

Oregon Rental Home Heat Pump Program

2023 Administrative Rulemaking



Hearing Officer Report

Date: April 28, 2023
To: Oregon Department of Energy
From: James Cogle, Rulemaking Coordinator
Subject: Hearing Officer's Report on Rulemaking Hearing
Hearing Date: January 5, 2023
Hearing Location: Online

Rule Filing Caption: Rebate and grant program for the purchase and installation of heat pumps in rental homes.

The rulemaking hearing on the proposed rules was convened at 3:07 p.m. on January 5, 2023. Sixteen members of the public attended along with 11 Oregon Department of Energy staff, including the hearing officer. People were asked to state their names, affiliations, and whether they wished to comment on the proposed rules. They were informed of the procedures for taking comments. They also were told that the hearing was being recorded.

Before receiving comment, James Cogle briefly summarized the proposed rules.

Summary of Oral Public Comments

The following is a summary of the testimony received during the hearing, it is not an exact transcription.

David Harris, Springfield Utility Board: Include something to the effect of requiring by rule that the Oregon Department of Energy and/or the contractor notify the appropriate electric utility of each individual heat pump installation address within their service territory, no later than three business days after the installation.

Jeremy Anderson, Total Comfort Weatherization, Ltd: Clarify whether rental tenancy would address situations like rental ADUs, vacation rentals, rooms rented within an existing occupied structure, that type of thing. To provide clarity on which properties would be allowed and which are not.

Under rebate amount, it appears that the contractor may be required to provide an estimate for the amount of tax credits that a customer may receive. Contractors are not competent to provide that, either from finding out what they may be eligible for, or what they could actually use. So, I would like to have that removed, or at least have a note that the contractor would not be responsible for getting that wrong.

This is perhaps one of the most important things and relates to the low- or moderate-income eligibility. We need to have a way for rental home owners or tenants to be able to submit their income qualifications directly to the department, or at least not have contractors involved. Contractors need to not be handling people's tax records. Alternatively, use self-certification of income as used in the Energy Trust savings within reach program. This has been used for quite a number of years and has worked out very well. It removes the liability of contractors handling other people's tax records while allowing us to cleanly and easily handle their paperwork for them.

The last kind of major concern we have under the rebate and grant request is that it looks like these contractors would be required to calculate energy savings. These are very complicated and probably in many ways impossible to accomplish. Ideally, we would have this requirement removed, otherwise we need very clear instructions on exactly what methodology you would like us to use to calculate energy savings and hopefully that's something that won't be too onerous.

Thomas Elzinga, Central Electric Cooperative:

I would just like to echo what David said as far as notifying utilities. I don't have a specific timeframe, although I do think specifying within a certain timeframe is a good idea.

Written Comments

No written comments were submitted during the hearing.

Close of Hearing

The hearing was adjourned at 3:27 p.m. The public comment period closed at 5 p.m. on January 6, 2023.

Written Comments Submitted During Public Comment Period

The following is a record of the written comments submitted during the public comment period. Remarks relevant to the rule topic were extracted from each submission and included below.

