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DIVISION 1

PROCEDURAL RULES

330-001-0000

Notification of Rulemaking Activities

Prior to the adoption, amendment, or repeal of any rule, the Department of Energy shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.

(2) By mailing a copy of the notice to persons on the Department of Energy's mailing list established pursuant to ORS 183.335(6).

(3) By mailing a copy of the notice to the following persons, organizations, or publications:

(a) United Press International and Associated Press;

- (b) Oregon Environmental Council;
 - (c) Western Environmental Trade Association;
 - (d) Oregonian, Oregon Journal, and all other daily newspapers in Oregon;
 - (e) Associated Oregon Industries;
 - (f) Associated General Contractors;
 - (g) AFL-CIO.
- Stat. Auth.: ORS 183
 Stats. Implemented: ORS 183
 Hist.: DOE 2, f. & ef. 10-21-75

330-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Department of Energy adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act as amended and effective January 1, 2008.

Stat. Auth.: ORS 183
 Stats. Implemented: ORS 183
 Hist.: DOE 1, f. 8-27-75, ef. 9-25-75; DOE 4-1978, f. & ef. 5-2-78; DOE 4-1980, f. & ef. 3-12-80; DOE 6-1981, f. & ef. 12-1-81; DOE 5-1988, f. & cert. ef. 8-18-88; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 2-2010, f. & cert. ef. 1-27-10

330-001-0015

Charges for Computer Information Requests

(1) The Department will provide, upon request, any or all of the public information in its computers. Information that is not public includes:

- (a) Trade secrets;
 - (b) Information given to the Department in confidence and which reasonably should be considered confidential;
 - (c) Any other information withheld from disclosure by law.
- (2) The Department will set reasonable fees for such service. Requests for service that require additional programming or new programming will not be granted unless or until the Department's own programming demands have been met.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469
 Hist.: DOE 2-1984, f. & ef. 1-25-84

330-001-0025

Public Records Request

(1) All public records of the Oregon Department of Energy are available for public inspection and copying at the Department during usual business hours, except for records that the Department has determined to be exempt or conditionally exempt from disclosure in accordance with ORS Chapter 192.410–191.505 and any other references establishing an exemption to disclosure of public records.

(2) A request to inspect or obtain copies of a public record or information from public records shall be made in writing or in person, and shall include:

- (a) The name, address and telephone number of the requester, except as considered unnecessary by the director;
- (b) An identification of the needed public record, or of the type and format of needed public record information, if known to the requester; and
- (c) The number of copies requested of the record, if copies are requested.

(3) A person who is receiving a copy of a public record or information from a public record shall pay for the department's actual cost for:

- (a) Staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requester;
- (b) Producing the copy or the information; and
- (c) Other supplies or services necessary to furnish the copy or information.

(4) In accordance with Chapter 192 the Director may reduce or waive payment of the fee for access of a public record if the director determines that the reduction or waiver is in the public interest including when the costs associated with collecting the fee would exceed the cost of producing the public record.

(5) The requester shall pay all fees for access of a public record in advance unless later payment is approved by the director.

(6) The director establishes fees and miscellaneous charges in agency policy, reviewed periodically, but not less than every three years, to insure all charges reflect no more than the actual cost of producing and processing.

Stat. Auth.: ORS 192.430 & 192.440
 Stats. Implemented: ORS 192.410 - 192.505
 Hist.: DOE 2-2010, f. & cert. ef. 1-27-10

DIVISION 7

CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

330-007-0200

Statement of Purpose and Statutory Authority

(1) Purpose. These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, contractor or volunteer in a position covered by OAR 330-007-0220(2)(a)–(g). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee or volunteer.

(2) Authority. These rules are authorized under ORS 181.534 and 469.055.

Stat. Auth.: ORS 181.534, 469.055.
 Stats. Implemented: ORS 181.534(9)
 Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0210

Definitions

As used in OAR chapter 330, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 330-007-0240 or a final fitness determination under 330-007-0260, an authorized designee has determined that the subject individual is fit to be an employee or volunteer in a position covered by 330-007-0220(2)(a)–(g).

(2) "Authorized Designee" means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Contact Person" means a person who is authorized by the Department to receive and process criminal records check request forms signed by subject individuals and is authorized to receive other criminal records information. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(4) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(5) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(6) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 330-007-0270.

(7) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 330, division 007.

(8) “Criminal Records Check” or “CRC” means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department’s request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department’s request (Nationwide Criminal Records Check).

(9) “Denied” means that, pursuant to a preliminary fitness determination under OAR 330-007-0240 or a final fitness determination under 330-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, contractor or volunteer in a position covered by 330-007-0220(2)(a)–(g).

(10) “Department” means the Oregon Department of Energy (ODOE) or any subdivision thereof.

(11) “False Statement” means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record, or

(b) Failed to provide to the Department information material to determining his or her criminal history.

(12) “Fitness Determination” means a determination made by an authorized designee pursuant to the process established in OAR 330-007-0240 (preliminary fitness determination) or 330-007-0260 (final fitness determination) that a subject individual is or is not fit to be a Department employee, contractor or volunteer in a position covered by 330-007-0220(2)(a)–(g).

(13) “Family Member” means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) “Subject Individual” means an individual identified in OAR 330-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0220

Subject Individual

“Subject Individual” means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Its employed or applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In the Hanford Nuclear Safety program;

(b) In which the person conducts energy audits in schools, colleges, universities or medical facilities;

(c) In the Budget and Finance section of the Department;

(d) That has personnel or human resource functions as one of the position’s primary responsibilities;

(e) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(f) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers or criminal background information; or

(g) In which the person has access to tax or financial information about individuals or business entities or processes tax credits.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0230

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual, if requested, shall complete and sign the ODOE Criminal Records Request form and, if requested by the Department, a fingerprint card. The Criminal Records Request Form shall require the following information: name, birth date, physical characteristics, driver’s license or identification card number, current address, prior residences, and any other information deemed necessary by the authorized designee. The ODOE Criminal Records Request form may also require details concerning any circumstance listed in OAR 330-007-0240(3)(a)–(f).

(b) A subject individual shall complete and submit to the Department the ODOE Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 330-007-0260(3)(d)(B).

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve any issues hindering the completion of a criminal records check.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:

(a) An individual meets the definition of “subject individual”;

or

(b) Required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee may request or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0240

Preliminary Fitness Determination

(1) An authorized designee or contact person may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) If an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the authorized designee or contact person shall make that preliminary fitness determination based on information disclosed by the subject individual under OAR 330-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee or contact person shall approve a subject individual as fit on a preliminary basis if the authorized designee or contact person has no reason to believe that the subject individual has made a false statement and the information available

to the authorized designee or contact person does not disclose that the subject individual:

(a) Has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 330-007-0270;

(b) Has been arrested for or charged with a crime listed under OAR 330-007-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 330-007-0270;

(d) Is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 330-007-0270;

(e) Has a deferred sentence or conditional discharge in connection with a crime listed under OAR 330-007-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 330-007-0270 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 330-007-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 330-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0250

Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee or contact person has approved the subject individual on the basis of a preliminary fitness determination under OAR 330-007-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 330-007-0260, may not appeal the termination under the process provided under 330-007-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 330-007-0260(3)(d), then the Department shall immediately terminate the subject individual's employment or appointment.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0260

Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 330-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 330-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any

false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The subject individual shall meet with the authorized designee if requested and provide additional information within a reasonable period of time, as established by the authorized designee. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 330-007-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 330-007-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 330-007-0270;

(B) Evidence that the subject individual has a pending indictment for a crime listed in OAR 330-007-0270;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 330-007-0270;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines:

(A) That the evidence is not credible; or

(B) If the evidence is credible, that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual before removing a restriction.

(d) Denial:

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the employment of the individual, or revoke or deny any applicable position, authority to provide services, license, certification, registration, or permit. A person may not appeal any determination made based on a refusal to consent.

(C) If a subject individual is denied as not fit, the subject individual may not be employed by or provide services as a volunteer or contractor to the Department in a position covered by OAR 330-007-0220(2).

(4) Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Order. A completed final fitness determination is final unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 330-007-0300(2)(a) or an alternative appeals process as provided by 330-007-0300(6).

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0270

Crimes Relevant to a Fitness Determination

(1) Crimes Relevant to a Fitness Determination.

(a) All felonies;

(b) All misdemeanors;

(c) Any United States Military crime or international crime;

(d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;

(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.555, when the underlying crime is listed in this section (1);

(2) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0280

Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 330-007-0220;

(b) The subject individual does not provide materials or information under OAR 330-007-0230(1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other relevant information under OAR 330-007-0260(2);

(e) The Department determines that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer) for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 330-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0290

Notice to Subject Individual of Fitness Determination

(1) An authorized designee shall provide written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.

(2) The authorized designee shall record on the notice the date on which the preliminary or final fitness determination was either closed as incomplete or completed. This shall include the mailing date.

(3) If the notice pertains to a completed final fitness determination, it shall meet the requirements of OAR 137-003-0505 and ORS 183.415.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0300

Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determination made under OAR 330-007-0260 that he or she is fit or not fit to hold a position with, or provide services to the Department as an employee, volunteer or contractor. Section (6) of the rule identifies an alternative appeal process available only to ODOE employees.

(2) Process:

(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 330-007-290(1)(b), within 14 calendar days of the mailing date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order.

(b) Exceptions. The subject individual, the subject individual's legal counsel, or the Department's representative may file written exceptions with the Department within 14 calendar days after service of the proposed order. Exceptions will be considered as set forth in OAR 137-003-0650 and 137-003-0655.

(c) Default. A completed final fitness determination made under OAR 330-007-0260 becomes final:

(A) Unless the subject individual makes a timely request for a hearing; or

(B) When a party withdraws a hearing request, notifies the agency or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by ODOE may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 330-007-0260(3)(c), and that, at the request of the subject individual, the subject individual's employment application will be kept on file. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (8), a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 330-007-0260 by submitting a new ODOE Criminal Records Request form.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8) of this rule, will not delay or postpone the Department's hiring process or employment decisions except when the authorized designee, in consultation with the Human Resources Section, decides that a delay or postponement should occur.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0310

Recordkeeping and Confidentiality

(1) An authorized designee or contact person shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal laws and regulations.

(b) Only the Department's authorized designees and the contact person shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee and contact person shall have access to records received from the Oregon Department of State

Police in response to a criminal records check only if the authorized designee or contact person has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees and the contact person shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity before providing this criminal offender information to him or her. The Department shall require that the subject individual sign a receipt confirming his or her receipt of the criminal offender information.

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including ODOE Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees and the contact person shall have access to the records identified under subsection (a).

(c) An authorized designee and contact person shall have access to records identified under subsection (a) only if the authorized designee or contact person has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0320

Contact Person and Authorized Designees

(1) Appointment.

(a) The Department Director or the Director's designee shall designate the positions that include the responsibilities of an authorized designee or contact person.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her sole discretion.

(2) The Department Director or Appointing Authority may also serve as an authorized designee or contact person, contingent on being approved under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee and the contact person shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee or contact person is a family member of the subject individual; or

(b) The authorized designee or the contact person has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee or

contact person shall consult with his or her supervisor before taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee or Contact Person Status.

(a) When an authorized designee's or contact person's employment in a designated position ends, his or her status as an authorized designee or contact person is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position, and thereby suspend or terminate his or her status as an authorized designee or contact person, if the employee fails to comply with OAR 330-007-0200 through 330-007-0310 in conducting criminal records checks and fitness determinations.

(c) An authorized designee or contact person shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 330-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position, and thereby termination of his or her status as an authorized designee or contact person.

(d) The Department will review and update an authorized designee's or contact person's eligibility for service in a designated position, during which a new criminal records check and fitness determination may be required:

(A) At any time the Department has reason to believe that the authorized designee or contact person has violated these rules or no longer is eligible to serve in his or her current position.

(5) A denial under OAR 330-007-0260(3) related to a designated position is subject to the appeal rights provided under 330-007-0300.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0330

Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.

(3) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

DIVISION 10

CONFIDENTIAL TREATMENT OF INFORMATION

330-010-0005

Purpose

The purpose of these rules is to establish standards and procedures for determining whether information submitted to the Department of Energy shall be entitled to confidential treatment.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 4, f. & ef. 11-28-75; DOE 2-1979, f. & ef. 3-20-79

330-010-0010

Statutory Authority and Scope

These rules carry out and are authorized by ORS 469.040(a), (d), and 469.090.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 4, f. & ef. 11-28-75; DOE 2-1979, f. & ef. 3-20-79

330-010-0015

Definitions

For purposes of these rules, the following definitions shall apply:

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

(2) "Director" means the Director of the Department.

