Appendix B
Oregon Administrative Rules
Chapter 330, Division 130
Effective Date ~~June 27, 2011~~

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DIVISION 130
ENERGY EFFICIENT DESIGN FOR STATE AGENCY FACILITIES

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ENERGY EFFICIENT DESIGN FOR STATE AGENCY FACILITIES

330-130-0010

Purpose

These rules prescribe procedures to promote the design, construction and renovation of highly energy efficient buildings owned and operated by state agencies by:

(1) Minimizing energy use by incorporating the Optimum Energy Conservation Measures Package as defined in these rules into the final building design; and ~~A a facility constructed or renovated after June 30, 2001, shall exceed~~improve performance ~~beyond the energy conservation provisions of the state building code by 20 percent or more~~ by designing all facilities constructed or renovated after June 30, 2001 to perform a minimum of 20 percent better than the energy conservation provisions of the state building code.

~~(2) Reducing agency energy use by 20 percent in existing buildings by the year 2015 compared to the year 2000~~. ~~Requiring facilities constructed or renovated after June 30, 2001, to improve performance by 20 percent or more beyond the expected performance of a similar facility meeting the energy conservation provisions of the state building code.~~ Reporting monthly energy use for existing buildings over 5,000 square feet using more than 10,000 Btus/square foot/year to a database specified by the department.

Commented [AH1]: This section returns rules to original intent of statute

Commented [AH2]: This section updates rules to reflect that the 2015 goal is passed (and met) and defines what is to be reported and how reporting is to take place. The agencies are already reporting this information as of January 1, 2015.

Stat. Auth.: ORS 276.900 - 276.915, Ch. 26, OL 2008 HB 3612
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0020

Definitions

(1) "Agency" means the authorized state agency, board, commission, department or division which has the authority to enter contracts, finance the construction, purchase, renovation, or leasing of buildings or other structures for use by the State of Oregon.

(2) "Agency contact" means a lead person appointed by the agency who is responsible to coordinate all State Energy Efficient Design related business with the Oregon Department of Energy, such as project notifications, interagency agreements, invoice and payment, project coordination, guideline updates and advisory recommendations.

(3) "Baseline building" means the basic building conceived by the agency and the design team. The baseline building incorporates the standard design features of typical buildings of the same usage and meets the prescriptive or performance requirements of the Oregon Energy Efficiency Specialty Code according to criteria established in the State Energy Efficient Design Program Guidelines.

(4) "Benefit-to-Cost Ratio (BCR)" means the present value of Energy Conservation Measure benefits divided by the present value of incremental Energy Conservation Measure costs.

(a) The Energy Conservation Measure benefit is the difference between the present values of the operating cost of the baseline building and the operating cost of the baseline building with the Energy Conservation Measure added.

(b) The incremental Energy Conservation Measure cost is the difference between the present values of the capital cost of the baseline building and the capital cost of the baseline building with the Energy Conservation Measure added.

(5) "Biennial report" means the report summarizing the progress toward achieving the goals of ORS 276.900 through ORS 276.915.

(6) Building Class:

(a) "Class 1 Building" means all:

(A) New buildings, additions, or renovations of 10,000 or more square feet of heated or cooled floor area; and

(B) Building additions that increase the size of an existing building to 10,000 or more square feet of heated or cooled floor area and renovations to buildings of 10,000 or more square feet of heated or cooled floor area, which significantly affect:

(i) The existing mechanical or control system; or

(ii) At least two of the following energy systems: interior lighting, building envelope, domestic hot water, or special equipment.

(iii) Only those systems identified in (i) and (ii) that are significantly affected are subject to procedures outlined in 330-130-0040.

(b) "Class 2 Building" means all new buildings or renovations of less than 10,000 square feet of heated or cooled floor area except for new buildings, structures, or facilities of any size which have no energy using systems.

(7) "Building model" means a computer model, which calculates annual building energy use. The Oregon Department of Energy shall approve hourly building models, simplified hourly building models and the approach to modeling Energy Conservation Measure energy savings above the baseline building as established in the State Energy Efficient Design Program Guidelines. The building model for all Class 1 Buildings must be an hourly building model, except for certain Class 1 buildings as approved by the Oregon

Department of Energy where simplified hourly building modeling or prescriptive packages established in the State Energy Efficient Design Program Guidelines may be used.

