue a deficiency notice to the grantee listing deficiencies found through monitoring, provide documentation, and list deficiencies that must be corrected. The Department may require repayment of a portion or all of the grant funds in the event of misappropriation or fraud. The hearing notice draft rules specified in (3) that grantees must repay funds not used in accordance with the performance agreement; the permanent rules changed the language in (3) to allow for discretion by the Department in situations where, for instance, a grantee has misinterpreted a rule or performance agreement requirement.

CHANGES TO RULE:

330-290-0100

Remedies for unsatisfactory performance

(1) The Department reserves the right to identify deficiencies in the performance of any grantee or their partners discovered during compliance monitoring activities and take remedial action upon the grantees, including, but not limited to terminating its funding agreement with a grantee and requiring repayment of program funding.¶

(2) To remedy any identified deficiencies, the Department:¶

(a) Must issue a deficiency notice notifying a grantee of deficiencies identified through the monitoring process and provide documentation for the basis of such determination and the specific deficiencies that must be corrected; and ¶

(b) Must require the grantee to correct any deficiencies in a manner and time satisfactory to the Department.¶

(3) The Department may require a grantee to repay to the Department grant funds that the grantee, or their partners, does not use in accordance with the provisions of the performance agreement.¶

(4) The Director of the Oregon Department of Energy may order the grantee to repay all or a portion of the grant funds if the Director finds that there are grounds for misappropriation, fraud or similar reasons after auditing or investigating the grantee's, or their partner's, operations and conducting a contested case hearing under ORS 183.413 to 183.470.

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442

ADOPT: 330-290-0110

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: OAR 330-290-0110 establishes a process for grantees to request and the Director of the Oregon Department of Energy to grant or deny a request for amending a performance agreement under the grant program.

CHANGES TO RULE:

330-290-0110

Amendments to performance agreements

(1) If a grantee wishes to amend a performance agreement entered into with the Department under OAR 330-290-0070 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 funding 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 Director 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.¶

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

Statutory/Other Authority: Oregon Laws 2023 Chapter 442, ORS 469.040

Statutes/Other Implemented: Oregon Laws 2023 Chapter 442