(3) "Energy Supplier" means a coal supplier, petroleum supplier, or utility, as defined in ORS 469.020(2), (8), and (12).

(4) "Person" shall be defined in ORS 469.020(7).

(5) "Proprietary" means information, regardless of its format, in which there is an ownership interest which is of important, established financial or competitive value to its owner, determined by use of the following indicators:

(a) Whether the information is treated as confidential by its owner.

(b) Whether its owner has made the information available to others, and the reason for such disclosure.

(c) The potential for competitive advantage that the information provides.

(d) The cost of developing the information.

(e) The potential for financial or competitive loss to its owner from disclosure of the information.

(f) Whether legal protections, such as patents or copyrights, exist for the information.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 4, f. & ef. 11-28-75; DOE 2-1979, f. & ef. 3-20-79

330-010-0020

Material Entitled to Confidential Treatment

(1) Any information submitted to the Department by an energy supplier or any other person shall be entitled to confidential treatment if the Director, upon request of the one submitting the information, determines:

(a) That the information is proprietary in nature; or

(b) That the information consists of geological and geophysical information and data, including maps, concerning oil, gas, or geothermal resources wells.

(2) Any information submitted to the Department classified as Safeguards Information (SI) shall be automatically entitled to confidential treatment and handled in accordance with OAR chapter 330, division 30 and OAR chapter 345, division 70.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 4, f. & ef. 11-28-75; DOE 2-1979, f. & ef. 3-20-79; DOE 2-1985, f. & ef. 1-7-85

330-010-0025

Procedure for Requesting Confidential Treatment

(1) A request for confidential treatment shall be made in writing and shall be accompanied by copies of the information which is the subject of the request, segregated from any other information submitted for which confidential treatment is not requested.

(2) The written request for confidential treatment shall set forth the following:

(a) The specific information to be treated as confidential, identified by form, page, and line number, if any;

(b) The specific reason for requesting confidential treatment, together with any supporting evidence, documents, or argument related thereto;

(c) The minimum level of aggregation at which the information may be reported without losing its confidentiality; and

(d) The date on which each item of information need no longer be treated as confidential.

(3) The package or envelope in which the request for confidential treatment and related material are sent to the Department shall be addressed to the Director's attention and be so marked as to indicate clearly the confidential nature of the contents.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 4, f. & ef. 11-28-75; DOE 2-1979, f. & ef. 3-20-79

330-010-0030

Determination by Director

(1) Within ten business days after receipt of a request for confidential treatment, the Director shall review the request and make his findings on whether the standard set forth in OAR 330-010-0020 has been met.

(2) The Director's findings shall be promptly sent to the energy supplier or other person requesting confidential treatment by registered or certified mail.

(3) In the event that the Director finds that confidential treatment is not proper, the information submitted shall not be publicly disclosed until ten days after his decision has been mailed.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 4, f. & ef. 11-28-75; DOE 2-1979, f. & ef. 3-20-79

DIVISION 20

ENERGY SUPPLIER REPORTING REQUIREMENTS

330-020-0005

Purpose

The purpose of these rules is to specify the form and content of certain information to be furnished annually to the Department of Energy by utilities regarding energy demand.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0010

Statutory Authority and Procedure

These rules carry out, and are authorized by ORS 469.080(1) and were adopted pursuant to 183.335.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0020

Definitions — General

For purposes of these rules, all terms are to be construed in a manner consistent with their common commercial usage absent an express indication to the contrary. When a term is commonly used in conflicting ways and there is no evidence of the meaning intended by the Department, the following rules of construction apply:

(1) For natural gas and electricity information, if the term has a single recognized meaning for reports to the U.S. Department of Energy, Federal Energy Regulatory Commission (FERC), that meaning shall apply.

(2) If the conditions of section (1) of this rule does not apply and if the term has a single recognized meaning for reports to the Oregon Public Utility Commissioner (OPUC), that meaning shall apply.

(3) If the conditions of sections (1) and (2) of this rule do not apply and if the term has a single recognized meaning to the Edison Electric Institute (EEI) or the American Gas Association (AGA), that meaning shall apply.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0025

Definitions — Specific

For purposes of these rules, the following definitions shall apply:

(1) "Customer Class" means a broad category of customers who use a particular energy form for essentially similar purposes, including, but not limited to the following categories:

(a) Transportation: Those activities or uses of property where the primary function is to transfer or convey persons or property from one place to another;

(b) Residential: Energy use in a domestic dwelling for space-heating, air conditioning, cooking, water heating and other domestic uses;

(c) Commercial: Energy use by customers engaged primarily in the sale of goods and services including institutions and local, state and federal government agencies;

(d) Electrical Generation: Those activities or uses of property used for the generation of electric power;

(e) Industrial: Energy use by customers engaged primarily in a process which changes raw or unfinished materials into another form or product;

(f) Other: All other uses of energy.

(2) "Department" means the Department of Energy.

(3) "Director" means the Director of the Department.

(4) "Electric Utility" means a utility engaged in the generation, transmission or distribution of electric energy and having an Oregon service area.

(5) "Energy Supplier" means a utility as defined in ORS 469.020, subsections (2), (8), and (12).

(6) "Gas Utility" means a utility engaged in distributing natural gas and having an Oregon service area.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(8) "Proprietary Information" means information in which is of financial or competitive value to its owner. Specific rules and procedures regarding the designation and handling of proprietary information are listed as OAR 330-010-0005 to 330-010-0030 and are available from the Department upon request.

(9) "Resale Customer" means a customer who purchases energy from an energy supplier, the majority of which he sells to another person.

(10) "SIC" means the Standard Industrial Classification Manual of 1972 (Executive Office of the President, Office of Management and Budget, Washington, D.C.), on file with the Oregon Secretary of State.

(11) "Utility" shall be as defined in ORS 469.020(12).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 2-1982, f. & ef. 1-29-82; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0030

Forms — General

With the exception of the provisions of OAR 330-020-0065, all information required to be submitted by ORS 469.080(1), or by these rules shall be submitted on forms provided by the Department and described in these rules. The information required by each form shall be determined by the provisions of OAR 330-020-0035. The actual forms provided by the Department may vary as to format and phrasing from the descriptions provided in 330-020-0035 in any manner consistent with these rules, and may contain such notation as may facilitate computer data entry.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0035

Forms — Specific

Each utility shall submit its best estimate of information required by these rules, which shall be on the following forms to be supplied by the Department of Energy (all information submitted shall relate to the supplier's Oregon business unless specified otherwise):

(1) Electric utilities shall submit the following forms:

(a) ODOE Form OEU-1, "Base Year Electrical Consumption," requires one year of historical data of electricity consumption by Customer Class;

(b) ODOE Form OEU-2, "Residential Sector — New Customer Report 1978," requires information on the number of new customers for the most recent historic year; their space and water heat fuel types, and whether they live in a house, apartment or mobile home;

(c) ODOE Form OEU-3a and OEU-3b, "Base Year Electrical Consumption by Industry Type," requires historical data on electrical consumption by two digit SIC:

(A) ODOE Form OEU-3a for utilities with annual sales of five billion kilowatt hours or more in Oregon, electrical consumption for each two digit SIC for the most recent historic year is required,

(B) ODOE Form OEU-3b for those utilities with annual sales of less than five billion kilowatt hours in Oregon, annual electrical consumption for all manufacturing two digit SIC is required for industrial firms with more than 200 kW demand.

(2) Natural gas utilities shall submit copies of Forms G-17, G-18 and G-20 filed with the American Gas Association for the calendar year immediately preceding the current reporting year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 2-1982, f. & ef. 1-29-82; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0045

Submission Deadline

(1) Except as provided in OAR 330-020-0055, every energy supplier required to submit information to the Department by these rules shall submit the specific information required by 333-020-0035 on or before June 1st of each year.

(2) For purposes of this rule, an energy supplier's report shall be deemed submitted as of the date of postmarking, or the date of receipt at the Department, whichever is earlier, provided each report is properly completed.

(3) "A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the Circuit Court for wilful failure to submit energy data or wilful failure to comply with a subpoena served by the director pursuant to subsection (2) of ORS 469.080." (Subsection (3) of ORS 469.992 as amended in 1977).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0050

Extension of Submission Deadline

(1) Any energy supplier that finds it cannot meet the deadline set forth in OAR 330-020-0045 may apply to the Director for an extension of time. The application shall be by petition setting forth:

(a) The reasons why it cannot meet the deadline;

(b) The measures it is taking to comply with the deadline; and

(c) The date on which it expects to be able to supply the information.

(2) The Director may grant an extension of not more than thirty days if it appears to him:

(a) That the energy supplier is making a good faith effort to provide the information required in a timely manner; and

(b) That it is likely that the energy supplier will be able to comply within the period of the extension.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0055

Corrections

Corrections of any information submitted by an energy supplier shall be reported to the Department promptly. The change or correction shall identify the form number, page and item to be changed or corrected and accompanied by a full explanation regarding the correction.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0065

Substitution of Data

Any energy supplier may, in lieu of submitting a form required by OAR 330-020-0035, submit a report it made to another governmental agency, if the alternative report submitted contains all of the information required by, and is clearly cross-indexed to, the form for which it is substituted.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

330-020-0070

Request for Confidential Treatment

If any form described in OAR 330-020-0035 requests proprietary information, the energy supplier may request that the information be received and maintained on a confidential basis (see the procedures in Department of Energy rule 330-010-0090). A request for confidential treatment must be made by the energy supplier no later than the date on which the information is submitted in accordance with the submission deadline contained in 330-020-0050.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.090

Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 1-1984, f. 1-16-84, ef. 2-1-84

DIVISION 25

RESOURCE PLAN

330-025-0005

Purpose and Statutory Authority

(1) This rule is authorized pursuant to ORS 469.040(i)(d) and 469.080 and implements the policies enunciated by the Energy Facility Siting Council (EFSC) in its statement in explanation of the Need-for-Power Standard, adopted January 6, 1981. In that statement, EFSC directed the Oregon Department of Energy (ODOE) to develop rules for resource plan to be filed by electric utilities. EFSC stated: "Such a resource plan would document the steps to be taken by the utilities to achieve the resources identified in the Need-for-Power standard and their actions to overcome the constraints which preclude greater reliance on these resources." This procedure is intended to offer the opportunity to measure progress towards achieving greater reliance on conservation and renewable resources.

(2) The resource plan will offer information on how utilities plan to meet load requirements in their respective Oregon sources area. The information will foster understanding of Oregon electricity loads and resources, not only within the state but within the region. Conversely, information produced in the development of the regional electricity supply plan of the Pacific Northwest Regional Planning Council will also be considered. Utilities are encouraged to incorporate information developed for the regional supply plan to minimize duplication and describe any significant differences.

(3) The information contained in the plans will be considered public information except such specified information which a utility explicitly seeks to be treated confidential pursuant to ORS 469.090.

(4) ODOE recognizes that information contained in the resource plans may be preliminary and subject to change. The

information contained in the resource plans may be qualified to reflect uncertainties.

(5) This rule will be reviewed by July 1 of each year for appropriate revisions and may be revised in the interim if warranted.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.060
Hist.: DOE 4-1982, f. & ef. 3-12-82

330-025-0010

Definitions

(1) "Utility": Every electric utility that serves Oregon consumers and which has a service area load greater than 100 average megawatts and every generating and transmission company (G & T) acting on behalf of member utilities serving consumers in Oregon that participates in, or intends to participate in, constructing electricity generation facilities in Oregon.

(2) "Director": The Director of the Oregon Department of Energy.

(3) "EFSC's Biennial Forecast": The forecast of electricity demand and supply adopted by the EFSC as part of the siting standard. The first forecast was adopted January 6, 1981. EFSC will update this forecast every two years, but may revise the forecast under circumstances described in OAR 345-111-0020.

(4) "Planned Electric Generating Facility": An electric generating facility, including one owned by a Private Power Producer, for which any of the following events has occurred:

(a) The filing of an application, with the appropriate federal or state licensing authority;

(b) The execution of a contract with a utility creating a binding financial obligation to participate in the construction of, or to purchase firm energy from, an electric generating facility.

(5) "Planned Electric Generating Facility" shall not include facilities which meet any of the above criteria if the sponsor or owner of the facility has announced publicly the termination or indefinite delay in construction of the facility.

(6) "Private Power Producers": A person or organization who generates electricity to sell wholesale and who is not subject to state or federal regulation as an electric utility.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.030
Hist.: DOE 4-1982, f. & ef. 3-12-82

330-025-0015

Resource Plan Submission Requirement

(1) On or before July 1, 1982, and on or before every April 1 of even numbered years thereafter, each utility shall submit to the Director a resource plan. This plan shall forecast and describe how the utility will meet demand on its Oregon system (or the systems of its members) over a fifteen-year period as determined by EFSC's most recent biennial forecast of demand and supply. This plan will meet the utility forecast requirement contained in ORS 469.070(4) for those years that a resource plan is due.