Respondent	Detail
<p>Jeremy Anderson, Total Comfort Weatherization, Ltd</p>	<p>Should there be a requirement for existing condition to prevent unneeded heat pump installations? For example, should homes with existing heat pumps that are operational and less than 15 years old be ineligible?</p>
	<p>It would be good to clarify when/if non-typical rentals would qualify such as: ADUs, short term rental, vacation rentals, room rentals (such as garage conversions), etc.</p>
	<p>All of the efficiency ratings seem a bit low. Are they based on another benchmark/program?</p>
	<ul style="list-style-type: none"> • Should there be different incentive levels for different types of heat pumps (split vs unitary, air vs ground)? This seems to add unnecessary complication to the program and will tend to encourage one type vs another. Specifically, for most smaller rental and manufactured housing, ductless will be more efficient and cost-effective, so why should the Department promote ducted in its place? • If there need to be different incentives per heat pump type, please add a specific rebate amount for extended capacity heat pumps. These typically save much more energy than traditional ducted systems at a similar cost.
	<p>In (6), do tax credits count as “other incentives”? If so, they can be hard for an Owner/Contractor to calculate accurately.</p> <p>We continue to have concerns about, as contractors, being put in a position to determine what tax credits a project should get. For most rentals, it appears that the tax credits will not apply. However, for owner-occupied manufactured housing, most owners will probably qualify for a credit, but many will not have a high enough tax liability to claim the full amount. Therefore, even if we could determine what the tax credit eligibility should be (which we can’t, since the IRS won’t have the rules ready until after this program launches), we won’t know if the homeowner can actually use it.</p>
	<p>How should the Owner/Contractor provide ODOE with tax records, etc. for tenants without opening themselves to confidentiality and record-keeping liabilities? Can the tenants provide these directly (as is done in the SHOW program) or could there be a self-certification form (as is done in Savings within Reach)? The self-certification process seems to require the least program staff time and does not appear to be abused.</p>
	<p>The primary concern that we have with the online application system is that the landlord and/or tenant would need some way to upload their financial information (without the contractor) and then have that match up with the rest of the application that would be handled by the contractor. This sounds like it might be a bit of challenge for the software developers and would certainly be a significant time commitment for your program staff to handle the inevitable landlord/tenant phone calls. As a much more efficient alternative, would you be able to use a self-certification form similar to the one attached? Using such a form would allow the contractor to simply submit it as part of the rest of the application.</p>
<p>In (1)(d), what sizing calculations will be allowed? How should these be submitted? Will you use a different method for ducted vs ductless? This can potentially be simple, but it can also get to be very complicated, cumbersome, and redundant.</p>	

	<p>For the sizing calculations, we suggest either the tool that NEEA built (https://betterbuiltinw.com/hvac-sizing-tool) and/or the PTCS calculator (copy attached). The NEEA tool gives you more options, but the PTCS tool is quicker and has fewer opportunities for user error. In our experience, the both give very similar results. For either one, I'm not sure what print out you would want to have submitted with the application. It would also be important for the program to recognize that the most cost-effective way to install ductless in many homes is to displace the bulk of the heat load from the existing heat source rather than replace it entirely. Therefore, the new ductless may look slightly undersized on a heat load calc sheet. Conversely, some homeowners may want to add additional ductless heads (for example in a master bedroom, or an upstairs of an older story-and-a-half house) that would require the equipment to be oversized.</p> <p>In (1)(e), what method should be used to calculate energy savings? This can get very complicated.</p> <p>We don't have any idea how to reasonably estimate the energy savings in an inexpensive or reliable way on a per-project basis. Unless you know of a better way, it would be best just to use a deemed savings number from BPA/RTF or the ETO. It might not be very accurate for any given project, but on average is probably better than any other method.</p> <p>In (1)(h), will a customer-signed invoice work?</p>
Lori Bailey	<p>I would like to see your program make a distinction between the larger corporate owned (hedge funds) homes/apartments and the mom and pop landlords. Similar to other state bills this program should provide better funding to those landlords who own 4 or fewer homes. The mom and pop landlords need help more, as we can't absorb this cost. Further your program needs to take into account those landlords who have rentals under the rent control, because we can't increase the rents, beyond what is allowed, to help offset the cost.</p> <p>In order for us to install these heat pumps in our rental homes we would need to have our out-of-pocket costs be around \$2000. Even at that, it would take a few years to pay the thousands of dollars for the installation with the rent increase allowed by law. I've been told by my heating contractor that Oregon is going to require landlords to have A/C in all rental units. If that's the case Oregon needs to make it affordable for us to do so.</p> <p>In closing, between the grant and rebate program, mom and pop landlords, especially those of us under rent control restrictions, should be able to install heat pump in our rentals for no more than \$2000. That's assuming the home is between 1000 sq ft and 1500 sq ft.</p>
Tim Davis, Washington County	<p>Consider minimum device requirements starting with 330-270-0040- (6). The rule (4) does not meet minimum requirements for utility incentives, whereas (6) does. For example, the requirements in this rule (6) meet utility requirements for incentives for ductless heat pumps of minimum of \$500, more often \$800, and additional incentives (up to \$1000) for households under 200% of the federal poverty level or under 80% of the median family income for the area.</p>

