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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DOE 5-2024

CHAPTER 330

DEPARTMENT OF ENERGY

FILED

08/23/2024 4:23 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Oregon Rental Home Heat Pump Program temporary rules for transferred funds to benefit tribal members

EFFECTIVE DATE: 08/26/2024 THROUGH 02/14/2025

AGENCY APPROVED DATE: 08/16/2024

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NEED FOR THE RULE(S):

The Oregon Rental Home Heat Pump Program (ORHHPP) provides incentives for property owners to install heat pumps in rented dwellings. The Community Heat Pump Deployment Program (CHPDP) allocates grant moneys to each of the 11 economic development districts (regions) in Oregon and the nine federally recognized Indian tribes (hereafter "Tribes") in Oregon for an eligible entity to provide incentives to homeowners who wish to install a heat pump at their home. An eligible entity may be selected to serve as an administrator for each tribe or region. For some Tribes, an eligible entity did not apply to administer the grant, leaving the moneys allocated unable to be accessed through CHPDP. In February 2024, Senate Bill 1525 outlined the transfer of unallocated grant moneys from CHPDP to ORHHPP to allow for the use of the moneys in rental properties occupied by members of Tribes and regions to whom the moneys were originally allocated. Grant funds not awarded as a grant by July 1, 2024, shall be transferred. As of July 1, 2024, all regions have been awarded a grant, so moneys are only being transferred for Tribes. For this reason, the temporary rulemaking is limited to Tribes without an administrator. Authority to adopt the rules to implement the program comes from Oregon Laws 2022, Chapter 86.

Rule amendments are needed to facilitate access to the incentives that will benefit tribal members and to outline how tribal membership will be verified, as these provisions do not currently exist in ORHHPP rules. The temporary amendment to the rules for ORHHPP would specify requirements for providing rebates to install heat pumps in rental housing occupied by members of Tribes in Oregon that did not have an administrator under CHPDP. It is essential that moneys that were allocated for each Tribe in Oregon under CHPDP remain allocated to each Tribe under ORHHPP. The temporary amendment will specify that the moneys that are transferred from CHPDP, and allocated for each Tribe that did not establish an incentive program through CHPDP, will remain allocated for rental housing where members of those specific Tribes dwell. Additionally, in order to ensure that funding allocated to each federally recognized Indian tribe is awarded to property owners that rent or provide affordable housing to tribal members of those Tribes, rules are needed to delineate how tribal membership will be verified. The temporary amendment outlines the ways that tribal membership may be verified, which will allow Oregon Department of Energy to ensure that the funding benefits members of Tribes, as intended.

Rules are further needed to allow tribal members to qualify for rebates for low- or moderate-income tenants under the program. One method the current program rules use to qualify tenants as low- or moderate-income is to require proof of household eligibility through enrollment in one of the programs administered by Oregon Housing and Community Services (OHCS), Oregon Health Authority (OHA), or Oregon Department of Human Services (ODHS) listed under Oregon Administrative Rule (OAR) 330-280-0070(b). Though tribal members are eligible for these programs, some of the programs, such as Temporary Assistance for Needy Families (TANF) are administered by the federally recognized Indian tribe for their members, not by Oregon Department of Human Services. The temporary rule amendment will add that a program could be administered by a Tribe or a Tribally Designated Housing Entity (TDHE). Not all tribal members who are experiencing low- or moderate-incomes may be participating in those programs. Tribes and TDHEs verify the income of tribal members that they provide assistance to, most of which have criteria equal to, or stricter than, those required by ORHHPP, typically 80% of National Median Income or Area Median Income. A rule amendment is needed to allow Tribes or TDHEs to attest that tribal members qualify as experiencing low- or moderate-income. This addition will allow tribal members who are experiencing low- or moderate-incomes and receive assistance through programs not listed in OAR 330-280-0070(b) to qualify as low- or moderate-income for higher incentive levels in ORHHPP. The temporary rule amendment will also enable access to rebates for low- or moderate-income tenants for affordable housing providers.

Rule amendments are needed to allow for the provision of rebates to install heat pumps in affordable rental housing owned or operated by Tribes in Oregon or by TDHEs. Tribes and TDHEs do not qualify as affordable housing providers under the current administrative rules. The current rules require affordable housing providers to prove that they are qualified based on participation in at least one of the programs administered by OHCS. Tribes and TDHEs are not eligible to participate in OHCS programs, though both types of entities serve as affordable housing providers and provide rental assistance to tribal members through federal funding sources and other grant programs. All federally recognized Indian tribes in Oregon are eligible for the U.S. Department of Housing and Urban Development Indian Housing Block Grant (IHBG). This block grant allows for the provision of affordable housing and rental assistance to tribal members. The temporary rule amendment allows for Tribes and TDHEs to qualify as an affordable housing provider based on receiving funding through IHBG, which will allow Tribes and TDHEs to access incentives to install heat pumps in housing that they own or operate and rent to tribal members. This addition will allow for Tribes and TDHEs to access both the moneys specifically allocated to them through this fund transfer as well as funding reserved for low- or moderate-income households and affordable housing providers that is available in the general pool of ORHHPP funds.