(8) "Capital construction cost" means the cost of current and future building investments including construction, design, administration, major replacement, and salvage values. Costs of compliance with these rules may also be included.

(9) “Commissioning agent” is an individual or firm that has demonstrated experience commissioning Heating, Ventilating, and Air Conditioning (HVAC) mechanical systems and HVAC control systems, commercial and industrial mechanical technologies, lighting controls, and testing and balancing of air and water systems.

(10) “Contracting agency” means the agency entering into a contract for facility construction or renovation.

(11) “Department” means the Oregon Department of Energy.

(12) "Design team" means the architect(s), engineer(s), and other professionals who are responsible for the design of the new building or renovation.

(13) “Director” means the director of the department.

(14) “Energy Use Index (EUI)” is a calculated index that describes a building’s energy use in relation to a metric, generally square feet, such as $kBtu/ft^2$ –yr or kWh/ft^2 –yr.

(15) "Energy analysis report" means a report prepared by an energy analyst, under the direction of a professional engineer or licensed architect, recommending an Optimum Energy Conservation Measure Package for a Class 1 building. The report must include:

(a) Department State Energy Efficient Design forms;

(b) A summary of recommendations;

(c) A baseline building description;

(d) Energy Conservation Measure descriptions with analysis results;

(e) Energy Conservation Measure savings calculations; and

(f) Energy Conservation Measure cost estimates.

(16) "Energy analyst" means the individual who prepares the building energy analysis and the energy analysis report under the direction of a professional engineer or licensed architect who reports to the project architect or agency.

(17) “Energy auditor” is an individual or firm that has demonstrated experience performing comprehensive analysis of a building’s energy using systems, and performs benefit to cost analysis of energy efficiency measures.

(18) "Energy Conservation Measure (ECM)" means a measure designed to reduce energy use, including alternative energy systems which replace conventional fuels with renewable resources. ECMs must not conflict with applicable codes and other professional standards.

(19) "ECM Package" means two or more ECMs combined for analysis.

(20) “Energy Service Company (ESCO)” means a company, firm or other legal person with the demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement ECMs and other work in building systems or building components that are directly related to the ECMs in existing buildings and structures.

(21) “Energy Services Performance Contract (ESPC)” means a public improvement contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design, and construction of ECMs, including a Design Build Contract, that guarantees the energy savings performance.

(22) "Energy systems performance verification plan" means a plan that outlines how the building's energy systems are to be tested during the construction phase and how the building's performance is to be verified with long-term monitoring during occupancy.

(23) “Highly efficient facility” means a facility that is designed, built and operated according to these State Energy Efficient Design rules, that makes use of renewable energy resources where practical, that incorporates all cost-effective energy efficiency measures, and exceeds the requirements of the Oregon Energy Efficiency Specialty Code.

~~(24) “Leadership in Energy Efficient Design (LEED)” is an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies intended to improve performance in metrics such as energy savings, water efficiency, greenhouse gas emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.~~

(~~25~~24) “Measurement and verification (M&V)" means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol or process, to monitor and verify the operation of energy using systems pre-installation and post-installation.

(25) “Model of Energy Efficiency” means a facility that is designed, built, and operated according to these SEED rules, that ~~exceeds~~improves energy performance compared to the state building code by 20~~%~~ percent or more, that makes use of renewable resources where practical and that incorporates optimum energy efficiency measures.

Commented [AH3]: This section returns original rule language that was in place prior to the 2010 rule change.

(26) "Net Present Value Savings (NPVS)" means the difference between the present values of the capital and operating costs of the baseline building and the capital and operating costs of the baseline building with the ECM added.

(27) “OEESC” means the Oregon Energy Efficiency Specialty Code adopted pursuant to OAR 918-460-0500.

(28) "Operating cost" means the costs for energy, fuel, annual and periodic maintenance, supplies, consumables, and other operating items associated with ECMs, such as water and sewer, during the life of the building.

(29) "Optimum ECM Package" means the ECM package which incorporates all reasonable cost-effective ECMs and which meets the following conditions:

(a) Each ECM included in the package has a BCR greater than 1.0 when modeled independently.