(2) Utilities do not have to submit a revised plan if and when EFSC revises its biennial forecast in the interim period between the development of consecutive biennial forecasts.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.080
Hist.: DOE 4-1982, f. & ef. 3-12-82

330-025-0020

Required Contents of the Resource Plan

(1) The resource plan shall list and describe all existing and Planned Electric Generating Facilities expected to be in operation to meet the utility's demand in each of the forecast years. The description of existing and Planned Electric Generating Facilities shall include, but not be limited to, type, location, name plate rating, commercial operation date, retirement date, average energy capability, the utility's share of ownership, fuel, and operating characteristics. For Planned Electric Generating Facilities, the status of the licensing process and a construction schedule shall be provided.

(2) The resource plan shall contain information on the financial and economic characteristics of Planned Electric Generating Facilities including, but not limited to, projected construction capital outlays, operation costs, and escalation rates.

(3) The resource plan shall list and describe all the utility's existing and planned conservation programs (including programs to implement use of renewable resources at the point of end use), their actual or expected financial and economic characteristics, actual annual energy savings achieved to date from existing programs, and expected amount of energy savings on an annual basis for planned programs, taking into account energy savings specified by EFSC's biennial forecast.

(4) A utility shall, in its submitted resource plan, specify what conditions (if any) inhibit obtaining the quantity of energy from conservation and renewable resources which is specified in EFSC's biennial forecast and actions it is taking or which must be taken by other entities to overcome these.

(5) For the forecast period, the resource plan shall contain a list of utilities (including BPA), and Private Power Producers, with which the utility has contracts for firm purchases and sales. This listing shall include the amount and the price of electricity to be delivered, exchanged, or sold under each specific contract.

(6) The resource plan shall identify major transmission requirements to connect planned and purchased resources to the utility's transmission grid.

(7) The resource plan shall include estimates of energy losses and energy used by the utility for each year of the forecast.

(8) The resource plan shall describe generally, the actions and timing of actions being taken or necessary to be taken by the utility to develop its proportional share of the resources identified in OAR 345-111-0020, Table 3. [Table not included. See ED. NOTE.] It is recognized that an individual utility may place a greater or lesser emphasis on each type of resource vis-a-vis its proportionate share, particularly for resources that are specific to a given service area. This description shall include, but not be limited to, identification of the major milestones that must be met in developing each type of these resources and when the Utility expects that they will be met.

(9) The resource plan shall include actual annual average system demand by major customer classes for the most recent five years for which data are available.

(10) If the resource plan deviates from EFSC's biennial forecast of loads and resources (specifically in the makeup of energy from conservation and renewable resources), the utility shall explain the reasons for the deviation.

(11) A Utility may submit to the Director, in addition to the resource plan, alternate forecasts which are different from EFSC's biennial forecast, or alternate resource plans to meet an alternate demand forecast or to meet EFSC's demand forecast with an alternate mix. If the utility makes such a submission, it may describe why the alternate approach is believed more appropriate than that prescribed by EFSC's forecast. The utility may, at its option, fully describe the methodology, assumptions, and data used to allow the Director to replicate the utility's submission. If the Director requests additional information regarding the methodology, assumptions, and data used in such submission and the utility declines to provide same, the Director shall not be required to consider such submission.

(12) If any of the requested information in this rule is covered under a different submission to ODOE, such information need not be resubmitted. References to when the information was given to ODOE will be sufficient. If such information was recently submitted to a federal or state agency other than ODOE that filing may be provided to ODOE, provided it substantially complies with the information requested by ODOE.

(13) Where there are significant differences between the resource plan and the plan adopted by the Pacific Northwest Regional Planning Council, such differences will be identified and explained.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.080

Hist.: DOE 4-1982, f. & ef. 3-12-82

330-025-0025

Supplemental Information

The Director may, by letter, require a utility to submit as part of the resource plan supplemental information assessing the effectiveness of resource development efforts, including conservation and renewable resources programs.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 4-1982, f. & ef. 3-12-82

330-025-0030

Rejection of Deficient Submission

If the resource plan submitted by an electric Utility fails to satisfy requirements of OAR 330-025-0020, the Director shall reject the submission and require the Utility to submit a new plan which remedies the deficiencies. The Director may specify the date by which the resubmission shall be made.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 4-1982, f. & ef. 3-12-82

330-025-0035

Waiver of Certain Provision

In the event of a demonstration of hardship or inapplicability, the Director may waive compliance with one or more of these provisions.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 4-1982, f. & ef. 3-12-82

DIVISION 30

CONFIDENTIAL TREATMENT OF SECURITY PROGRAM INFORMATION

330-030-0005

Purpose

The purpose of these rules is to protect the confidentiality of information submitted to the Energy Facility Siting Council and the Oregon Office of Energy regarding security programs for nuclear-fueled power plants, nuclear installations, and the transportation of radioactive materials to and from such facilities, and, to the extent possible, maximize information available to the public regarding the nuclear fuel cycle.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.490

Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1996, f. & cert. ef. 7-11-96

330-030-0010

Legislative Authority

These rules are promulgated concurrently by the Council and the Director pursuant to their respective rulemaking authorities contained in ORS Chapter 183, 469.040, 469.470, 469.501 to 469.507, 469.530, 469.560 and 192.500, in order to implement their joint responsibility under 469.530.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.530

Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1985, f. & ef. 1-7-85; DOE 2-1996, f. & cert. ef. 7-11-96

330-030-0015

Definitions

(1) "Council" means the Energy Facility Siting Council established by ORS 469.450.

(2) "Director" means the Administrator of the Oregon Office of Energy.

(3) "Nuclear Installation" shall have the meaning set forth in ORS 469.300.

(4) "Person" shall have the meaning set forth in ORS 469.300.

(5) "Security Program" means any plan or procedure the primary function of which is to protect nuclear power plants, nuclear installations, transportation and storage of new or irradiated nuclear

fuel elements, or transportation and storage of fissile material against any deliberate act which could directly endanger the public health and safety including exposure to radiation, including, but not limited to, the means for:

(a) Controlling entry to the site or portions of the site of fixed installations;

(b) Deterring or discouraging penetrations of sites or carriers by unauthorized persons;

(c) Detecting such penetrations in the event they occur;

(d) Apprehending in a timely manner unauthorized persons or authorized persons acting in a manner constituting a threat of sabotage or theft;

(e) Providing for appropriate authorities to take custody of violators.

(6) "Fissile Material" means fissile plutonium, uranium-233, and uranium-235 in any combination sufficient to cause (gm Pu/200 gm) + (gm U-233/200 gm) + (gm U-235 (contained in uranium enriched to more than 20% in U-235)/350 gm) to be greater than unity.

(7) "Safeguards Information (SI)" means information which specifically identifies detailed:

(a) Security measures for the protection of special nuclear material; or

(b) Security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities such as nuclear power plants.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.530

Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1985, f. & ef. 1-7-85; DOE 2-1996, f. & cert. ef. 7-11-96

330-030-0020

Confidential Treatment Required

Information submitted by any person pursuant to ORS 469.530 for review and approval by the Council and Director shall, to the extent it falls within the definition of "security program" in OAR 330-030-0015, or Safeguards Information in 330-030-0015, be received and maintained in strict confidentiality. The Council and Director shall take all reasonable precautions to:

(1) Limit the number of persons within the Office of Energy having access to such information; and

(2) Physically safeguard such information.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.530

Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1985, f. & ef. 1-7-85; DOE 2-1996, f. & cert. ef. 7-11-96

330-030-0025

Releases of Non-Confidential Information

In reviewing information submitted to them under ORS 469.530, the Council and Director shall jointly determine whether specific portions of such information are not within the definition of "security program" in OAR 330-030-0015, and promptly arrange for the physical segregation and public availability of all information not entitled to confidential treatment.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.530

Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1985, f. & ef. 1-7-85; DOE 2-1996, f. & cert. ef. 7-11-96

330-030-0030

Public Statements and Security Programs

(1) Upon completing their review and approval of a security program and modifications to the program, the Council and Director shall promptly issue a joint statement which describes, without directly or indirectly breaching the confidentiality of the security program:

(a) The nature and scope of the review conducted;

(b) The adequacy of the security program; and

(c) A general description of the security measures.

(2) In the event of discovery of noncompliance with approved security programs, the Council and Director will issue a joint statement describing the general nature of the noncompliance. However,

this statement shall not directly or indirectly breach the confidentiality of the security program.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.530

Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1996, f. & cert. ef. 7-11-96

DIVISION 40

RULES REGARDING APPLICATIONS TO

FORM A JOINT OPERATING AGENCY

330-040-0005

Purpose

The purpose of these rules is to establish standards to assist

the Director in evaluating applications submitted to him for the for-

mation of joint operating agencies.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 6(Temp), f. & ef. 11-8-76; DOE 8, f. & ef. 3-7-77

330-040-0010

Authority

These rules are adopted by the Director in accordance with ORS Chapter 183, pursuant to authority vested in him by 469.040(1)(d).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 6(Temp), f. & ef. 11-8-76; DOE 8, f. & ef. 3-7-77

330-040-0015

Definitions

(1) "Director" shall mean the Director of the Oregon Department of Energy.

(2) "Joint Operating Agency" shall be as defined in ORS 262.005(1)(1975).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 6(Temp), f. & ef. 11-8-76; DOE 8, f. & ef. 3-7-77

330-040-0020

Required Information on Reason of Formation

An applicant seeking an order from the Director authorizing formation of a joint operating agency shall, by the submission of factual information, demonstrate:

(1) The specific reasons why the applicant believes it is necessary or desirable to form a joint operating agency.

(2) Activities that the joint operating agency will take to either plan for or provide an adequate supply of electric energy to meet the needs of publicly owned utilities in Oregon.

(3) The time frame within which the identified activities will be undertaken.

(4) In the event that the joint operating agency will not be active in either planning for or providing electric energy immediately following its formation, a statement as to why the Director should authorize formation of a joint operating agency at the present time.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 6(Temp), f. & ef. 11-8-76; DOE 8, f. & ef. 3-7-77

330-040-0025

Required Information Regarding Adequacy of Financing

(1) The applicant shall provide a proposed budget for the JOA for each of the first five years of its existence, identifying the sources of all funds to be expended.

(2) To the extent that specific projects were identified pursuant to OAR 330-040-0020(2), the applicant shall demonstrate that the JOA either has or will have adequate funds to finance the identified projects.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 6(Temp), f. & ef. 11-8-76; DOE 8, f. & ef. 3-7-77

DIVISION 50

PETROLEUM PRODUCT CONVERSION RATES

330-050-0005

Purpose

The purpose of this rule is to prescribe the rate which shall be used by petroleum suppliers and by the Department of Energy (DOE) in converting barrels of petroleum products into British thermal units (Btus) of energy in connection with the assessments imposed upon petroleum suppliers by Section 4 of Chapter 813, Oregon Laws 1977.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 9(Temp), f. & ef. 8-5-77; DOE 11(Temp), f. & ef. 9-21-77; DOE 13, f. & ef. 12-6-77

330-050-0010

Definitions

For purposes of this rule, the following definitions shall apply:

(1) “Barrel” shall mean a volumetric measure equal to 42 gallons.

(2) “Bureau of Mines Publication” shall mean a publication entitled “Mineral Industry Surveys” issued by the Department of Interior, Bureau of Mines, in December 1976.

(3) “Petroleum Products” shall mean only those petroleum products which are subject to assessments under Section 4 of Chapter 813, Oregon Laws 1977. These products include:

- (a) Crude petroleum;
- (b) Fuel oil (distillate and residual);
- (c) Kerosene;
- (d) Liquefied petroleum gases;
- (e) Motor vehicle fuel (when used primarily for agricultural purposes) and

(f) Petroleum coke (when used as fuel in metal processing).

(4) “Petroleum Suppliers” shall have the meaning set forth in Section 4(g) of Chapter 813, Oregon Laws 1977, “those petroleum suppliers who are required to submit forecasts to the department pursuant to subsection (4) of ORS 469.070.”