	<p>Consider providing a chart/template for 330-270-0050. One example is to prioritize households with systems that do not have air filtration (electric baseboard heat) slightly over households with similar qualifiers that have air filtration systems (electric furnace).</p> <p>And consider additional vetting for households that may be prioritizing other needs, such as food, medicine, healthcare and childcare, etc., over utility bill payments, and may be offsetting energy costs with wood heat and sourcing the wood for free. Households like these, using alternative means of heating, may be causing a perception that the energy burden is less than the 6% threshold. Calculations of household energy burden should include these alternative heating sources and the associated costs.</p>
<p>Benedikt Springer, CAPO</p>	<p>We appreciate eligibility through SNAP, OHP, and CHIP. This will make it much easier for low-income households to qualify. However, not all low- to moderate-income households will be able to avail themselves of this possibility. In fact, moderate-income individuals above 200% of FPL but below 100% of state median income won't qualify for these programs. Other low-income households might not participate in these programs for other reasons, or not have documentation available. Unfortunately, providing tax returns is not an option for everyone. 18% of US households do not file income tax returns. Others might not be able to locate their documents. For these reasons, we propose a more comprehensive set of qualification rules:</p> <p>Replace: 330-280-0070 (1) (a) If the owner provides the Department documentation that the qualifying tenant has household income less than or equal to 100 percent of state median income adjusted for household size. Acceptable documentation is limited to:</p> <ul style="list-style-type: none"> (A) A U.S. Internal Revenue Service or Oregon Department of Revenue tax transcript for each tax filer residing at the household 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. (B) Paystubs for all members of the household for one year or three months; (C) Social Security Benefits Administration or retirement award letters for all members of the household; (D) Bank Statements for all members of the household for one year or three months with income highlighted; or (E) A declaration of zero income for all members of the household. <p>(b) If the owner provides the Department an eligibility notice for the household that has been received in the past twelve months for a federal or state means-tested assistance programs, including:</p> <ul style="list-style-type: none"> (A) Supplemental Nutrition Assistance Program (SNAP); (B) Oregon Health Plan (OHP) (Medicaid); (C) Children's Health Insurance Program (CHIP; this option is available only for households consisting of six or fewer people); (D) Temporary Assistance For Needy Families (TANF); (E) Low-Income Home Energy Assistance Program (LIHEAP); or (F) Section 8 Housing Voucher. <p>Even if these recommended changes are not made, we suggest ODEO clarify the definition of income taken from a tax return. As it reads, it is unclear whether gross income, adjusted gross income, or net income is used. Furthermore, does income</p>

	<p>only include compensation for work or also income from capital gains? We don't have a strong preference here but suggest this be clarified.</p>
	<p>Not every tenant will feel comfortable handing over personal documents, like tax returns or eligibility notices, to landlords. This is normal and understandable. ODOE should offer an optional private process, where a third party confirms eligibility. This could easily be implemented through the reservation rebate system. After a contractor applies for a low- or moderate-income rebate, the tenant would have the ability to upload income documentation as an attachment to the application. After ODOE has confirmed the document, the contractor could be notified that the application has been approved.</p>
	<p>Add 330-280-0070 (3) To protect the privacy of low- and moderate-income tenants, the Department shall offer such tenants the option to upload the eligibility certification form and accompanying documentation directly to the Department as attachments to the application, allowing them to bypass landlord and contractor. The eligibility certification form shall clearly state and explain this option.</p>
	<p>There are good reasons to reserve rebates for low- and moderate-income tenants. Landlords in this segment have the least incentive and the least financial resources to make building upgrades. At the same time, those tenants have the least ability to find relief during extreme heat events. They might not be able to afford buying a portable AC unit, operating it, or staying at a hotel. Therefore, we applaud both, higher incentives for owners of low- and moderate-income housing, as well as reserving 50% of rebates for this population. However, unfortunately, the current allocation of funds language is too weak. Allowing unspent funds to become available to all applicants makes it likely that exactly that is what will happen. Instead of proceeding in that way, underspending on low- and moderate-income housing should make us pause and ask, how can we change the program design to help those households? It is likely that the situation could be remedied with more creative outreach efforts or changes in application processes. Hence, we suggest that unspent funds are not reallocated. Instead, the Department should use a fraction of the unspent funds to figure out how to get them to the right owners. Replace 330-280-0110 (3) If total funds spent and allocated for installations for affordable housing providers and owners of units occupied by households whose income is less than 80 percent of the area median income are less than those specified in OAR 330-280-0110(2) for that calendar year, the Department shall use some of the funds for program evaluation and improvement. The remaining funds will be made available to the applicants specified in OAR 330-280-0110(2) in the following year.</p>
	<p>Heat pumps are a relatively new technology that many people are unfamiliar with. Proper usage rules differ significantly from those of a baseboard heater or forced air furnace. If used improperly, heat pumps can generate skyrocketing electricity bills. It's therefore imperative that landlords/contractors properly educate and train tenants about usage. Add 330-280-0030 (1) (o): A contractor must educate the tenant about proper usage of the heat pump.</p>
	<p>The rules should ensure that some of the energy savings benefits from the installation of heat pumps accrue to renters. Landlords, who include energy costs in rent, should pass on some of the saving their tenants. At a minimum, we don't want landlords to be raising rents in response to the installation of a heat pump Add 330-280-0030 (1) (p): The dwelling owner must agree to:</p>

