

**DEPARTMENT OF ENERGY
DIVISION 112
ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY LOAN PROGRAM**

330-112-0000

Purpose and Objectives

These rules carry out provisions of ORS Chapter 470 as they pertain to the administration by the Oregon Department of Energy of the Energy Efficiency and Sustainable Technology Act of 2009. Oregon Administrative Rule, Chapter 330, Division 112 sets out the rules governing the department's energy efficiency and sustainable technology loan program. The purpose of the program is to provide financing for energy efficiency upgrades of residential and commercial buildings in the State of Oregon.

330-112-0010

Definitions

As used in ORS Chapter 470 and in Oregon Administrative Rule, Chapter 330, Division 112, the following terms have the definitions set forth below unless the context requires otherwise:

- (1) "Act" means ORS 470.500 through 470.715.
- (2) "Base efficiency package" has the meaning given that term in ORS 470.050(3).
- (3) "Contractor" is defined in ORS 701.119.4.
- (4) "Department" means the Oregon Department of Energy.
- (5) "Director" means the director of the Oregon Department of Energy.
- (6) "Eligible entities" means those parties that meet with the general provisions of ORS 470.060.
- (7) "Energy savings projection" is defined in ORS 470.050 (13).
- (8) "Estimated economic benefit" means the amount by which the average estimated monthly energy savings of a project exceed the project repayment costs.
- (9) "Financial Manager" is a financial manager as described in ORS 470.590
- (10) "Measure" means the building shell and energy efficiency equipment improvements via materials and products that reduce energy use by an existing building.
- (11) "Nontraditional technology" means technology applicable to renewable energy sources (such as, biomass, geothermal, solar, wave, and wind), smart grid, and alternative fuels.
- (12) "Optional package" has the meaning given that term in ORS 470.050(21).
- (13) "PPFA" means the Public Purpose Fund Administrator as defined in ORS 470.050(23).
- (14) "Program", "EEAST" or "EEAST program" means the energy efficiency and sustainable technology loan program.
- (15) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.
- (16) "Sustainable energy project manager" means a sustainable energy project manager as defined in ORS 470.050 (30).
- (17) "Property" means the property benefited by a project.

(18) "Territory" or "sustainable energy territory" means the geographic service area that a sustainable energy project manager serves.

(19) "Useful life" means the number of years that a project or project component will likely function without major repair or replacement.

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Sustainable Energy Project Managers

(1) The PPFA shall be the sustainable energy project manager for the investor-owned electric utility service territory, and shall be the acting sustainable energy project manager in any other territory that is not served by an existing sustainable energy project manager. The PPFA and consumer-owned utilities are not subject to the requirements of this section.

(2) Entities may apply to be the sustainable energy project manager for a territory: where the 5-year term of the sustainable energy project manager for that territory is within 1 year of expiry; or where the PPFA is the acting sustainable energy project manager.

(3) Each entity applying to be a sustainable energy project manager shall submit to the director the following:

(a) Completed application on a form approved by the director,

(b) Proof of its status as a city, county, metropolitan service district, local government, nonprofit, for-profit, tribal or state entity;

(c) Boundaries that are consistent with the parameters established in ORS 330-112-0030 for the sustainable energy territory of the proposed sustainable energy project manager;

(d) A proposed business plan that demonstrates how the entity will provide the following services for the program within the proposed sustainable energy territory:

(A) Promotion and outreach;

(B) Technical support;

(C) Financial support including loan applicant support;

(D) Project installation verification;

(E) Monitoring of program effectiveness of energy efficiency and sustainable technology loans;

(F) Cooperation and coordination of outreach and promotional efforts with local utilities and other stakeholders;

(G) Coordination with gas utilities regarding any changes to a gas pipeline or the installation of appliances used for space heating, water heating and compressed natural gas refueling;

(H) Coordination with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure;

(I) Referral of applicants with household incomes that may qualify them for a weatherization program to the Housing and Community Services Department;

(J) Reporting of information on a monthly basis regarding:

(i) the total amount of energy efficiency and sustainable technology loans issued;

(ii) the types of projects being funded by the loans;

(iii) the characteristics of the loan recipients; and

(iv) the number of applications denied, and the reasons for denial;

(K) Maintenance of records that document the receipt and disbursement of funds provided through the program;

(L) Maintenance of records that document both approved and denied applications for loans; and

(M) Development of the underwriting criteria used to determine loan eligibility.