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 9(Temp), f. & ef. 8-5-77; DOE 11(Temp), f. & ef. 9-21-77; DOE 13, f. & ef. 12-6-77

330-050-0015

Conversion Rates

For all purposes of Section 4 of Chapter 813, Oregon Laws 1977, petroleum suppliers and the Department of Energy shall use the following rates from the Bureau of Mines Publication for converting barrels of petroleum products into British thermal units of energy:

Type of Product — Btu/Barrel:

- (1) Crude Petroleum — 5,800,000;
- (2) Distillate Fuel Oil — 5,825,000;
- (3) Residual Fuel Oil — 6,287,000;
- (4) Kerosene — 5,670,000;
- (5) Liquefied Gases — 4,011,000;
- (6) Motor Vehicle Fuel (gas) — 5,248,000;
- (7) Petroleum Coke — 6,024,000.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

Hist.: DOE 9(Temp), f. & ef. 8-5-77; DOE 11(Temp), f. & ef. 9-21-77; DOE 13, f. & ef. 12-6-77

DIVISION 60

ENERGY CONSERVATION SERVICES

330-060-0005

Purpose

(1) OAR 330-060-0005 through 330-060-0095 describe qualifying energy conservation measures, the basis for the energy audit, prescribe how fuel oil dealers shall provide energy conservation services to their residential customers as required by ORS 469.673 through 469.679, and prescribe the standards for state financed 6.5 percent interest loans made under Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991.

(2) These rules are effective September 1, 2007 or upon filing with the Secretary of State, whichever is later and shall apply to energy conservation measure rebate applications postmarked on or after the effective date of these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-29-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0010

Definitions

As used in OAR 330-060-0005 through 330-060-0095, unless the context requires otherwise:

(1) “Annual Rate”: The yearly interest rate specified on the note. This is not the annual percentage rate, if any, disclosed to the applicant under the federal Truth in Lending Act.

(2) “ASHRAE”: American Society of Heating, Refrigeration, and Air Conditioning Engineers.

(3) “Auditor”: The person who gathers information at the dwelling to complete a report recommending energy conservation measures consistent with the standards set in these rules and the energy conservation measures specifications.

(4) “Buffer Space”: An enclosed but unheated space such as a garage, porch, unheated basement, crawl space or attic, which abuts a heated space.

(5) “Commercial Energy Auditor”: A person who through training or experience has a general knowledge of heat transfer principles, construction practices, energy efficient operations and maintenance procedures, boiler and furnace efficiency improvements, infiltration controls, envelope weatherization, heating, ventilating and air conditioning systems, electric control systems, lighting systems, and solar and energy conservation measures.

(6) “Commercial Energy Audit”: The service provided by a commercial energy auditor to the owner of an apartment building which is centrally heated. It includes on-site data gathering, energy use analysis, and a report to the owner recommending energy conservation measures.

(7) “Cost-Effective”: The present value of energy saved over the life of an energy conservation measure is worth more than the measure’s cost. However, the energy savings of a measure shall receive a 10 percent “bonus”.

(8) “Customer”: A residential customer or dwelling owner.

(9) “Dealer”: Fuel oil dealer or any person or organization which supplies fuel oil at retail for the heating of dwellings.

(10) “Director”: The Director of the Oregon Department of Energy.

(11) “Dwelling”: Real or personal property in Oregon which is the principal residence of the owner or a tenant. “Dwelling” includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in an apartment building. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

(12) “Dwelling Owner”: The person who has legal title to a dwelling, including the mortgagor under a mortgage, the trustor under a deed of trust, or a purchaser under a contract.

(13) “Energy Audit” means a written report completed to recommend energy conservation measures consistent with the standards set in these rules and the energy conservation measures specifications.

(14) “Energy Conservation Measures”: Items that are primarily designed to improve the energy efficiency of a dwelling:

(a) In the case of dwellings not receiving a commercial energy audit, these measures are limited to:

(A) Caulking, weatherstripping and other prescriptive actions to seal the heated space and ducts in a dwelling;

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs (but excluding any fire or weatherproofing or roofing materials installed over the insulation) and associated ventilation;

(C) Fill the wall cavity with insulation. If area has unfinished walls adjacent to unheated areas, fill the wall cavity to R-21, if achievable. In areas that have finished walls with no insulation that are adjacent to unheated areas, fill to R-13, if achievable.

(D) Insulation of floors over unheated spaces to fill framing cavity or achieve R-30 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

(E) Insulation of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least ten feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;

(G) Double glazed windows (including sliding doors) with a U-value of at least 0.35 or lower replacing less energy efficient windows.

(H) Storm doors covering uninsulated exterior doors;

(J) Storm windows over single pane glass windows on an exception basis when double glazed windows are not a practical option;

(K) Insulated exterior doors with an U-value no higher than 0.20.

(L) Replacement fuel oil burners, including electrical controls and combustion chamber improvements when needed, which increase combustion efficiency of oil furnaces or boilers. A replacement burner must have a tested steady state efficiency of at least 80 percent and be replacing a burner that is more than 10 years old or is in a heating systems with a tested steady state efficiency of 70 percent or less;

(M) Fuel oil furnaces or boilers with tested steady state efficiency of at least 81 percent replacing a fuel oil heating system that is more than 20 years old or has a steady-state efficiency of 70 percent or less or as otherwise authorized by the Oregon Department of Energy;

(N) Installation of above-ground oil tanks to replace use of underground oil tanks and associated fuel lines shall qualify, but only if associated with the replacement of the oil furnace qualifying for a rebate. Any costs associated with the decommissioning, removal, or environmental cleanup of an underground fuel tank are excluded;

(O) Programmable thermostats;

(P) Blower door tests and blower door assisted whole house air sealing performed by a technician certified by the Oregon Department of Energy's Residential Energy Tax Credit duct sealing technician certification program;

(Q) Duct leakage tests and duct sealing performed by a technician certified by the Oregon Department of Energy's Residential Energy Tax Credit technician certification program in accordance with the Oregon Department of Energy's premium efficiency duct system standards in effect at the time the work is completed.

(R) Vapor barrier material, exhaust fans and venting to provide spot ventilation in kitchens, bathrooms, utility rooms, or other areas where as the result of installing recommended energy conservation measures moisture problems could be created or worsened.

(b) In the case of centrally-heated apartment buildings receiving a commercial energy audit, measures shall be primarily designed to reduce fuel oil use. In addition to measures listed in subsection (a) of this section, the measures may include but not be limited to:

(A) Automatic energy control systems;

(B) Equipment, associated with such control systems, which is needed to run variable steam, hydraulic and ventilating systems;

(C) Furnace or boiler plant and distribution system modifications. This includes devices for modifying flue openings which will increase the efficiency of the heating system; or

(D) Lighting system improvements.

(15) "Energy Conservation Measures Specifications": All energy conservation measures shall meet the installation provisions of the Oregon Department of Energy's Energy Conservation Measure Specifications. All heating system improvements shall meet the steady state efficiency requirements of these rules. All blower door assisted whole house air sealing and duct sealing measures shall meet the specifications of the Oregon Department of Energy's Residential Energy Tax Credit technician certification program.

(16) "Finance Charge ": The total of all interest, loan fees, and other charges related to the cost of obtaining credit. This includes any interest on any loan fees financed by the lender.

(17) "Fuel Oil": Any petroleum product sold by a petroleum supplier for use as a residential heating fuel, including heating oil, propane, butane and kerosene.

(18) "Landlord": A dwelling owner who rents his or her dwelling to a tenant.

(19) "Lender": Any bank, mortgage company, trust company, savings and loan, or credit union having an office in Oregon.

(20) "Lighting system improvements": Measures which will reduce energy use in the lighting system by at least 25 percent if recommended in the commercial energy audit.

(21) "Oregon Department of Energy": State of Oregon agency

(22) "Residential Customer": A dwelling owner or tenant who is billed by a dealer for fuel oil received at the dwelling.

(23) "Space-Heating": The heating of living space within a dwelling.

(24) "State Incentive": The energy conservation measure rebate or any other state incentive which gives a customer a cash payment for an energy conservation measure.

(25) "Tenant": A tenant as defined in ORS 91.100 or any other tenant.

(26) "Trade Ally": means a contractor licensed in the State of Oregon to install energy conservation measures.

(27) "Unheated Space": An area in a dwelling which is not connected to a heating system fueled by fuel oil or wood.

(28) "Wood Heating Resident": A person whose primary space heating fuel is any form of wood, including sawdust:

(a) In the case of a dwelling which has an installed central electric or gas heating system the customer is eligible for rebate and loan financing under this program if not eligible for such financial assistance from the utility; or

(b) In the case of a dwelling which has baseboard or portable space heaters, the customer is eligible for rebate and loan financing under this program if not eligible for such financial assistance from the utility.

(c) In the case of a dwelling that has no installed heating system other than wood, the customer is eligible for rebate and loan financing under this program.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0015

Description of Residential Energy Conservation Program

As defined in ORS 469.673 through 469.679, each dealer shall establish an energy conservation services program and shall provide energy conservation information to customers and to the public. A dealer may rely upon the services contracted for by the Director pursuant to 469.677, instead of presenting a separate program, or complete the energy audits as a trade ally, as provided in these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0020

Reliance on the Statewide Fuel Oil Audit Program

(1) The Director shall contract for a statewide energy audit program to give the information, help and technical advice required of dealers by ORS 469.675.

(2) A dealer who relies on the statewide energy audit program may, however:

(a) Notify its customers about this program, including a toll-free number to request information; or

(b) Act as a contact between its customers and the statewide energy audit program. Such a dealer may pass on its customers' requests for information to the statewide energy audit contractor chosen by the Oregon Department of Energy.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0040

Low-Interest Loans Through Lenders

(1) State financed 6.5 percent interest loans made under Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991, shall meet the following standards:

(a) A loan shall be made only to a dwelling owner who is or who rents to a residential fuel oil customer or a wood heating resident;

(b) Only energy conservation measures recommended as cost-effective in the energy audit, recommended adjuncts to those measures, and any loan fee that is included in the body of the loan shall qualify for the loans;

(c) The maximum loan limit, including the loan fee, is \$5,000 for each eligible dwelling unit. If the dwelling owner is a corporation operating a non-profit home for the elderly, a loan shall not exceed \$2,000 per dwelling unit;

(d) A lender may charge, finance, and collect a nonrefundable front-end loan fee. Charging such a loan fee will not disqualify the loan for a tax credit under this section. The fee shall not exceed that charged by the lender for non-subsidized loans made under like terms and conditions at the time the subject loan is made;

(e) There is no limit on the number of eligible dwelling units for which a dwelling owner may receive a loan;

(f) Loans shall not finance the following:

(A) Converting space heat equipment from oil or wood to another source of fuel;

(B) Space heating heat pumps;

(C) Water heating heat pumps;

(D) Wood-burning devices;

(E) Any measure that would benefit all or part of a non-residential commercial building unless the building has some residential living space. In the case of a commercial building which has some residential living space the following can qualify for a loan:

(i) That part of the building used exclusively for residential; and

(ii) In a centrally heated building, a prorated share of the cost of a heating system. This share shall be based on the percentage of residential to total square footage served by the heating system.

EXAMPLE: 1,000 square feet is commercial, 2,000 square feet is residential — 2/3 of the cost of an eligible heating system could qualify for the loan.

(F) Solar equipment;

(G) Any materials used in building a new dwelling, additions to dwellings or remodeling which adds living space;

(H) That part of the cost of the measures for which the dwelling owner receives a state cash incentive.

(g) The costs of materials for "do-it-yourself" jobs may be included in the loan. No labor costs of such jobs shall qualify for the loan.

(2) In order to qualify for a loan, the dwelling owner must submit to the Oregon Department of Energy written permission to inspect the job to verify that the measures have been installed.

(3) In applying for the loan, a dwelling owner shall present to the lender:

(a) For contractor-installed measures, at least one written bid itemizing measures to be included in the loan and their costs. The Oregon Department of Energy may require that contractors use bid forms provided by the Oregon Department of Energy; and

(b) For "do-it-yourself" measures, an itemized list of materials to be installed and their costs.

(4) Lenders may receive a state tax credit in accord with Section 28, Chapter 894, Oregon Laws 1981 as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991. This applies only to loans which:

(a) Are made to dwelling owners who are or who rent to residential fuel oil customers or wood heating residents and who:

(A) Have received an energy audit completed pursuant to these rules; and

(B) Give the lender a copy of:

(i) The results of the energy audit;

(ii) Certification on a form supplied by the Oregon Department of Energy stating that the dwelling receives space heating from fuel oil or wood; and

(iii) For a furnace or burner replacement, a certification from the contractor on a form supplied by the Oregon Department of Energy that the heating system meets or exceeds the combustion efficiency standards set in these rules.

(iv) Written permission on a form supplied by and submitted to the Oregon Department of Energy to inspect.

(b) Are subject to an annual rate not to exceed 6.5 percent;

(c) Have a term of ten years or less; and

(d) Finance those measures recommended in the energy audit.

(5) Lenders making weatherization loans under Section 28, Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991, shall:

(a) Keep a copy of the customer's energy audit and the certification that the heating system meets or exceeds the combustion efficiency standards set in these rules, as well as the customer's loan application;

(b) Help the customer fill in a form, given to the customer during the energy audit, stating what measures will be included in the loan; and

(c) Return that form and the heating system certification to the Oregon Department of Energy no later than one week after the loan is closed. (This is the lender's only reporting requirement to the Oregon Department of Energy.)