JUSTIFICATION OF TEMPORARY FILING:

Failure to immediately adopt temporary rules will result in serious prejudice against tribal members, as they will continue to be unable to access funding that is allocated for them. Due to a lack of administrator for some Tribes, the funding has been unavailable through CHPDP to those tribal members. If temporary rules are not adopted, it will continue to be unavailable through ORHHPP, even after the fund transfer, due to existing rules not accounting for the requirement to allocate the funds to specific Tribes and their tribal members. It is particularly important that temporary rules are adopted so that funding is available for rental housing in which tribal members reside as we enter the summer months and hottest part of the year, when the need for cooling systems is at its highest. Waiting for permanent rules to be implemented will result in funding not being accessible until the summer is over, or longer, by which time the state will have already experienced extreme heat.

If the temporary rules are not adopted, ORHHPP will also continue to be inaccessible to Tribes and TDHEs that provide affordable housing and rental assistance programs to their tribal members. Temporary rules are needed to specify that Tribes and TDHEs qualify as affordable housing and rental assistance providers. As the affordable housing and rental assistance provided by Tribes is available only to tribal members, failure to adopt these rules directly results in prejudice

against the tribal members living in tribally owned or operated affordable housing.

If temporary rules are not adopted, low- or moderate-income tenants who are tribal members will continue to face barriers to proving eligibility for higher program incentive levels. Though property owners who rent to tribal members are currently eligible for non-income restricted ORHHPP funds, the lower incentive level can result in cost-prohibitive up front costs that can deter property owners from paying to install a heat pump in their rental property, leaving the tribal members without cooling for another heat season. ORHHPP has been in effect for 10 months and ODOE is unaware of any dwellings where it is known that the renter is a member of a federally recognized Indian tribe. Program staff are aware of a small number of instances where a property owner applied for a higher rebate on behalf of a low-income renter who is a tribal member. Based on the income documentation submitted, the tribal member(s) would have qualified as low- or moderate-income but were unable to provide the specific documentation required under current administrative rules. The property owners were unable to receive incentives reserved for low- or moderate-income households and as a result, heat pumps were not installed in those units. For these reasons, failure to adopt temporary rules will result in continued prejudice against Tribes and tribal members.

Adopting temporary rules will allow for tribal members who live in rental units to have access to heat pumps during the time of the year when they are most needed, rather than requiring them to wait until permanent rules are approved. The temporary rules will allow for property owners who rent to tribal members, including Tribes and TDHEs, to access funding that has been specifically allocated for tribal members and that has been inaccessible up to this point. The temporary rules will also ease the burden on and provide additional avenues of access for property owners to provide proof that tribal members qualify for higher incentive levels due to experiencing low- or moderate-income. Adopting temporary rules will ultimately allow for heat pumps to be installed in units that tribal members live in at the time of the year when they are most essential.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 1525

<https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/SB1525/Enrolled>

Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

<https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1536/Enrolled>

Oregon Revised Statutes 469.040

https://www.oregonlegislature.gov/bills_laws/ors/ors469.html

HOUSING IMPACT STATEMENT:

As required under ORS 183.530 and 183.534, the Department has considered the potential impact of these rules and believes these rules will cause no impact to the following costs for developing a typical 1,200 square foot detached single family dwelling on a 6,000 square foot parcel of land: (1) materials and labor costs (2) administrative construction or other costs (3) land costs, or (4) other costs.

RULES:

330-280-0070, 330-280-0140

AMEND: 330-280-0070

RULE SUMMARY: The rule amendments expand the eligibility criteria for incentives for low- and moderate-income tribal members.

CHANGES TO RULE:

330-280-0070

Low- or Moderate-Income Eligibility

(1) In order to qualify for a rebate offered under the program for low- or moderate-income tenants, the owner of the dwelling where the installation will be located must provide proof of eligibility. Proof of eligibility shall be provided in at least one of the following ways:¶¶

(a) The owner provides the Department with a U.S. Internal Revenue Service or Oregon Department of Revenue tax transcript for each tax filer residing at the dwelling where the heat pump shall be installed. A tax transcript must be for the most recent tax filing year immediately preceding the current year, or the transcript for the year prior if the tax return for the most recent tax filing year has not yet been filed. A transcript must also demonstrate the household adjusted gross income is less than or equal to 100 percent of state median income adjusted for the applicable household size.¶¶