(b) The ECM package has a BCR greater than 1.0.

(c) The ECM Package has the highest NPVS of the analyzed ECM packages.

~~(30) “Oregon Reach Code” is a set of construction standards adopted under ORS 455.490 to 455.595.(31)~~

Commented [AH4]: Removed since Reach code as it was known no longer exists.

(30) "Present value" means the value of a financial cost or benefit, discounted to current dollars using discounting factors and methods approved by the department.

(~~32~~31) “Renewable energy resource” includes, but is not limited to, on-site generation of energy for use in the building from the following sources:

(a) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal energy; or

(b) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(A) That does not exceed 10 megawatts of installed capacity; or

(B) Qualifies as a research, development or demonstration facility.

(c) The purchase of renewable energy certificates does not qualify as a renewable energy resource.

(~~33~~32) “SEED” means State Energy Efficient Design Program as defined in ORS 276.900 through ORS 276.915 under the heading State Agency Facility Energy Design.

(~~34~~33) "SEED Program Guidelines" are guidelines developed by the department with assistance from an advisory committee that consists of representatives from interested agencies, design professionals, consulting engineers and utilities.

(~~35~~34) "Simple payback" means the estimated ECM cost divided by the estimated first year ECM energy, operating, and maintenance savings.

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

~~330-130-0025~~

~~Alternate Compliance Paths~~

Commented [AH5]: Alternate compliance paths were inserted to allow use of the Oregon Reach Code. Since the Reach Code, as was defined at the time no longer exists, the section is being removed.

~~(1) If an agency intends to seek LEED certification, or build to the Oregon Reach Code or build to some other substantially equivalent national standard for a building project the following shall apply:~~

~~(a) The agency must notify the department in writing of their intention to seek LEED certification, or build to the Oregon Reach Code or build to a substantially equivalent national standard. When an agency wishes to build to a substantially equivalent national standard, the department must agree and certify in writing that the standard is "substantially equivalent" before the agency can proceed.~~

~~(b) The agency must comply with energy consumption analysis and review requirements of the SEED Program Guidelines;~~

~~(c) The agency must provide documentation to the department throughout the design, construction and post-occupancy phases to verify that all SEED requirements are met as specified in the SEED Program Guidelines; and~~

~~(d) Agencies following the LEED path must achieve a minimum of 12 points in the Energy and Atmosphere Credit Number 1 Category (Optimize Energy Performance).~~

~~(2) A donated building is exempt from the SEED rules until the agency assumes the title to the building.~~

330-130-0030

Notification

When the building class has been determined during the pre-design or programming phase of a building project, the following procedures shall be followed:

(1) Class 1 Buildings. ~~Before the design team is selected, the agency and the department may enter into an interagency agreement which outlines the procedures as shown in OAR 330-130-0040, the hourly rates to be charged by the department and the related statement of work.~~ The agency shall notify the department of a building project prior to the release of the request for proposals (RFP) for contracting/design services. The agency contact shall coordinate with the department to set-up the initial meeting early in the pre-design or programming phase of a building project. The interagency agreement may include expanded services under OAR 330-130-0040(9).

Commented [AH6]: This is holdover language that has not been relevant since 2001. We no longer do interagency agreements as rates are defined in the rules.

(2) Class 2 Buildings. The agency shall ~~contact~~ notify the department ~~for consultation~~ and request a list of recommended ECMs and services applicable to the building.

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0040

Procedures for Class 1 Buildings

(1) The SEED process follows typical design process steps as the organizing principle. If the ~~agency is accustomed to using different phases or terminology, or if the~~ project does not fit the suggested steps, an alternative plan may be developed between the department and the agency.

(2) Meetings in this section of these rules may be eliminated or combined with other meetings as deemed appropriate by the department.

(3) Pre-Design or Programming Phase. The purpose of the SEED process is to ensure ~~early involvement so~~that energy efficiency is an integral part of the building design.

(a) Initial Meeting. Early in the pre-design or programming phase, the agency and the department shall meet to:

(A) Discuss the scope of the project;

(B) Define the role of the department including, but not limited to, the level of involvement, decision authority on behalf of the owner, and relationship with contractors. The department shall be notified of all meetings where significant review of or final decisions about energy systems are anticipated.