(e) A detailed breakdown of the cost of implementation of its business plan, in particular the elements of its business plan listed in OAR 330-112-0020(3) (d) (A) through (D); and

(f) Background information about the applicant including, but not limited to, the qualifications, relevant experience, financial status and staff of the applicant.

(4) When reviewing an applicant, the director may consider:

(a) The organizational experience of the applicant and the capacity of the applicant to successfully implement the energy efficiency and sustainable technology loan program goals and requirements;

(b) The strength of the applicant's proposed plan for implementing the goals and requirements of the energy efficiency and sustainable technology loan program;

(c) The cost at which the applicant can conduct outreach, promotion, loan applicant support and project verification services necessary to implement the energy efficiency and sustainable technology loan program;

(d) Any fiduciary or other obligation of the applicant that creates an actual or apparent conflict of interest that may interfere with achieving the goals of the energy efficiency and sustainable technology loan program; and

(e) The approval of the utility or utilities within whose service territory the applicant is requesting certification.

(5) The director may negotiate any feature of the applicant's proposed plan, or place such conditions on the certification, as necessary to ensure that the applicant will meet the goals and requirements of the energy efficiency and sustainable technology loan program.

(6) The director will notify an applicant in writing within no more than 90 days from the day the completed application was received as to whether or not the applicant is awarded the sustainable energy project manager position.

(7) The Department may request verification that a sustainable energy project manager continues to meet the required qualifications and provide the required services at any time.

(8) The director may terminate the certification of a sustainable energy project manager for:

(a) Failure to adequately implement an applicable energy efficiency and sustainable technology loan program plan;

(b) Noncompliance with the regulatory requirements established in OAR 330-112 or the statutory requirements of the energy efficiency and sustainable technology loan program established in the Act;

(c) Failure to meet any sustainable energy project manager criteria established by the director; or

(d) Failure to perform other certification conditions. If the director terminates the certification of a sustainable energy project manager, the PPFA shall become acting sustainable energy project manager.

- (9) The Department shall monitor reports to determine compliance with program requirements, monitor fiscal patterns and chart program progress. The Department may conduct a review of a sustainable energy project manager, and this may include, but not be limited to, a review of:
- (a) Financial records of the sustainable energy project manager;
 - (b) Loan files;
 - (c) Work completed by the sustainable energy project manager, including training and technical assistance provided;
 - (d) Post-installation inspections conducted by the sustainable energy project manager.

(10) Pilot program sustainable energy project managers in consumer-owned utility service areas shall provide information to the director, in a form approved by the director, to meet the requirements of the Energy Efficiency and Sustainable Technology Act of 2009.

330-112-0030

Sustainable Energy Territories

- (1) The boundaries for sustainable energy territories shall comply with ORS 470.530(3) (a), (b), and (c) and ORS 470.555
- (2) Territory boundaries may be set by the director as necessary to accomplish the goals of the program.

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Form of Loan Assistance

- (1) The Department may make loans to eligible entities under the terms of written commitments.
- (2) Loans shall be made with proceeds from bonds issued pursuant to ORS 470.610 or other available funds obtained by the Department. The Department may establish such fees, charges, premiums, interest rates, and repayment terms, as the Department considers appropriate or necessary to provide sufficient funds to:
 - (a) Pay for the cost of borrowing through bond issuance; and
 - (b) Carry out the EEAST program;

Further, the Department may include in the loan documentation such covenants, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of loan provided, and such other provisions as the Department considers appropriate or necessary, to provide sufficient safeguards to protect the financial interest of the state.

- (4) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve the program's goals as defined in ORS 470.500.

330-112-0050

Loan evaluation, processing and collection

(1) Projects and EEAST loans may be processed through a sustainable energy project manager. The PPFA and consumer-owned utilities that participate in the EEAST program will be the initial sustainable energy project managers within their territories.

(2) The Department may make loans to entities that will use the funds to provide EEAST loans.

(3) The Department or sustainable energy project manager will review all applications of eligible entities. An applicant shall submit such documentation as the Department or sustainable energy project manager may require to determine whether a loan should be approved. If any items requested by the Department or sustainable energy project manager are not received within fourteen days from the date of the request, the loan application may be denied. If a loan application is denied and an applicant chooses to re-apply, the applicant must submit a new application and again pay any applicable fees and charges.

(4) The Director or sustainable energy project manager may deny a loan to any applicant that restricts membership, sales, or services on the basis of any of the protected classes listed in ORS 659A.003.