	<p>(A) Make reductions in rent to reflect in some equitable way the reductions achieved in fuel cost upgrades if tenants pay for energy as part of their rent; or (B) Not raise the rent because of the increased value of the dwelling unit due to the upgrades.</p> <p>In our view, compliance rules under 330-280-0120 are vague and insufficient. While most contractors are honest and hard-working, owners and renters need solid protection from home improvement scams, which have been rapidly increasing in numbers in recent years. Especially elderly and low-income homeowners have been preyed on. Furthermore, incorrectly installed or used heat pumps can lead to skyrocketing energy bills. Neither the owner, nor the contractor will experience those, leaving a potentially low-income tenant with unaffordable bills. Lastly, how do the rules prevent contractors from raising prices to absorb most of the benefits of the incentives? Given the current shortage in qualified contractors, and rising demand for their services, this is the equilibrium economic analysis would suggest. We do not propose specific rules here, but urge ODOE to adopt additional rules to address the following issues:</p> <ul style="list-style-type: none"> - Conduct a minimum amount of quality control inspections. For instance, the Energy Trust of Oregon does 10%. - Create a remedy for tenants who think their heat pump might have been installed incorrectly. For instance, tenants could be allowed to request an inspection if neither their landlord nor contractor is responsive to their concerns. - Clearly prohibit price inflation with the intent to absorb the rebates and conduct market analysis to find such behavior.
<p>Brooke Brownlee, PGE</p>	<p>We encourage the prioritization of funds to support those populations who would benefit the most from more energy efficient heating and cooling systems, therefore reducing their overall energy bills.</p> <p>We also want to note one area that we recommend the agency continue to explore. We understand the program structure was modeled after the solar rebate program, but because many customers and contractors are still familiarizing themselves with newer heat pump technologies, we want to ensure the program is set up for maximum success. In particular, we recommend the agency explore further work that can be done to support contractors through the Oregon Rental Home Heat Pump Program to ensure their success with the administrative components of this program. We recognize the agency has to operate within the parameters of the legislation, but potential solutions could include examining statutory changes during the 2023 legislative session or through a future rulemaking. There may also be opportunities to establish a list of preferred contractors to support the rollout of this program.</p>
<p>Scott Leonard, ETO</p>	<ul style="list-style-type: none"> • Recommend reviewing the administrative process as administrative burden to contractors may be high, which can be especially burdensome on rural and/or small contractors. For example, could a program resource be available to help customers/contractors through the administrative process? • Recommend reviewing the income verification process as it could be challenging to verify renter income. • Observe that requiring contractors to provide heat load calculations could be challenging. • Regarding permits required for the application, recommend discussions with Tribes to ensure their permit application processes will meet the program rules.