(C) Develop the ~~request for proposal (~~RFP~~)~~ and contract. The RFP and the contract's statement of work must include a reference to building a "highly energy efficient facility" as defined in these rules and to the SEED process. The department may develop language for the agency ~~may~~ to use ~~to~~ for includ~~e~~ing energy efficient design in the request for proposals and the contract for architectural and engineering services. Upon request, the department will review or comment on the RFP, contract or energy qualifications of proposals as an expanded service under section (9).

(D) The agency must hire an energy analyst as described in OAR 330-130-0090(2)(a).

(b) Schematic Design Phase:

(A) Energy Planning Session. Early in the Schematic Design Phase, the agency, design team, department and energy analyst shall meet to further define the items in the list below:

(i) Project design;

(ii) Construction schedule;

(iii) Energy goals of the project

(iv) Design criteria;

(v) Integrated energy design approach;

(vi) Energy systems performance verification plan; and

(vii) Modeling approach.

(B) Preliminary Investigation. Working with the agency and the design team, the energy analyst must prepare a comprehensive list of ECMs to capture significant opportunities for building energy savings. Two weeks before the scoping process (under section (2)(c)), the agency must deliver to the department the following items:

(i) Description of the baseline building and its energy-using systems;

(ii) List of proposed ECMs;

(iii) Approach and tools for modeling;

(iv) Initial plans;

(v) Design intent;

(vi) Description of operating criteria; and

(vii) Results of preliminary modeling effort, if any.

(c) Scoping Process. The department, the agency, the design team, and the energy analyst shall select the ECMs for analysis. If needed, further refinement of the modeling effort may be discussed and decided upon.

(4) Design Development Phase:

(a) Baseline and individual ECM analysis. The energy analyst shall use the building model for baseline building analysis and individual ECM analysis. The energy analyst may use fully documented manual calculations for simple, non-interactive ECMs and may eliminate potential ECMs with preliminary estimates of costs and savings if the simple payback is greater than the equipment life.

(b) Metering Plan. The agency, in consultation with the energy analyst, the design team and the department, must specify what types of utility meters are to be installed and what system is to be used to monitor the building's energy use. Where practical, sub-metering shall be provided on major energy-using equipment or systems. This Metering Plan must be incorporated in the energy systems performance verification plan.

(c) Interim Submittal and Review. Two weeks before the ECM Review Meeting, the agency must submit to the department the preliminary energy analysis report. The department ~~must~~ will review the preliminary energy analysis report and provide its written or verbal comments and recommendations to the agency prior to the ECM review

meeting. The following items must be submitted as part of the preliminary energy analysis report:

(A) Narrative describing the baseline building and the proposed ECMs;

(B) Tables showing energy use for the baseline building and the building with proposed ECMs;

(C) Baseline building model input and output;

(D) List of eliminated ECMs and calculations;

(E) Analysis results for individual ECMs; and

(F) Metering plan.

(d) ECM Review Meeting. The department, the agency, the design team, and the energy analyst shall meet to review and agree on the results in the preliminary energy analysis report.

(5) Construction Documents Phase:

(a) Implementation of Cost-Effective Measures. The agency must incorporate the Optimum ECM Package into the final building design.

(b) Submittal of Construction Documents. The agency shall provide the department with construction documents in sufficient detail to verify that the Optimum ECM Package will be included in the final construction documents and specifications no later than at 90 percent design completion. This submittal must also include the preliminary energy systems performance verification plan.

(c) The department shall review this submittal and forward its written findings and recommendations to the agency within 10 working days after receiving the documents, if practicable.

(6) Construction Phase:

(a) Contractor Submittals and Substitutions. The design firm shall ensure that contractor equipment submittals, requests for substitutions and change orders adhere to the ECM design intent. The design firm must send any substitutions or submittals that differ from the ECM design intent to the department for review.

(b) Final Report Submittal. The agency shall deliver the final energy analysis report containing the Optimum ECM Package and projected energy use to the department for review.

(c) Delivery of the department findings. The department shall review the report and forward its written findings and recommendations to the agency within 10 working days after receiving the report, if practicable.