(b) The owner provides the Department an eligibility notice for the household residing at the dwelling where the heat pump shall be installed that a member of the household has received in the past seven months for one of the following Oregon Department of Human Services, Oregon Health Authority, or Oregon Housing and Community Services programs or for one of the following programs administered by a federally recognized Indian tribe or Tribally Designated Housing Authority:¶¶

(A) Supplemental Nutrition Assistance Program (SNAP).¶¶

(B) Oregon Health Plan (OHP) (Medicaid).¶¶

(C) Children's Health Insurance Program (CHIP).¶¶

(D) Temporary Assistance for Needy Families (TANF)¶¶

(E) Low Income Home Energy Assistance Program (LIHEAP)¶¶

(F) Oregon Energy Assistance Program (OEAP)¶¶

(G) Low Income Weatherization Assistance Program¶¶

(c) The owner provides proof they are currently qualified under one or more of the following programs administered by Oregon Housing and Community Services at the rental housing where the heat pump shall be installed:¶¶

(A) A housing capital funding offering issued through a Notice of Funding Availability;¶¶

(B) Low Income Housing Tax Credits;¶¶

(C) Oregon Multifamily Energy Program;¶¶

(D) Conduit/Pass-Through Revenue Bond Financing Program;¶¶

(E) Local Innovation and Fast Track Housing Program;¶¶

(F) Loan Guarantee Program and General Guarantee Program; or¶¶

(G) Oregon Rural Rehabilitation Loan Program.¶¶

(d) The owner provides the Department proof they are participating in the Housing Choice Voucher Program (Section 8) at the dwelling the heat pump shall be installed.¶¶

(e) The owner provides the Department proof that either:¶¶

(A) They provide activities and services funded by the United States Department of Housing and Urban Development Indian Housing Block Grant at the rental housing where the heat pump shall be installed; or¶¶

(B) The rental housing where the heat pump shall be installed was constructed using funds from the United States Department of Housing and Urban Development Indian Housing Block Grant.¶¶

(f) The owner provides the Department a certification, issued in the past 12 months, that a tribal member residing at the dwelling where the heat pump shall be installed is qualified as low- or moderate-income, as attested to by a federally recognized Indian tribe.¶¶

(2) The Department will provide low- or moderate-income eligibility certification forms to contractors. For each installation where the customer claims eligibility for the rebate rate for low- or moderate-income tenants, all legal owners of the dwelling or their representative must sign the form certifying that the information is accurate. The contractor must submit a scanned copy of the form and accompanying documentation to the Department as part of the reservation application.

Statutory/Other Authority: Oregon Laws 2022, Chapter 86 (Senate Bill 1536), ORS 469.040

Statutes/Other Implemented: Oregon Laws 2022, Chapter 86 (Senate Bill 1536)

ADOPT: 330-280-0140

RULE SUMMARY: The rule outlines the allocation of funds transferred from the Community Heat Pump Deployment Program to the Oregon Rental Home Heat Pump Program, as well as the ways that tribal membership may be verified in order to ensure that those benefitting from each Tribe's funding allocation is a member of that Tribe.

CHANGES TO RULE:

330-280-0140

Funding Transferred from the Community Heat Pump Deployment Program

(1) Funds transferred from the Community Heat Pump Deployment Program to the Oregon Rental Home Heat Pump Program under Senate Bill 1525 shall be used in the provision of grants and rebates under the Oregon Administrative Rules Chapter 330 Division 280 and associated administrative costs and expenses. A rebate for the purchase and installation of a heat pump and grant for upgrades to facilitate the installation of the heat pump, financed by these transferred funds shall be provided to an eligible dwelling that is occupied by a member of a federally recognized Indian tribe in Oregon for which no eligible entity has been awarded a grant under ORS 469B.460. ¶

(2) Each tribe must have the same amount of funding allocated for that tribe under the Oregon Rental Home Heat Pump Program as was allocated for that tribe under the Community Heat Pump Deployment Program.¶

(3) In order to qualify for a rebate funded by moneys allocated for eligible dwellings occupied by a member of a specific federally recognized Indian tribe in Oregon, the owner of the dwelling where the installation will be located must provide proof of the tenant's tribal membership to the Department. Proof of tribal membership shall be provided in at least one of the following ways:¶

(a) A Tribal Enrollment Card;¶

(b) A letter from a tribal enrollment officer;¶

(c) A Bureau of Indian Affairs (BIA) Certificate of Degree of Indian or Alaska Native Blood (CDIB); or¶

(d) Verified documentation of eligibility for the Indian Health Service as an American Indian or Alaska Native.

Statutory/Other Authority: Oregon Laws 2022, Chapter 86 (Senate Bill 1536), ORS 469.040

Statutes/Other Implemented: Senate Bill 1525 (2024), Oregon Laws 2022, Chapter 86 (Senate Bill 1536)