(6) Eligibility of the lender for any tax credit under Section 28, Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991, shall not be affected by any dwelling owner's failure to use the loan for qualifying measures.

(7) The borrower must complete installation of the measures financed within 90 days of receiving the loan funds.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.170

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0060

Oil Audit Standards: General Description of Oil-Heated Dwellings Energy Audit

(1) The energy audit shall provide a basis to determine which energy conservation measures are recommended as described in OAR 330-060-0010(14).

(2) The energy audit shall also provide information published by the Oregon Department of Energy about no-cost/low-cost energy-saving practices, about energy conservation measures, and financial incentives available to help pay for the costs of installing those measures.

(3) The Administrator may approve the use of other audit methodologies, including allowing customers or trade allies to use a form developed by the Oregon Department of Energy, if the Administrator determines that such alternate methodologies will provide the customer with results comparable to those achieved using the audit methodology prescribed by these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0070

Oil Audit Standards: Calculation Procedures

(1) The energy savings from energy conservation measures shall be calculated by the Oregon Department of Energy.

(2) The Oregon Department of Energy may approve use of alternate energy savings calculations, if the calculations and the methodology supporting those calculations are submitted to the Oregon Department of Energy for its review and approval.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0075

Oil Audit Standards: Calculation of Cost Effectiveness

(1) The cost-effectiveness of energy conservation measures shall be calculated by the Oregon Department of Energy.

(2) The Oregon Department of Energy may approve use of alternate cost-effectiveness calculations, if the calculations and the methodology supporting those calculations are submitted to the Oregon Department of Energy for its review and approval.

(3) The measure is “cost-effective” if its cost is less than 110 percent of the present value of the cost of fuel oil saved over its assumed life cycle.

(4) The Oregon Department of Energy must approve all measures that are presumed to be cost-effective. These measures may include items which alone may not save energy but are needed to make recommended energy measures work effectively.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

330-060-0090

Oil Audit Standards: Auditor Qualifications

The person performing the energy audit must be able to determine whether the applicable energy conservation measures meet the standards set forth in these rules and the specifications and to be able to effectively communicate recommendations to the customer.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

330-060-0095

Post-Installation Inspections

(1) The Oregon Department of Energy may inspect energy conservation measures:

(a) The Oregon Department of Energy may inspect energy conservation measures installed by customers receiving a cash payment or loan for those measures;

(b) The Oregon Department of Energy may inspect installed measures at the customer’s request if those measures qualify for a cash payment or loan;

(c) The Oregon Department of Energy may require an inspection at the time of the audit if any energy conservation measures qualifying for the cash payment or loan were installed before the audit is completed.

(d) The Oregon Department of Energy may require an inspection before disbursing cash payments.

(2) The inspection shall verify that:

(a) Measures included in the loan or other incentive were installed; and

(b) Workmanship and materials meet industry standards. Installation standards and inspection forms shall be approved by the Oregon Department of Energy. All measures installed shall meet the energy conservation measure specifications. Local codes shall prevail in all cases.

(3) The results of the inspection shall be promptly reported to:

(a) The customer; and

(b) The Oregon Department of Energy.

(4) Inspectors shall have no financial or other interest in the firm that installed the measure(s) inspected.

(5) An inspector shall be able to determine whether the applicable energy conservation measures meet the standards set forth in these rules and specifications.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

DIVISION 61

PROCEDURES FOR A CASH PAYMENT FOR WEATHERIZATION

330-061-0005

Purpose

(1) Oregon Administrative Rules, chapter 330, division 61 prescribe how the Oregon Department of Energy will run the State Home Oil Weatherization (SHOW) program providing energy conservation measure cash payments. Operation of the program depends on availability of funds.

(2) The amendments to these rules apply to energy conservation measures completed on or after the effective date of these rules.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 8-2008, f. 12-4-08, cert. ef. 12-5-08; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0010

Definitions

For the purposes of Oregon Administrative Rules, chapter 330, division 61 the following definitions apply, unless the context requires otherwise:

(1) “Applicant” means an individual, corporation, partnership, joint venture or other entity applying for a cash payment.

(2) “Community Action Agency” means an agency designated to receive federal low income weatherization or energy assistance funds on behalf of low income clients.

(3) “Contractor” means a person receiving payment for installing an energy conservation measure. If installation is performed by a subcontractor, then the subcontractor may fulfill requirements such as the warranty requirements.

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

(5) “Director” means the Director of the department.

(6) “Dwelling” has the meaning provided in ORS 469.673. Real or personal property within the state inhabited as the principal of a dwelling owner or a tenant. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

(7) “Energy Conservation Measures” has the meaning provided in ORS 469.673.

(8) “Fuel Oil” means any petroleum product sold by a petroleum supplier for use as a residential heating fuel, including heating oil, propane, butane and kerosene.

(9) “Improvement Costs” means

(a) The actual costs of an energy conservation measure;

(b) Any incidental cost necessary to ensure the quality of the energy conservation measure, but not including the cost of repairs; and

(c) If installed by contractor, the actual costs to the recipient;

(d) Improvement costs do not include the applicant's own labor.

(10) "Recipient" means an applicant receiving a cash payment under the energy conservation measure program.

(11) "Tenant" means a tenant as defined in ORS 91.100 or any other tenant.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 3-1988, f. & cert. ef. 5-24-89; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0015

Description of State Home Oil Weatherization Program

The Oregon Department of Energy offers cash payments for energy conservation measures. The cash payments are subject to available funding on a first-come, first-served basis.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0020

Eligible Recipients

(1) A dwelling owner who purchases and installs energy conservation measures may receive a cash payment. Dwellings must be heated by oil, propane, kerosene, butane or wood as the primary source of space heat at the time of receipt of the cash payment.

(2) A contractor may receive a cash payment on behalf of any dwelling owner who would be eligible to receive a cash payment, if such dwelling owner consents to the arrangement in writing. The contractor must comply with all requirements which would apply to the dwelling owner if he or she had received the cash payment.

(3) Community Action Agencies and other organizations that assist low-income households with weatherization and energy conservation measures may receive a cash payment on behalf of any dwelling owner who would be eligible to receive a cash payment. Such agencies may apply for a cash payment on behalf of dwelling owners who meet income guidelines for the U.S. Department of Energy's Low Income Weatherization Program.

(4) In the case of a commercial building which has some residential living space, the following can qualify for a cash payment:

(a) That part of the building used exclusively for residential purposes; and

(b) In a centrally heated building, a prorated share of the cost of a heating system upgrade. This share shall be based on the percentage of residential to total square footage served by the heating system.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0025

Specifications and Amount of Cash Payment

(1) The Oregon Department of Energy may annually allocate available funding. When allocating the funding, the department will allocate as provided in sections (2) and (3) of this rule.

(2) Households at or below eligibility levels for the U.S. Department of Energy's Low Income Weatherization Program can receive weatherization and energy conservation measure services

from a Community Action Agency or other agencies serving low-income households. The agency may apply for the cash payment program for installing qualifying energy conservation measures. The cash payment for installing qualifying energy conservation measures shall not exceed the lesser of the following:

(a) The cost of the qualifying energy conservation measures,

(b) 50 percent of the total project costs incurred at the dwelling for weatherization and energy conservation measures by the Community Action Agency during the current State Home Oil Weatherization grant period, or

(c) \$2,500.

(3) Any eligible dwelling owner may receive a cash payment not to exceed 50 percent of the project cost up to a cash payment of \$500 per dwelling address, for installing at least one of the qualifying energy conservation measures listed below, subject to the following limitations:

(a) Fuel oil furnace or boilers with tested steady state efficiency of at least 81 percent replacing a fuel oil heating system that is more than 20 years old or has a steady-state efficiency of 70 percent or less or as otherwise authorized by the Oregon Department of Energy.

(b) Replacement fuel oil burners, including electrical controls and combustion chamber improvements when needed, which increase combustion efficiency of oil furnaces or boilers. A replacement burner must have a tested steady state efficiency of at least 80 percent and be replacing a burner that is more than 10 years old or is in a heating systems with a tested steady state efficiency of 70 percent or less.

(c) Replacement windows including storm windows, storm doors, double pane windows, or double pane sliding doors subject to the following:

(A) Windows (including sliding doors) with a U-factor of at least 0.30 or lower replacing less energy efficient windows and sliding doors that are certified and labeled for U-factor in accordance with the simulation, testing and certification procedures of the National Fenestration Rating Council (NFRC).

(B) Storm doors covering uninsulated exterior doors; or

(C) Storm windows over single pane glass windows on an exception basis when double glazed windows are not a practical option.

(d) Insulated exterior doors with a U-factor no higher than 0.20. Subject to other limits, a cash payment for insulated exterior doors is limited to \$200.

(e) Insulation for attics and ceilings, floors or walls subject to the following:

(A) Attics and ceilings, with a preexisting insulation level of R-21 or less, must be insulated to a minimum nominal loose fill material of R-49 or cavity fill, or continuous rigid insulation of R-20 for roof decks;

(B) Floors, insulate over unheated spaces to fill framing cavity to R-30, if achievable; or

(C) Walls, fill the wall cavity with insulation. If area has unfinished walls adjacent to unheated areas, fill the wall cavity to R-21, if achievable. In areas that have finished walls with no insulation that are adjacent to unheated areas, fill up to R-15, if achievable.

(f) Weather-stripping, caulking or air sealing, seal the heated space and ducts in a dwelling. Subject to other limits, a cash payment for weather-stripping, caulking or air sealing is limited to \$200.

(g) Duct sealing and insulation, insulate supply and return air ducts in unheated spaces to at least R-8. This must be performed by a technician and certified that Bonneville Power Administration's Prescriptive Duct Sealing Specifications have been completed. Subject to other limits, a cash payment for duct sealing and insulation is limited to \$200.

(h) Programmable thermostats. Subject to other limits, a cash payment for programmable thermostats is limited to \$100.

(4) Notwithstanding OAR 330-061-0025(1), the Director may:

(a) Reduce incentive amounts or limit the number of qualifying energy conservation measures if the Director determines that cash payment applications are likely to exceed the funding allocated. This action will apply to any applications received no sooner than 30 calendar days after that determination.

(b) Allocate additional funding for financial incentives through pilot programs that the Oregon Department of Energy determines may encourage installation of energy efficiency measures.

(5) In some cases, a landlord may not wish to install energy conservation measures in all units within a building. To determine the building type, all dwelling units in the building must be counted. The cash payment is only available for those units where energy conservation measures have been installed. All dwelling units sharing a common space conditioning system shall be considered part of the same residential building.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 8-2008, f. 12-4-08, cert. ef. 12-5-08; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0030

Application Procedure

(1) An applicant for a cash payment must submit to the Oregon Department of Energy a copy of a home energy assessment or third-party audit for the dwelling unit for which a cash payment is requested before the cash payment is provided.

(2) Applicant certification. The applicant must certify to the department that the applicant heats with oil, propane, kerosene, butane or wood, the application is for costs of qualifying energy conservation measures, the applicant will grant permission for an inspection of the installed measures within a reasonable time if requested by the department, and the applicant understands that the installed measures must comply with the program's energy conservation measure specifications and if the measures do not comply that the installation must be remedied or the cash payment repaid.

(3) A contractor applying for a cash payment on behalf of any dwelling owner must provide the department with evidence of written consent from the dwelling owner before receiving a cash payment.

(4) Contractor requirements:

(a) All contractors who install energy conservation measures receiving a cash payment must be registered with the Oregon Construction Contractors Board. This requirement may not apply to community action agencies acting as contractors;

(b) Contractors shall certify, if requested by the Oregon Department of Energy, that all applicable federal, state and local licenses are in good standing.

(c) Warranties:

(A) Basic Requirement:

(i) The contractor for the installation of energy conservation measures shall, in connection with such measures, warrant in writing that the recipient shall (for those measures found within one year from the date of installation to be defective due to materials, manufacture, design or installation) at a minimum be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts, materials or installation;

(ii) Any replacement parts or materials must be provided at the site of installation without charge for transportation and must be installed without charge by the contractor.