(d) Site Inspections. To verify that ECMs are installed correctly and operating efficiently, the department or its representative may make walk-through site inspections during the installation of ECMs.

(e) ~~Performance verification~~Commissioning. The energy systems ~~performance verification~~commissioning plan must be carried out and a copy of the ~~test~~ commissioning report~~s~~ must be submitted to the department.

Commented [AH7]: At the time this language was originally used, "commissioning" was a more controversial idea. It has since become standard and acceptable.

(f) Training. Training must be provided for building operators and a training plan must be incorporated into the commissioning plan. The training should parallel the operations manual prepared for the owner. It is highly recommended that instruction on the design intent and operation of the building as a system also be offered to the owners and ~~operators~~ occupants of the new facility. ~~This may be part of the energy systems performance verification plan. The training should parallel the operations manual prepared for the owner.~~

Commented [AH8]: This emphasizes the importance of providing training. A good commissioning plan would always include training.

(7) Occupancy Phase:

(a) Monitoring. ~~At completion of functional testing (approximately two months after occupancy begins), a meeting may be held between the agency, building operator, general contractor, commissioning agent, and energy analyst to review building energy use.~~ Actual building operation will be compared with assumptions made in the final design phase energy analysis. If significant differences in schedules, equipment, operation, etc. exist, a calibrated energy model must be submitted at the discretion of the department (if actual energy use is outside ~~five~~ fifteen percent (+/-) of predicted energy use). During the first 18 months into occupancy, energy use by the building systems must be monitored and compared with the modeling results. If significant differences between the actual energy use and the model predictions result, the agency must investigate to find the cause, so that:

Commented [AH9]: Pretty tight, suggest +/- 15 percent.

(A) An adjustment can be made to the operation of the building; or

(B) An explanation for the difference can be found that is acceptable to the agency and the department. The agency must send its finding to the department.

(b) Non-compliance. If, after monitoring the building for 18 months, the building's performance does not meet the projected energy use because of reasons reported under (7)(a), the agency shall submit an energy conservation plan to the department within 90 days after reporting the non-compliance. This plan will outline the modifications to be made until monitoring shows that the building meets the projected energy use, or all reasonable attempts to reduce the energy use have been made. A report of these remedial actions must be submitted to the department.

(c) SEED Award. The department shall give the SEED Award to the agency if the building complies with these SEED rules, is a "highly energy efficient facility," and meets the criteria for the SEED award as determined in the SEED Program Guidelines.

(8) Waiver. The director of the department may waive part of these rules when an agency cannot comply due to extenuating circumstances such as a conflict with federal

requirements, for health or safety reasons, or the building has been designated a historic site.

(9) Expanded Services. Expanded services are services provided by the department that are outside the scope of OAR 330-130-0010 through OAR 330-130-0100. Such services may include, but are not limited to:

(a) Acting as the owner's agent on energy issues;

(b) Modeling during various phases of the design process and when the building is occupied;

(c) Participating on design teams and providing services for building projects following an alternate compliance path as specified in OAR 330-130-0025;

(d) Building commissioning; and

(e) Providing resource conservation management assistance and training as needed or requested by the agency.

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0050

Procedures for Class 2 Buildings

(1) Role of the agency. The agency shall determine that the design incorporates all required prescriptive ECMs or all reasonable cost-effective ECMs. ECMs or ECM packages with a Simple Payback shorter than equipment life shall be considered cost-effective for Class 2 Buildings.

(2) Role of the department. The department has accepted the Oregon Reach Code as a prescriptive package of measures deemed to result in the definition of a highly efficient facility for Class 2 Buildings. The department shall also be available to the agency to advise or suggest potential energy saving measures.

(3) Project Reporting. The agency shall provide the department with the list of all measures or packages installed in the building.

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0055

Procedure for Leased Buildings

The department, in consultation with the agencies, shall establish guidelines for incorporating energy efficiency requirements into lease agreements of 10 years or more to be phased in as current leases expire or as agencies enter into new agreements.