	<ul style="list-style-type: none"> • Where do contractors determine energy savings assumptions? Are there set criteria for determining energy savings? Recommend leveraging proven and existing savings assumptions rather than individual contractors determining savings on each project.
	<ul style="list-style-type: none"> • Is there a way to know which utilities are serving the homes? If so, could this information be shared with Energy Trust for the purpose of monitoring energy savings activity, customer/contractor coordination and coordinating with impact evaluation projects?
	<ul style="list-style-type: none"> • Is the heat system existing condition known? If so, could this information be shared with Energy Trust for the purpose of understanding the impacts to utility systems and to coordinate with impact evaluation projects.
	<ul style="list-style-type: none"> • Do heat pump types change from reservation to installation?
	<ul style="list-style-type: none"> • What is the expected turnaround time for reservation approval?
	<ul style="list-style-type: none"> • What is the expected turnaround time for rebate payment?
	<ul style="list-style-type: none"> • Can duct sealing and repair be part of mechanical work covered by grant funding?
	<ul style="list-style-type: none"> • Does a space need to be previously conditioned, like an unconditioned basement, or is that considered similar to a garage?
	<ul style="list-style-type: none"> • Is this program solely considering heat pumps manufactured after January 1, 2023, per the use of HSPF2 and SEER2?
	<ul style="list-style-type: none"> • Can naturally occurring affordable housing sites qualify if not validated by one of the programs?
	<ul style="list-style-type: none"> • Is there a remedy or exception process if a contractor/entity installs a heat pump before reserving?
	<ul style="list-style-type: none"> • How are 15-day advance notice provided by the department before physical inspection. There could be delays in mail service in rural areas.
	<ul style="list-style-type: none"> • In some multifamily settings, maintenance staff and site operational teams may have skills to install qualifying systems but may lack some of the contractor eligibility requirements. Is contractor eligibility a necessary requirement or can there be exceptions like validation through preapprovals and post installation inspections?
	<ul style="list-style-type: none"> • Is there a cap/max amount for grants per project?
	<ul style="list-style-type: none"> • What happens if a customer refuses to sign off on the project after the work is completed? How does ODOE handle disputes and ultimately decide if the contractor will receive the rebate?
	<ul style="list-style-type: none"> • Consider alignment on income and rental status verification methods to streamline processes between ODOE and Energy Trust programs thus allowing contractors to submit similar documentation to each agency
	<ul style="list-style-type: none"> • Consider developing a pathway for Energy Trust contractors who are enrolled in special promotions (such as the manufactured home promotion) to expedite approval with ODOE.
	<ul style="list-style-type: none"> • Consider similar alignment on the DHPs-in-rentals promotion where ODOE incentives could further reduce owner’s out of pocket cost. Recommend alignment on 1:1 specification for open concept and small sq ft homes.
	<ul style="list-style-type: none"> • Energy Trust incentives are typically provided by contractors to their customers as an instant incentive, discounted on their invoice at the time of installation. Contractors then apply for reimbursement from Energy Trust. Payment typically takes 40-60 days from when the product is installed. With the addition of ODOE incentives, we anticipate that smaller contractors with less access to capital may