(B) Other law. This section may not relieve a warrantor under this section from full compliance with federal and state laws applicable to warranties, except to the extent that such law is inconsistent with the requirements of this section.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-

29-07, cert. ef. 9-1-07; DOE 8-2008, f. 12-4-08, cert. ef. 12-5-08; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0035

Cash Payment

After receipt of all documents and certificates required by OAR 330-061-0030, the department will issue a two-party check in the allowable cash payment amount to the applicant and the applicant's designated contractor or supplier. The department may also, at its discretion, issue a two-party check to the applicant and another person (such as a landlord, Community Action Agency, or lending institution). If no contractor or supplier is involved, or if the applicant has receipts showing that the contractor has been paid in full, the department may issue a single-party check to the applicant. The department may also, at its discretion, issue a single-party check to the contractor. The department may issue checks to Community Action Agencies administering the SHOW program on behalf of the department.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0040

Post-Installation Inspections

(1) The Oregon Department of Energy may conduct post-installation inspections to inspect energy conservation measures:

(a) The department may inspect energy conservation measures installed by a dwelling owner receiving a cash payment; and

(b) The department may require an inspection before disbursing cash payments.

(2) The inspection will verify that measures included for the cash payment were installed and that workmanship and materials meet industry standards. All measures installed must meet the energy conservation measure specifications. Local codes must prevail in all cases.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0045

Penalties and Remedies

(1) Any person who knowingly makes any false statement or misrepresents any material fact with respect to any cash payment provided by the Oregon Department of Energy is subject under state law ORS 162.085 to a fine of not more than \$1,000, or imprisonment for not more than six months, or both, for each offense. Each false statement, material misrepresentation or failure to make a required disclosure or statement shall be a separate offense.

(2) Refusal by a recipient to allow an inspection previously authorized in writing by the recipient, upon reasonable request by the department and at a reasonable time constitutes grounds for the department to recover the full cash payment amount from the recipient.

(3) Penalties in these sections are not exclusive. The penalties provided for in sections (1) and (2) of this rule are in addition to any civil or criminal fines or penalties applicable under law, including any applicable provisions of federal, state or local law.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0050

Retention of Records by Recipients

Recipients shall retain all records pertaining to the SHOW application and the energy conservation measures for which the cash payment was provided for a period of three years after the financial assistance is provided.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

330-061-0060

Applicability of Rules

These rules shall apply to all weatherization cash payments.

Stat. Auth.: ORS 469.040

Stats. Implemented: ORS 469.673 – 469.683

Hist.: DOE 5-1987, f. & ef. 12-18-87; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 3-2015, f. 9-30-15, cert. ef. 10-1-15

DIVISION 62

**ENERGY CONSERVATION STANDARD
FOR EXISTING DWELLINGS**

330-062-0005

Advisory Residential Energy Conservation Standards for Existing Dwellings Scope

(1) The purpose of OAR 330-062-0015 through 330-062-0025, pursuant to ORS 469.155, is to establish statewide advisory energy conservation standards for weatherization measures installed voluntarily in existing dwellings.

(2) OAR 330-062-0010 through 330-062-0025 addresses only building component improvements because these improvements are relatively permanent and tend to remain effective throughout the life of the dwelling, regardless of changes in occupancy.

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469

Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0010

Definitions

As used in OAR 330-062-0010 through 330-062-0045:

(1) “Conditioned Spaces” shall mean areas within a dwelling’s thermal envelope which are heated, cooled, or ventilated by the dwelling’s heating, ventilating and air conditioning (HVAC) equipment.

(2) “Dwelling” shall mean real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. “Dwelling” includes a mobile home as defined in ORS 446.003, a floating home as defined in 488.705 and a single unit in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in 446.003.

(3) “Economically Feasible” shall mean that the present value to the resident of the conventional energy saved by weatherization is not less than the installed cost of the measure. Present value is calculated using the value of the first year energy savings discounted at three percent (the difference between a five percent real discount rate and a two percent real escalation rate for fuel) over the useful life of the weatherization measure.

(4) “Energy Audit” shall mean:

(a) The calculation and analysis of the heat loss and energy use efficiency of a dwelling; and

(b) An analysis of the energy savings and dollar savings potential that would result from providing weatherization in the dwelling; and

(c) An estimate of the cost of the weatherization that includes:

(A) Labor for the installation of items designed to improve the space heating and energy use efficiency of the dwelling; and

(B) The items installed.

(5) “Energy Conservation Standards” shall mean standards for the efficient use of energy for space and water heating in a dwelling. Energy conservation standards address weatherization of existing dwellings.

(6) “Resident” shall mean the owner or tenant occupying a dwelling as their principal residence.

(7) “Thermal Envelope” shall mean the elements of a dwelling which enclose conditioned spaces and through which heat may be transferred to or from the exterior of such a dwelling.

(8) “Weatherization” shall mean measures which reduce a dwelling’s heat exchange with its external environment. Weatherization measures are those measures in OAR 330-062-0025.

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469

Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0015

Audit Recommendation

(1) Before the installation of weatherization measures, each dwelling should receive an energy audit to determine its current energy use characteristics and to determine which weatherization measures are appropriate. For each appropriate measure, the audit should indicate the estimated installation cost and the amount of incentive financing, if any, that is available.

(2) A follow-up energy audit should be performed whenever there is a change in occupancy for a previously audited dwelling which has not been audited within the preceding five years. Follow-up audits should provide new residents with up-to-date information on the energy efficiency of their home and recommendations for further weatherization improvements.

(3) Each weatherization measure which is recommended for installation by an energy audit should be installed at the level indicated in rule 330-062-0025, unless that measure is restricted to a lesser level by structural limitations or accessibility.

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469

Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0020

Recommendation Criteria

(1) OAR 330-062-0025 recommends measures at levels which are achievable with commonly available materials and material sizes.

(2) OAR 330-062-0025 recommends weatherization measures at levels which are estimated by the Oregon Department of energy to be economically feasible. The energy savings used to determine whether the weatherization measure is economically feasible is the calculated difference between a dwelling’s annual energy requirement with the measure installed and its annual energy requirement without the measure, using calculation methods described in the 1981 American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Handbook of Fundamentals and the 1980 ASHRAE Systems Handbook.

(3) For the purpose of developing OAR 330-062-0025, the energy savings estimate for each recommended weatherization measure was calculated independently of the savings attributed to other recommended measures the actual savings realized from the installation of several measures, therefore, may be less than the sum of the calculated individual savings for each measure.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469

Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0025

Advisory Energy Conservation Standards

(1) As used in OAR 330-062-0005 through 330-062-0045, weatherization measures for thermal envelopes are:

(a) For ceilings adjacent to unconditioned spaces or to the exterior:

(A) To reduce heat loss due to air leaks through ceiling to unheated spaces or to the exterior:

(i) Caulking or other sealing material should be added to all gaps around ceiling penetrations⁶, and weatherstripping should be added to attic access doors; and

(ii) Cover plate gaskets should be added to all electrical outlets in interior walls; and

(B) To prevent moisture condensation: Adequate ventilation should be provided above insulation; and

(C) To reduce heat loss due to thermal conduction:

(i) If no existing insulation: R-38¹³, insulation should be added with a vapor barrier of .5 perm or less on warm (ceiling) side of insulation; or

(ii) If existing insulation is R-11: R-30¹³, unfaced insulation should be added; or

(iii) If existing insulation is R-19 or more: Additional insulation probably is not economically feasible.

(b) For floors adjacent to unconditioned spaces⁵:

(A) To prevent moisture condensation:

(i) Adequate ventilation should be provided below insulation; and

(ii) A 6 mil polyethylene or equivalent ground cover overlapped at all seams should be added in a crawl space; and

(B) To reduce heat loss due to thermal conduction:

(i) If no existing insulation: R-19¹² insulation should be added with a vapor barrier of 1 perm or less on the warm (floor) side of the insulation; or

(ii) If existing insulation is R-11: R-11¹² insulation should be added.

(c) For concrete floor slabs on grade to prevent heat loss due to thermal conduction: If no existing insulation: R-41 insulation should be added around the perimeter of the slab to a depth of two feet below grade.

(d) For walls adjacent to exterior or unconditioned spaces:

(A) To prevent heat loss due to air leaks through walls adjacent to the exterior or to unheated spaces:

(i) Caulking or other sealing material should be added outside and inside to all gaps and holes at wall penetrations⁶; and

(ii) Cover plate gaskets should be added to all electrical outlets in walls⁶; and

(B) To reduce heat loss due to thermal conduction:

(i) If existing wall is standard studwall construction without insulation in wall cavity: R-11³⁸ insulation should be injected into wall cavity; or

(ii) If existing wall is an uninsulated knee wall adjacent to accessible unconditioned rafter space: R-111 insulation should be added to the unheated side of the knee wall with a vapor barrier of 1 perm or less on the warm (wall) side of the insulation.

(e) For windows and sliding glass doors:

(A) To prevent heat loss due to air leaks through windows and frames:

(i) Caulking should be added outside and inside to gaps and joints around glazing, stationary sash, and frames⁶; and

(ii) Weatherstripping should be added around all operable sash⁶; and

(B) To reduce heat loss due to thermal conduction: If existing prime window is single-glassed, jalousie, or sashless sliding:

(i) Tight fitting storm windows should be added; or

(ii) Existing glazing should be replaced with double-pane insulating glass⁴ set in tight fitting sash.

(f) For exterior doors:

(A) To prevent heat loss due to air leaks around doors and door frames:

(i) Caulking should be added outside and inside around frame⁶; and

(ii) Weatherstripping and a draftproof threshold should be added around door; and

(B) To reduce heat loss due to thermal conduction: If existing prime door is uninsulated: A tight fitting storm door should be added to the existing prime door.

(2) As used in OAR 330-062-0005 through 330-062-0045, weatherization measures for HVAC systems are:

(a) For space heating and cooling system controls to reduce heat loss due to unnecessary operation of heating equipment during sleeping hours or periods when the house is unoccupied: A timed setback space heating and cooling control thermostat should be added⁹.

(b) For forced air heating ducts in unconditioned spaces:

(A) To prevent heat loss due to air leaks from ducts: Caulking or duct tape should be added to all accessible duct seams where air leaks can occur; and

(B) To reduce heat loss due to thermal conduction: R-111 insulating wrap should be added to all accessible ducting.

(c) For steam or hydronic heating system pipes in unconditioned spaces to reduce heat loss due to thermal conduction: R-41 insulating wrap should be added to all accessible steam or hydronic system piping.

(3) As used in OAR 330-062-0005 through 330-062-0045, weatherization measures for domestic water heating systems are:

(a) For a water heater tank in conditioned or unconditioned spaces to reduce heat loss due to thermal conduction: The water heater thermostat(s) should be set back to 120–140° F.⁶; and

(A) If existing water heater is electric:

(i) R-111 insulating wrap should be added to sides and top of tank leaving thermostat access panel(s), drain valve, pressure relief valve, and electrical service entry panel uncovered⁶; and

(ii) Styrofoam or equivalent rigid insulating pad should be added between the bottom of the tank and the floor if the tank rests directly on a concrete or masonry floor⁷; or

(B) If existing water heater is gas- or oil-fired: R-111 insulating wrap should be added to sides and top of tank leaving the flue and the area around it, air inlets, controls, drain valve, and pressure relief valve uncovered. On oil-fired water heaters also leave the bottom 1/3 of the tank and the high-limit switch uncovered⁶.

(b) For hot water pipes in conditioned and unconditioned spaces: R-31 insulating wrap should be added to all accessible water pipes (including cold water pipes in unconditioned spaces to prevent pipe damage due to freezing).

Footnotes:

1. Higher levels of insulation may be economically feasible. An energy audit may be useful in determining the advisability of using insulation levels greater than this recommended level.

2. Installation of retrofit insulation below existing insulation and insulation levels above R-19, may require special materials or installation techniques.

3. The addition of retrofit insulation to the ceiling or walls of mobile homes can be expensive and, therefore, is generally not feasible.

4. Triple-pane insulating glass may be economically feasible for your home but it is not yet widely available in Oregon.

5. Skirtings with ventilation should be added around the base of mobile homes to prevent excessive drafts.

6. For "how-to" suggestions please refer to low-Cost Energy Savers for Oregon Homes, available from the Oregon agency, 1-800-452-7813.

7. When adding an insulating pad between a water heater tank and the floor, be certain not to create leaks by overstressing rigid plumbing connections to the water heater.

8. Use of ureaformaldehyde foam for insulation in residential applications has been banned by the Federal Consumer Product Safety Commission.

9. Timed setback thermostats are not recommended for households that conscientiously practice manual thermostat setback. In such cases times setback thermostats may not pay for themselves and in fact may be less effective in saving energy.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469.155

Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0030

Mandatory Energy Conservation Standards for Weatherizing Dwellings Under the Small Scale Local Energy Project Loan Fund Purpose

The purpose of OAR 330-062-0035, pursuant to ORS 470.090 is to establish mandatory energy conservation standards for weatherization of dwellings constructed before January 1, 1979 which will be served by space heating projects financed through the Small Scale Local Energy Project Loan Fund.