Stat. Auth.: Ch. 26, OL 2008 HB 3612
Stats. Implemented: ORS 276.900 - 276.915
Hist.: DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0060

Service Charges

Charges to the agency by the department for services shall be as follows:

(1) Class 1 Buildings:

(a) The charges by the department to the agency will be based on an hourly rate for the actual hours worked on the project. Hourly rates charged by the department and invoiced to the agency will include salary, other payroll expenses, the federally allowed indirect rate for the department, staff travel expenses, other service or supply costs, and administrative costs. Invoices may be submitted to the agency by the department monthly commencing one month after notification. Invoices will provide the hours of service and the hourly rate. The maximum charge shall be calculated at $0.002 for each dollar of capital construction cost unless otherwise agreed to in writing by the agency and the department.

(b) ~~The department will invoice the agency for all final charges within 60 days following the completion of its work as described in these rules.~~ To ensure the agency receives the final invoice prior to closing their construction accounts, the department may invoice in advance for final building inspections and post-occupancy energy use tracking.

Commented [AH10]: To discuss with stakeholders. Completion is hard to define.

(2) Class 2 Buildings. No charge unless the agency chooses to enter into an interagency agreement with the department.

(3) Charges do not include design team or energy analyst services. The agency must obtain these services directly. Charges include all services provided by the department or their representative in fulfilling the requirements described in these rules. Charges do not include services such as described in section 330-130-0040(9) "Expanded Services" provided by the department.

(4) The director may waive charges for special circumstances including, but not limited to, demonstration or pilot projects.

(5) All charges are subject to review and adjustment by the director of the department.

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-

2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2002, f. 5-8-02, cert. ef. 5-13-02; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0070

Department Administrative Procedures

(1) The department shall provide information and administer the program to ensure the program is in accordance with these rules.

(2) Under special circumstances, the director may waive certain requirements under these rules, provided the intent of the program as described in statute is maintained.

(3) The department has developed guidelines, which contain recommended procedures, instructions, and information relating to these rules. The department shall solicit agency comments on the guidelines on a biennial basis and revise the guidelines as appropriate.

(4) The department shall compile information about agency participation and ECM implementation into a database. The department shall make database information available to agencies and use the data in evaluating agency compliance with the objectives of ORS 276.900 through ORS 276.915.

(5) The department ~~, the Oregon Department of Administrative Services and the Oregon University System~~ shall ~~jointly~~ prepare a biennial report to the legislature ~~on January 1~~ prior to the legislative session of every odd-numbered year.

Commented [AH11]: DAS has never taken part in the past and OUS is no longer subject to SEED requirements.

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0080

Procedures for Monitoring the Reduction in Energy Use by State Agencies

~~In order to review whether an agency meets the requirement to reduce the amount of use of energy by at least 20 percent from the amount used by the agency in the 2000 calendar year or the first 12 month period for which reliable energy use data exists, the following rules for tracking energy use apply.~~

Commented [AH12]: This goal has been met. The goal is defined in statute and is now outdated.

(1) Energy use per square foot shall be tracked for all state owned buildings over 5,000 square feet with an annual energy use exceeding 10,000 Btus/square foot/year.

(~~1~~2) Agencies must report energy use on ~~a~~ monthly ~~basis~~intervals into the ENERGY STAR Portfolio Manager (ESPM) database..~~Energy use shall be tracked on a monthly basis using billing data.~~ Electricity and heating fuels ~~shall~~ must be tracked separately for each calendar year and~~. The~~entered into the ~~use of standard commercially available software for uniform tracking is recommended.~~ ESPM database no later than March 31 of the following year.

Commented [AH13]: Agencies are already reporting this way. This section has been modified to reflect that the energy reduction goal of 2015 has passed, no new requirement for energy reduction has been put in statute and that the requirement to report energy use still continues.

(2) Agencies must report and enter energy use on an annual basis into the State Energy Use Database http://saeuc.wesd.org.

(3) Energy use per square foot of conditioned space shall be tracked, where applicable. Where square footage is not applicable, another metric by which to compare annual energy use must be used in consultation with the Department.

(4) Weather adjustments relative to the base year 2000 are allowed if:

(a) The adjustments follow a standard process developed by the department through the SEED Program Guidelines; and

(b) Both the raw and revised usage is reported.