	<p>face financial challenges if more significant portions of their revenue are paid later as incentives.</p> <ul style="list-style-type: none"> • Collaborate with Energy Trust program outreach/training resources to support joint messages about ODOE and Energy Trust requirements, project submission pathways and points of contact. • Combining ODOE’s funds for manufactured homes with Energy Trust’s manufactured home heat pump offer could allow for more contractors to remain profitable while continuing to keep customer out of pocket costs low and attainable for income constrained customers living in manufactured homes. • Paying incentives based on a % of the total project cost could drive contractors to specify higher cost equipment or possibly increase costs unnecessarily so that customers can get the highest possible incentive. • Possible friction with contractors on requiring incentives be deducted from invoices. As mentioned above, if projects overlap with Energy Trust incentives and have the same “instant incentive” requirement, then contractors could be fronting a large portion of the total project cost. In some cases this could challenge business who have limited cash flow or limited access to capital. • Recommend requiring contractors perform a sizing calculation for the home and documenting the calculated heat load at their specified design temperature. Possibly use one of the regional sizing tools supported by BPA or NEEA https://betterbuiltnw.com/hvac-sizing-tool. Reporting heat load calculations on forms will allow the program to perform meaningful & efficient quality assurance if there are comfort or savings issues • Recommend requiring an AHRI match for equipment to ensure capacity ratings are identifiable and equipment can be warranted. • If the ducted heat pump is replacing an older heat pump the contractor should always replace old coil to ensure proper performance. • Recommend caution when setting higher HSPF equipment requirements because it could increase the overall project cost disproportionate to energy savings. In current market this could also create longer lead times for project installation due to manufacturing delays on variable speed units. <ul style="list-style-type: none"> • Consider using the NEEP database to find systems with a high COP at minimum capacity @ 47 degrees rather than basing performance on HSPF • Recommend requiring duct assessment and sealing on all projects (especially variable speed equipment and those that displace GFAF). <ul style="list-style-type: none"> • Poorly sealed ducts combined with variable speed HP and constant run time could lead to high energy use and poor performance. • This is a great opportunity for ODOE and Energy Trust to align on duct sealing services to compliment HVAC installation and encourage robust QA procedures. • Auxiliary heat lock out/commissioning could be different depending on system being replaced (gas vs electric) and variable speed vs single or double speed. • If allowing DHPs go to into homes with a gas forced air furnace or bulk fuels consider interactive effects and the challenge of disparate thermostats should those systems still operate as back up. • Fuel oil furnace homes may require duct addition or modification in order to support proper ducted heat pump performance. • Consider the de-commissioning cost or remediation of old oil tanks
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	<ul style="list-style-type: none"> • Recommend a 10% Quality Assurance inspection rate on projects <ul style="list-style-type: none"> • Consider remediation requirements on failures • Consider automated reporting tools to demonstrate system was installed according to manufacturer and program specifications. • Set a range of consequences for non-compliance depending on severity and frequency
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ODOE Evaluation of Comments

ODOE greatly appreciates the input that stakeholders have provided throughout the development of the rules. All comments received during the public comment period were considered during the process of finalizing the rules. While not all comments were ultimately adopted in the final rules, many will be considered during the next stages of the program’s implementation, including the development of program documents, the online application portal, and communications. Below, ODOE has provided a high-level evaluation of the comments received and how they were considered during the finalization of the rules.

Comments were received that related to the rebate offerings and the application process for contractors. As a result, ODOE simplified the rebate offerings available. The technical specification language was amended to accept both HSPF2 and SEER2 ratings and the equivalent HSPF and SEER ratings, expanding eligibility to older heat pumps that have the same efficiency. Clarification over the sizing calculation information required in the application was included in the rules. It was decided not to exclude properties based on the condition of their existing heating system, since there is no requirement in the program to replace the heating system. The heat pumps may be installed to complement existing systems. One commenter suggested making a distinction between larger, corporate landlords and landlords who own fewer properties. This is not something that was included in the Bill establishing the program and so was not included in the final rules. Some of the other comments relating to topics such as what energy savings methodology would be required will be addressed during implementation of the program.

Some commenters suggested areas where the requirements in the rules could be clarified. Following these comments, ODOE included details on what would be considered a residential tenancy under the program as well as clarifying the income type used when assessing the income level on tax transcripts in the low- or moderate-income eligibility requirements. Additional comments relating to demonstrating eligibility under the low- or moderate-income requirements were received. As a result, ODOE expanded the ways individuals could qualify. No change was made on how low- and moderate-income eligibility documentation would need to be submitted. Once the program is established, ODOE will evaluate whether there are any improvements that could be made to this process. There were a couple of comments related to the sharing of information with utilities. While this is not a requirement in the Bill language, ODOE is supportive of information sharing with utilities and will explore during the

implementation of the program what permissions and requirements would be necessary for this to occur.

A comment was received about additions to the program compliance rules. ODOE outlines the rules relating to program compliance in 330-280-0120, these include details of ODOE's inspection procedure. Section 19, Chapter 86 of the 2022 Oregon Laws also states ODOE may revoke or deny a contractor's eligibility to claim a rebate under the program if the contractor's performance does not meet industry standards. While no additions were made to this rule, ODOE will be receptive to complaints from the public when the program is operational.