Stat. Auth.: ORS 407, 469 & 470
 Stats. Implemented: ORS 470.080
 Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0035

Weatherization Standards for Small Scale Local Energy Project Loans

In OAR 330-062-0025, as it applies to mandatory weatherization for approval of Small Scale Local Energy Project loans for residential space heating projects, the word “shall” will be substituted throughout for the word “should.” Applicants for Small Scale Local Energy Project Loans who are subject to this rule may be exempted from compliance with any weatherization measure in OAR 330-062-0025 which can be demonstrated to create a potentially hazardous condition or which is determined not to be economically feasible for the applicant’s particular project.

Stat. Auth.: ORS 407, 469 & 470
 Stats. Implemented: ORS 470.080
 Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0040

Mandatory Weatherization Standards for Oregon Department of Veterans’ Affairs Home Loans Purpose

The purpose of OAR 330-062-0045, pursuant to ORS 407.055, is to adopt mandatory minimum weatherization standards for approval of loans by the Oregon Department of Veterans’ Affairs on Homes constructed before July 1, 1974, as defined in ORS 407.010.

Stat. Auth.: ORS 407, 469 & 470
 Stats. Implemented: ORS 407.055
 Hist.: DOE 9-1982, f. & ef. 7-1-82

330-062-0045

Oregon Department of Veterans’ Affairs Minimum Weatherization Standards

(1) The Director of the Oregon Department of Energy finds that as of July 1, 1982, the current minimum weatherization standards for approval of a loan by the Oregon Department of Veterans’ Affairs (Department of Commerce OAR 814-005-0005 through 814-005-0030) are compatible with the Advisory Energy Conservation Standards adopted July 1, 1982, under 330-062-0005 through 330-062-0025.

(2) The Director of the Oregon Department of Energy, therefore, adopts the existing Oregon Department of Commerce standards, OAR 814-005-0005 through 814-005-0030, as Minimum Weatherization Standards for the approval of loans by the Oregon Department of Veterans’ Affairs on homes as defined in ORS 407.010, constructed before July 1, 1974. Rule 330-062-0035 shall be reviewed when advisory energy conservation standards, OAR 330-062-0025, are revised by the Director or when the Oregon Department of Commerce minimum weatherization standards 814-005-0005 through 814-005-0030 are revised.

Stat. Auth.: ORS 407, 469 & 470
 Stats. Implemented: ORS 407.055
 Hist.: DOE 9-1982, f. & ef. 7-1-82

DIVISION 63

VOLUNTARY BUILDING ENERGY PERFORMANCE SCORE SYSTEMS

330-063-0000

Purpose and Scope

These rules establish requirements of using a voluntary energy performance score system for the purpose of evaluating:

(1) Energy conservation and energy efficiency of new and existing residential buildings in Oregon; and

(2) Energy use in new and existing commercial buildings in Oregon.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040
 Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703
 Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

330-063-0010

Definitions

For the purposes of these rules, unless otherwise specified, the following definitions shall apply:

(1) “Asset rating” means a representation of the building’s energy efficiency or energy use generated by modeling under standardized weather and occupancy conditions.

(2) “Building” means any enclosed structure created for permanent use as a residence, a place of business, or any other activities whether commercial or noncommercial in character.

(3) “Building energy assessment” means a determination of a building’s energy use and energy efficiency by analyzing the building’s physical systems and assuming certain operational characteristics.

(4) “Commercial building” means a structure of which more than 50 percent of usable square footage is used or intended for use in the exchange, sale, or storage of goods, or the provision of services.

(5) “Department” means the State Department of Energy created under ORS 469.030.

(6) “Director” means the Director of the State Department of Energy appointed under ORS 469.040.

(7) “Energy performance score system” means a technical and administrative framework for producing and reporting metrics that describe the energy consumption, generation and efficiency of a building.

(8) “Home” means a residential building.

(9) “Home energy assessor” has the meaning given that term in ORS 701.527.

(10) “Home energy performance score” has the meaning given that term in ORS 701.527.

(11) “Home energy performance score system” means an energy performance score system designed and used for residential buildings and which meets the requirements of OAR 330-063-0015(1).

(12) “Operational rating” means a representation of a building’s energy use generated by measuring actual energy consumption taking into consideration all physical systems and their operation.

(13) “Physical systems” means any energy-consuming equipment integrated in the building design, function or operation.

(14) “Residential building” has the same meaning as “residential structure” as defined in ORS 701.005.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040

Stats. Implemented: 2009 OL Ch. 750 & 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

330-063-0015

Home Energy Performance Score System Requirements

(1) A home energy performance score system must:

(a) Generate a home energy performance score that meets the requirements of section (2);

(b) Generate a home energy performance report that meets the requirements of sections (3) and (4);

(c) Incorporate building energy assessment software, the output of which must be used to derive the information presented on the home energy performance report;

(d) Provide or specify required training in the use of the home energy performance score system for home energy assessors; and

(e) Establish minimum performance standards for quality assurance.

(2) A home energy performance score must be an asset rating that is based on physical inspection of the home or design documents used for the home’s construction.

(3) A home energy performance report must include the following information, which must be presented on a single side of a single page if the report is formatted for printing:

(a) The home energy performance score described in section (2) and an explanation of the score;

(b) An estimate of the total annual energy used in the home in retail units of energy, by fuel type;

(c) An estimate of the total annual energy generated by on-site solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;

(d) An estimate of the total monthly or annual cost of energy purchased for use in the home in dollars, by fuel type, based on the current average annual retail energy price of the utility serving the home at the time of the report;

(e) The current average annual utility retail energy price in dollars, by fuel type, used to determine the costs described in subsection (d) of this section;

(f) At least one comparison home energy performance score that provides context for the range of possible scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, and the same home with certain energy efficiency upgrades.

(g) The name of the entity that assigned the home energy performance score and that entity's Construction Contractors Board license number if such a license is required by law;

(h) The date the building energy assessment was performed; and

(i) The statement "This report meets Oregon's Home Energy Performance Score standard." Reports generated by home energy performance score systems that have not been approved for use in Oregon according to OAR 330-063-0020 may not include this statement.

(4) Additional information that may be presented in a home energy performance report includes, but is not limited to:

(a) A list of recommended energy efficiency upgrades for the building;

(b) A hypothetical home energy performance score representing the score the building would be expected to receive upon completion of the energy efficiency upgrades in subsection (4)(a);

(c) The estimated amount of carbon dioxide equivalent (CO₂e) emissions, in metric tons, resulting from the energy used in the home based on the carbon intensity, as reported on the department website, of the electricity provided by the electric utility that serves the home, natural gas and other fuel types used in the home.

Stat. Auth.: ORS 469.703 & 469.040

Stats. Implemented: ORS 469.703

Hist.: DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

330-063-0020

Review and Approval of a Home Energy Performance Score System

(1)(a) The director will appoint a stakeholder panel to recommend to the director whether to approve home energy performance score systems for use in Oregon.

(b) Members of the stakeholder panel may serve terms up to five years. Members may include but are not limited to:

(A) A chair from the Oregon Department of Energy;

(B) A representative from Energy Trust of Oregon;

(C) A representative from the U.S. Department of Energy;

(D) A representative from a provider of building energy assessment software;

(E) A representative from each home energy performance score system approved for use in Oregon;

(F) A representative from an investor-owned electric utility;

(G) A representative from a consumer-owned electric utility;

(H) A representative from a natural gas utility;

(I) A representative from the residential construction industry;

(J) A representative from the real estate industry;

(K) A representative from the appraisal industry; and

(L) A representative from an entity that provides training for building energy assessments.

(c) In its review of a home energy performance score system, the stakeholder panel must review all required elements of the home energy performance score system listed in OAR 330-063-0015.

(d) The stakeholder panel may recommend to the director criteria for approval of home energy performance score systems, criteria for approval of training and certification programs or work experience, and revisions to OAR 330-063-0015 that specify criteria for content and format of a standard energy metrics label to be included in all home energy performance reports.

(e) The stakeholder panel may develop a charter and operating procedures. The stakeholder panel must provide its recommendations to the director in writing and must include a description of any dissenting views of panel members. Recommendations should be based on consensus when possible.

(2) Except as provided in section (3), home energy performance score systems must meet the requirements of OAR 330-063-0015, be reviewed by the stakeholder panel and be approved by the director prior to being used to assign home energy performance scores to homes in Oregon.

(a) An entity seeking approval for use of a home energy performance score system in Oregon must submit to the department a written request for review and approval. The request must include:

(A) A copy of or an internet link to the building energy assessment software used by the home energy performance score system;

(B) A sample of the home energy performance report generated by the home energy performance score system;

(C) A copy of test results demonstrating the accuracy of the building energy assessment software used by the home energy performance score system; and

(D) Other information that may be necessary for the stakeholder panel to make a recommendation to the director.

(b) Within 120 days of the department's receipt of a complete request, the stakeholder panel must complete its review of the home energy performance score system and provide its written recommendation to the director. If the stakeholder panel is unable to make a recommendation to the director within 120 days, department staff will make a recommendation to the director.

(c) Within 60 days of the director's receipt of the stakeholder panel's recommendation, the director will decide whether the home energy performance score system is approved for use in Oregon and provide that decision, including reasons for denying approval if approval is denied, in writing to the applicant. In deciding whether to approve a home energy performance score system for use in Oregon, the director will consider:

(A) Whether the system meets the requirements for home energy performance score systems in OAR 330-063-0015;

(B) The recommendation of the stakeholder panel, as well as dissenting views raised by one or more panel members;

(C) The test results of the building energy assessment software used by the home energy performance score system;

(D) The degree and nature of use of the system in the marketplace; and

(E) Any other information the director determines is necessary to make a decision whether to approve.

(3)(a) The following home energy performance score systems are approved for use in Oregon until January 1, 2016, without undergoing the review and approval process described in section (2):

(A) Energy Trust of Oregon EPS® in effect May 1, 2014;

(B) U.S. Department of Energy Home Energy Score in effect May 1, 2014; and

(C) Residential Energy Services Network Home Energy Rating System in effect May 1, 2014.

(b) No later than January 1, 2016, home energy performance score systems listed in subsection (3)(a) must meet the requirements of OAR 330-063-0015, and the provider of a home energy performance system listed in subsection (3)(a) must seek approval for the system's continued use in Oregon by submitting to the department a written request for review and approval according to subsection (2)(a). After the department has received the complete request, the home energy performance system may continue to be used in Oregon until the director has provided a decision whether to approve in writing to the applicant. The request will be reviewed by the stakeholder panel and considered for approval by the

director according to the process and timelines described in subsections (2)(b) and (c).

(4) The provider of a home energy score system that has been approved for use in Oregon must submit to the department a new written request for review and approval every time a substantive revision is made to the approved system. The request for review and approval must include supporting documentation describing the revision. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c). A home energy performance score system that has undergone a substantive revision may not be used to assign home energy performance scores to homes in Oregon until the director has provided written approval for the use of the revised system. Substantive revisions include significant changes to the building energy assessment methodology, significant changes to the derivation of the home energy performance score or the scale on which it is presented, and significant changes to the training and quality assurance requirements for home energy assessors.

(5) The department may, at any time, request from the provider of an energy performance score system documentation demonstrating that no substantive revisions have been made to the home energy performance score system since the system was last approved for use in Oregon. The provider must comply with the department's request within 60 days. If the provider cannot demonstrate that no substantive revisions have been made to the system since it was last approved, the provider must submit to the department a written request for review and approval that includes documentation describing the. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c). The system may not be used to assign home energy performance scores to homes in Oregon until the director has provided written approval.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040
Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

330-063-0025

Training Requirements for Home Energy Assessors

Individuals producing home energy performance scores must:

- (1) Be certified as a home energy assessor by the Oregon Construction Contractors Board if required by ORS 701.529;
- (2) Have completed training in the software program used to produce the score; and
- (3) Have successfully completed one of the following training and certification programs:
 - (a) Training and certification as a Building Performance Institute Building Analyst or Home Energy Professional Energy Auditor;
 - (b) Training and certification from the Residential Energy Services Network as a Home Energy Rater;
 - (c) Training and certification from the Oregon Training Institute as a Residential Energy Analyst; or
 - (d) Other training and certification program or work experience approved by the department. Requests for such approval must be submitted to the department in writing. The department may request information about the training and certification program or work experience from the requestor and will provide an approval decision to the requestor within 120 days of receipt of all requested information.