(35) When significant changes of facility size or use takes place, adjustments to the baseline energy consumption may be made. each agency is responsible for making revisions to their respective ESPM account.

(46) It is recommended that sub-metering of buildings and/or major energy consuming equipment is added where advisable and feasible in order to get better data on energy use and facilitate better energy management of the facilities.

(7) To assure that the 20 percent energy use reduction by 2015 goal is met, interim energy reduction goals shall apply:

(a) 10 percent reduction in energy use by the agency by December 31, 2010; and

(b) 15 percent reduction in energy use by the agency by December 31, 2012.

(8) If an agency fails to achieve and maintain the required percent reduction by the dates in (7)(a) and (7)(b), the following rules apply:

(a) The agency must notify the department that it failed to achieve or maintain the required percent energy savings by June 30th of each subsequent year.

(b) Within 90 days of such notification, the agency must submit to the department a corrective plan to reduce energy use by the required percent. The plan must:

(A) Outline all modifications, procedures, and changes that need to be introduced until the target is met and maintained; and

(B) The plan shall be in a format described in the SEED Program Guidelines.

(c) The agency may request the department to provide technical assistance in developing this corrective plan. In the event that the agency requests assistance, the agency must compensate the department's costs for assistance in preparation or review of the plan.

(d) The agency must implement the corrective plan within six months from the date of approval by the department. The agency shall monitor progress, report to the department, and modify the plan as necessary every six months, until the target reduction is achieved.

~~(e) This conservation plan and the results of remedial action(s) must be included in the biennial report to the legislature, to be jointly prepared by the department, the Oregon Department of Administrative Services and the Oregon University System.~~

Stat. Auth.: ORS 276.900 - 276.915
Stats. Implemented: ORS 469
Hist.: DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0090

Pre-qualification for persons performing Energy Analysis and Energy Savings Performance Contracting Services

(1) The department shall establish criteria to prequalify persons or firms to execute the provisions of ~~this bill~~ the SEED program rules. Agencies must only select persons or firms that have been prequalified by the department to perform energy analysis and energy savings performance contracting (ESPC) services.

Commented [AH14]: Changes in this section are mostly housekeeping revisions

~~(2) Agencies that wish to hire a person or firm that has not been previously prequalified by the department must request approval from the department for exemption from this requirement. Only licensed professional architects and engineers are considered eligible for exemption from prequalification.~~

(a) Energy analyst

(A) The department shall establish a list of pre-qualified energy analysts through ~~an open~~a ~~RFP~~ solicitation process that uses qualifications-based scoring criteria to determine a person's ability to perform building energy analysis.

(B) Agencies that wish to hire a person or firm that has not been previously prequalified by the department must request pre-approval from the department for exemption from this requirement. Only energy analysts that meet the qualifications as described in the SEED Program Guidelines will be considered eligible for exemption from prequalification. ~~(B) An agency may hire an energy analyst not on the approved list provided the energy analyst is a licensed engineer or architect and meets the qualifications of the energy analyst described in the SEED Program Guidelines. All energy analysis reports must be stamped by a licensed engineer or architect.~~

(b) Energy Savings Company (ESCO)

(A) A qualifying firm will have demonstrated expertise in the following areas:

(i) A prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to ~~the~~ projects typically undertaken ~~under consideration~~ by ~~the contracting~~state ~~agency~~agencies; and

(ii) The financial strength to effectively guarantee energy savings and performance ~~under for~~~~the~~ ESPC projects ~~for the project in question~~, or the ability to secure necessary

~~financial measures~~ funding to effectively guarantee energy savings under an ESPC ~~for that project~~.

(B) Pre-qualification process: The department ~~must~~ will utilize a Request for Qualifications (RFQ) process as the first step in a two-part process to pre-qualify energy service companies to perform energy savings performance contracting services.

(C) RFQ proposal evaluation process: For ~~ESPC~~ ESCO proposal evaluations, the department shall establish qualifications-based evaluation factors that outweigh price-related factors, due to the fact that the RFQ process is the first step of a two-step process. ~~used to establish a list of pre-qualified firms that A~~a ~~contracting~~ state agency planning to enter into an ESPC must request RFPs from ~~choose from~~a minimum of three ~~for distribution of RFPs~~firms on the pre-qualified list.