(5) The final maturity of a loan shall not exceed the lesser of (a) 20 years from the date of its making, and (b) the dollar-weighted average of the useful life of the project components.

(6) The director may limit the term and amount of any loan. The director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds and the Department.

(7) All EEAST loans made by the Department or sustainable energy project managers shall comply with the requirements of ORS 470.060; 470.065; 470.070; 470.080; 470.090; 470.100; 470.120; 470.150; 470.155; 470.170; 470.190; 470.200; and 470.210, to the extent not contrary to the requirements of the Act.

330-112-0060

Certification Standards for Contractors

These standards apply to contractors participating in the construction of projects financed through the program, but not including home energy savings projections. Contractors must obtain certification under ORS 701.119 from the Construction Contractors Board to participate. To obtain certification the contractor must:

(1) Prove that the contractor has sufficient skill to ensure that the contractor can successfully install energy efficiency, renewable energy or weatherization projects with a high degree of quality and customer satisfaction, such skills to be demonstrated by one of the following:

- (a) Oregon Home Performance certified through the ENERGY STAR Building Performance Institute (BPI);
 - (b) Residential Energy Analyst Program (REAP) certified through the Oregon Energy Coordinators Association; or
 - (c) Completion by its employees of training based on the curriculum developed by an accredited organization to meet the United States Department of Energy standards and any additional specifications and standards designated by the Department and PPFAs.
- (2) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.
- (3) Be an equal opportunity employer or small business or be a minority or women business enterprise or disadvantaged business enterprise as those terms are defined in ORS 200.005.
- (4) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.
- (5) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.
- (6) Demonstrate a history of compliance with federal and state wage and hour laws.
- (7) Pay wages to employees used for projects at a rate equal to at least 180 percent of the state minimum wage.
- (8) Pay wages to employees used for commercial structures at the prevailing wage rate for each trade or occupation employed.

Certified contractors that provide the Department proof that they provide employees with health insurance benefits shall be identified as preferred service providers by the Department. This information must be provided annually on the anniversary of certification by the Construction Contractors Board.

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Standards for Contractors during Pilot Programs

Contractors without certification may work on projects under pilot programs if no certified contractor is available, and the PPFAs or sustainable energy project manager has approved the contractor. The contractor must pay wages to employees used for pilot projects at a rate equal to at least 180 percent of the state minimum wage or, if the project is for a commercial structure or is subject to prevailing wage laws, the prevailing wage for each trade or occupation employed.

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Energy Savings Projections

Proposed measures shall be ranked in order of energy cost savings per dollar of measure cost before incentives, with less effective measures including in their energy savings calculations any reductions in energy use available from more effective measures.

The estimated costs and energy savings calculations for each measure in the energy savings projections shall clearly and separately note all eligible rebates, tax credits or other incentives for the measure.

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Base Efficiency Package and Optional Packages Content

(1) The base efficiency package and any recommended optional packages for a property shall be compiled from the results of an energy savings projection as defined in ORS 470.050 (3); 470.050 (13)].

(2) All energy savings projection evaluations shall meet with the provisions of ORS 470.635

(3) A package that does not during its useful life produce anticipated energy savings of at least 25 percent of the cost of the package is not eligible for a loan under this program; but this restriction does not apply to nontraditional technologies approved by the Department.

(4) The base efficiency package for a residential dwelling served by a single meter shall include an insulation package in accordance with installation standards to at least the following, as applicable:

(a) Building Envelope

(A) Attic/Ceiling: insulate to R-38;

(B) Floor: if currently R-11 or less, insulate to R-30 or full cavity thickness;

(C) Wall: if currently R-4 or less, insulate to R-11 or fill wall cavity; and

(D) Air Leakage: whole-house air sealing measures in accordance with installation standards.

(5) Any measure identified in an energy savings projection that produces energy savings equal to 95 percent or more of the loan payment amount for that measure may also be included in the base efficiency package if there are sufficient loan offset grant funds available to offset measure costs to the point where energy savings and loan costs for the base efficiency package are equal.

(6) All base efficiency package measures, if any, shall be included in the project before a project may include any optional packages.

(7) Optional package measures may be added to a project in order of energy savings per dollar of measure cost. More efficient measures must be included in a project before less efficient measures can be considered.

(8) If determined necessary by the Department, the Department may conduct a review of a project completed and financed under these rules to ensure the installation meets all of the requirements under these rules and the project manager.

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Fees

Project Initiation Fee

The department hereby establishes the project initiation fee for all EEAST loans at three percent of the application loan amount.