(3) Agencies must adhere to the following requirements for ESPC projects:

(a) Only select persons or firms that have been pre-qualified by the department to provide energy savings performance contracting services.

~~(b) The agency must use the department's template contract documents for all phases of the ESPC contract.~~

Commented [AH15]: ODOE cannot require this as was pointed out by our contracting department

(~~c~~b) Only utilize ESPC for comprehensive facility retrofits that include energy efficiency projects for two or more energy using systems. These systems must contribute to at least 50 percent of a facility's total energy use.

(~~d~~c) Only use ESPC for projects that save energy and water resources.

(~~e~~d) Only use ESPC for existing buildings that are two or more years old.

(~~f~~e) Limit eligible contracting ~~phases~~ activities to:

(A) ~~Phase I parts A and B for the t~~Technical energy audit; ~~and~~

(B) ~~p~~Project development plan;

(~~B~~C) ~~Phase II~~ Design ~~Build contract; and~~and construction;

(~~C~~D) ~~Phase III for the energy savings guarantee and m~~Measurement and verification ~~contract.~~ ;

(E) Energy savings guarantee(s)

(~~g~~f) Not combine service agreements with an ESPC contract. All service agreement contracts must be mutually exclusive.

(~~h~~g) ~~Advertise a simplified RFP~~Only solicit department-qualified ESCOs as the second step of a two-step process for final selection of an ESCO for ESPC services.

~~(i) Only distribute RFPs to ESCOs that have been pre-qualified by the department.~~

(~~i~~h) At a minimum, the agency's solicitation process~~RFP~~ must include a technical facility profile, ~~mandatory~~ pre-proposal walk-through, and an interview process.

(4) Agencies may;

(a) Select qualifications-based evaluation factors that outweigh price factors.

(~~l~~b) Contract with a third party for commissioning and measurement and verification services.

~~(m) Select a pre-qualified ESCO for third party commissioning or measurement and verification services associated with the ESPC project.~~

Stat. Auth.: Ch. 26, OL 2008 HB 3612
Stats. Implemented: ORS 276.900 - 276.915
Hist.: DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08

330-130-0100

Pre-qualification for persons performing Energy Commissioning, Auditing, and Performance Verification Services

(1) The department shall establish criteria to pre-qualify persons or firms to execute the provisions of this bill. Agencies may select persons or firms that have been pre-qualified by the department to perform auditing, commissioning, and performance verification services for energy systems.

(2) Energy Auditor:

(a) The department shall maintain a list of pre-qualified energy auditing firms. This list must be established through an open RFP process using a qualification-based scoring criteria to determine a person's or firm's ability to perform energy audits in existing buildings.

(b) A qualifying firm must demonstrate expertise in the following areas:

(A) Commercial and industrial technology;

(B) Energy auditing equipment, heating, ventilating, and air conditioning systems;

(C) Lighting design;

(D) Energy efficiency technology; and:

(E) Preventative maintenance procedures.

(c) Agencies may use the department's list of pre-qualified energy auditors for the selection of a person or firm to perform energy conservation measure analysis of existing buildings.

(3) Commissioning Agent

Commented [AH16]: This section modified to correct inadvertent errors from previous rulemaking

(a) The department maintains a list of pre-qualified commissioning firms. This list will be established through an open RFP process that uses a qualifications-based scoring criteria to determine a person's or firm's ability to perform commissioning of energy using systems in new and existing buildings.

(b) At least one individual employed by the firm must be a member of a building commissioning professional association such as Building Commissioning Association (BCA), National Environmental Balancing Bureau (NEBB), or Associated Air Balance Council (AABC).

(c) Agencies may use the department's list of pre-qualified commissioning agents for the selection of a person or firm to perform commissioning services for energy efficiency projects in new and existing buildings.

(4) Measurement and verification.

(5) Agencies may select from the list of pre-qualified ESCOs described in OAR 330-130-0090(2)(b) or the list of commissioning agents described in OAR 330-130-0100(3) for the measurement and verification of implemented energy efficiency measures.

Stat. Auth.: Ch. 26, OL 2008 HB 3612
Stats. Implemented: ORS 276.900 - 276.915
Hist.: DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08