Stat. Auth.: ORS 469.703 & 469.040
Stats. Implemented: ORS 469.703
Hist.: DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

330-063-0030

Reporting Home Energy Performance Score Data

Home energy assessors must report to the department, at least annually, in a manner specified by the department, the following information about each home in Oregon to which they assigned a home energy performance score, unless the department is able to obtain the information from another source:

- (1) The zip code and city from the home's site address, but not the street address;
- (2) The characteristics of the home that were input into the building energy assessment software; and
- (3) All information required by OAR 330-063-0015(3) to be in the home energy performance report.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040
Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

330-063-0040

Energy Performance Score System Standards for Commercial Buildings

- (1) Persons producing energy performance scores must have completed training in the building energy assessment software and energy performance score system used to produce the score.
- (2) Building energy assessment software used to produce the score must be approved the U.S. Department of Energy.
- (3) An energy performance score for an existing commercial building must be an operational rating based upon the actual energy usage of the building and shall utilize utility data.
- (4) An energy performance score for a new commercial building must be an asset rating based on the projected energy consumption of the building and may include a physical inspection of the building.
- (5) An energy performance score must include an explanation of the score and the assumptions used to derive the score, the date of the score, and the name of the person that produced the score.

(6) Commercial energy use must be displayed in annual Kbtu per square foot as determined by approved energy modeling methods, using standard occupancy profiles for the building type. The annual energy consumption of each fuel (electricity, natural gas, oil, propane, etc) must be displayed in retail units.

(7) Energy performance score reports may include:

- (a) A benchmark score based on a similar building built to state building code standards, a similar building that represents Oregon or national average energy consumption, or any other comparable building; and
- (b) The estimated amount of carbon dioxide equivalent (CO₂e) emissions, in metric tons, associated with the building's energy consumption based on the carbon intensity, as reported on the department's website, of the electricity provided by the electric utility that serves the building, natural gas and other fuel types used in the building.

Stat. Auth.: 2009 OL Ch. 750
Stats. Implemented: 2009 OL Ch. 750
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

DIVISION 65

OREGON RESIDENTIAL WEATHERIZATION TAX CREDIT PROGRAM

330-065-0005

Purpose

The purpose of these rules is to establish a list of weatherization items which qualify for the Oregon Residential Weatherization Tax Credit Program and to establish criteria for review of items proposed in the future. ORS 316.088 requires the Oregon Department of Energy to furnish to the Department of Revenue prior to January 1 of each year a list of items which qualify for the credit.

Stat. Auth.: ORS 316 & 469
Stats. Implemented: ORS 316.088
Hist.: DOE 7-1979, f. 11-27-79, ef. 1-1-80; DOE 14-1980, f. 12-15-80, ef. 1-1-81

330-065-0010

Qualifying Weatherization Materials

The following weatherization materials as defined in ORS 316.088 shall qualify for the Oregon Residential Weatherization

Tax Credit when installed in an existing dwelling as defined in ORS 316.088, other than a mobile home:

(1) Insulation of ceilings or attics, including insulating materials installed on the exterior of flat roofs (but excluding any fire- or weather-proofing or other material installed on the exterior of the insulating materials and serving as roofing material);

(2) Insulation of exterior walls;

(3) Insulation of basement walls;

(4) Insulation of crawl space foundation walls;

(5) Insulation of floors over unheated spaces and materials necessary to support the insulation;

(6) Insulation of heating system supply and return air ducts in unheated spaces;

(7) Insulation of water heaters, water pipes, or steam pipes in unheated spaces;

(8) Vapor barrier materials;

(9) Ground cover in crawl spaces;

(10) Weatherstripping;

(11) Caulking;

(12) Storm or thermal windows;

(13) Storm or thermal doors;

(14) Furnace or boiler replacement burners which result in increased combustion efficiency. The burners must replace an existing burner and must be of the same fuel type as the burner they replace. The burners do not qualify if they are acquired as part of a new furnace or boiler;

(15) Replacement furnaces or boilers only when they replace an existing converted solid fuel gravity furnace which at one time burned sawdust, wood, or coal and was later converted to burn fuel oil or natural gas. The replacement must be of the same fuel type as the furnace it replaced;

(16) Electric ignition devices for gas heating systems and appliances, except those acquired as part of a new furnace or boiler;

(17) Automatic vent dampers installed on furnaces, boilers, or water heaters;

(18) Improved draft hoods designed to restrict flue heat loss during both the on cycle and the off cycle installed on furnaces, boilers, or water heaters;

(19) Flue heat recovery devices for use on gas- or oil-fired furnaces or boilers;

(20) Timed thermostats;

(21) Timers installed on hot water circulation pumps serving multiple unit residential housing;

(22) Water flow regulating devices on any hot water outlet;

(23) Attic ventilation, excluding power ventilators;

(24) Dehumidifiers (plug-in or permanently installed);

(25) Cost of renting equipment to blow in insulation; and

(26) Insulated shades and shutters with a tight seal on all four sides, which have an R-value of at least 3, and if foam plastic, a maximum flame-spread rating of not more than 75.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

Hist.: DOE 7-1979, f. 11-27-79, ef. 1-1-80; DOE 14-1980, f. 12-15-80, ef. 1-1-81

330-065-0015

Qualifying Mobile Home Weatherization

The following mobile home weatherization materials as defined in ORS 316.088 shall qualify for the Oregon Residential Weatherization Tax Credit when installed in a mobile home:

(1) Caulking;

(2) Weatherstripping;

(3) Floor insulation and materials necessary to support the insulation;

(4) Ground cover in crawl spaces;

(5) Insulation of ceilings or attics, including insulating materials installed on the exterior of flat roofs (but excluding any fire- or weather-proofing or other material installed on the exterior of the insulating materials and serving as roofing material);

(6) Timed thermostats;

(7) Insulation of heating ducts, water pipes and water heaters in unheated spaces;

(8) Storm or thermal windows;

(9) Storm or thermal doors;

(10) Dehumidifiers (plug-in or permanently installed);

(11) Water flow regulating devices on hot water outlets;

(12) Electric ignition devices for heating systems and appliances except those acquired as part of a new furnace or boiler;

(13) Furnace or boiler replacement burners which result in increased combustion efficiency. The burners must replace an existing burner and must be of the same fuel type as the burner they replace. The burners do not qualify if they are acquired as part of a new furnace or boiler;

(14) Automatic vent dampers installed on equipment furnaces, boilers, or water heaters;

(15) Improved draft hoods designed to restrict flue heat loss during both the on cycle and the off cycle installed on furnaces, boilers or water heaters;

(16) Flue heat recovery devices for use on gas- or oil-fired furnaces or boilers; and

(17) Insulated shades and shutters with a tight seal on all four sides, which have an R-value of at least 3, and if foam plastic, a maximum flame-spread rating of not more than 75.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

Hist.: DOE 7-1979, f. 11-27-79, ef. 1-1-80; DOE 14-1980, f. 12-15-80, ef. 1-1-81

330-065-0020

Items Not Qualifying as Weatherization Materials

(1) Siding;

(2) Roofing;

(3) Carpeting;

(4) Microwave ovens and other appliances;

(5) Dimmer switches;

(6) Heat pumps;

(7) Wood- or sawdust-burning stoves, heaters, and furnaces;

(8) Ceiling to floor air circulators;

(9) Thermal draperies and awnings;

(10) Radiator temperature control valves;

(11) Furnace tune-up and cleaning;

(12) Appliance electricity consumption meters;

(13) New gasketing for refrigerators, freezers and ovens;

(14) Automatic water heater schedulers;

(15) Solar screens and solar control films;

(16) Power ventilators;

(17) Wall insulation for mobile homes;

(18) Fireplace modifications including: outside air inlets, glass screens, heat exchangers, special grates, and permanent fireplace inserts manufactured specifically for fireplaces;

(19) Transient voltage surge suppression devices;

(20) Any materials installed in new construction, additions to existing structures, or remodeling which adds living space;

(21) Flue heat recovery devices for use on wood-burning equipment; and

(22) Any insulation, other than on a water heater, water pipe or heating duct, not installed between a conditioned area and an unconditioned area.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

Hist.: DOE 7-1979, f. 11-27-79, ef. 1-1-80; DOE 14-1980, f. 12-15-80, ef. 1-1-81

330-065-0025

Review of Proposed Weatherization Materials

(1) The Department shall, upon request, review items proposed for inclusion as weatherization materials eligible for the Oregon Residential Weatherization Tax Credit. Items determined to be eligible shall annually be added to OAR 330-065-0010 (Qualifying Weatherization Materials) and/or 330-065-0015 (Qualifying Mobile Home Weatherization Materials). The Department shall notify the Department of Revenue of those items determined to be eligible by January 1 of each year.

(2) The request for review shall be in writing and shall be accompanied by the following information about the proposed item:

- (a) Cost;
 - (b) Product literature;
 - (c) Photos, schematic drawings and/or product samples;
 - (d) Copy of listing certificate from UL, AGA, ICBO or other recognized standard-setting organization, where applicable; the certification shall be for the device as a whole and not simply for components;
 - (e) Test data, including R-values where applicable, from an independent laboratory documenting and quantifying energy savings;
 - (f) Name, address, and telephone number of the manufacturer; and
 - (g) Name, address, and telephone number of the person(s) submitting the request for review.
- Stat. Auth.: ORS 316 & 469
 Stats. Implemented: ORS 316.088
 Hist.: DOE 7-1979, f. 11-27-79, ef. 1-1-80; DOE 14-1980, f. 12-15-80, ef. 1-1-81

330-065-0030

Criteria for Review of Proposed Weatherization Materials

- (1) In order to qualify as an addition to the list of weatherization items in OAR 330-065-0010 and 330-065-0015, the proposed item shall:
 - (a) Be primarily designed to improve the efficiency of space heating and energy utilization of a dwelling;
 - (b) Where applicable, be listed by Underwriters Laboratory, American Gas Association, International Conference of Building Officials or other recognized standard-setting organization;
 - (c) Actually and substantially improve the efficiency of space-heating and energy utilization. Independent laboratory test data or acceptable methods of calculation must be provided to demonstrate energy savings;
 - (d) Involve replacement of retrofit rather than maintenance or repair;
 - (e) Conserve more than nominal amounts of energy and/or be reasonably cost-effective; and
 - (f) Not involve substitution of one form of energy for another.
 - (2) Review of an item shall also take into consideration whether the item will:
 - (a) Be reasonably considered a fixture attached to the dwelling;
 - (b) Operate to save energy independent of activation by the homeowner; and
 - (c) Be consistent with the statutory list of qualifying weatherization materials.
- Stat. Auth.: ORS 316 & 469
 Stats. Implemented: ORS 316.088
 Hist.: DOE 7-1979, f. 11-27-79, ef. 1-1-80; DOE 14-1980, f. 12-15-80, ef. 1-1-81

DIVISION 66

COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAMS FOR PUBLICLY OWNED UTILITIES IN OREGON

330-066-0005

Purpose, Statutory Authorization, Policy

The purpose of these rules is to provide procedures and standards for publicly-owned electric utilities to present energy conservation services programs for commercial buildings as required by Chapter 708, Oregon Laws 1981.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469.030
 Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0010

Definitions

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

- (1) "Automatic Control Systems" means devices which regulate lighting, heating, ventilating, air conditioning, or other energy loads automatically based on time, temperature, humidity,

pressure and/or load limiting measures. Equipment associated with automatic control systems includes, but is not limited to: automatic dampers, wiring, relays, sensors, valves, microprocessors, and other equipment which produces a reduction in energy consumption or demand.

(2) "Commercial Building" means a public building as defined in ORS 456.746 which includes:

- (a) Any building which provides facilities or shelter for public assembly, or which is used for educational, office or institutional purposes.
- (b) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise.
- (c) Any portion of an industrial plant building used primarily as office space.

(d) Any building owned by the state or political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sports arenas and university buildings.

(3) "Commercial Building Customer" means the owner or tenant of a commercial building who is responsible for paying energy costs to a utility and who is the utility customer of record.

(4) "Commercial Energy Audit" means the service provided by a qualified commercial energy auditor, energy specialist, or engineer or architect to a commercial building customer which includes on-site data gathering, energy use analysis, a report to the customer recommending energy conservation measures and an estimate of the cost/benefit of those measures.

(5) "Commercial Energy Auditor" (or "Level I Auditor") means a person who is qualified through training or experience and who has a general knowledge of heat transfer principles, construction practices, energy-efficient operations and maintenance procedures, boiler and furnace efficiency improvements, infiltration controls, envelope weatherization, HVAC systems, electric control systems, lighting systems, solar insulation and applicable energy conservation measures.

(6) "Commercial Energy Conservation Services Program" means those services specified in Sections 15(1)-(4) and 18(1)-(2), Chapter 708, Oregon Laws 1981, as further defined in these rules.

(7) "Commercial Energy Specialist" (or "Level II Auditor") means a person who is qualified through training or experience and who has knowledge and abilities of a qualified commercial energy auditor and can perform calculations: Of energy use analysis; of energy efficiencies of HVAC, lighting, plumbing, water, steam, control or electrical systems; and can prepare technical reports of net energy savings for energy conservation measures.

(8) "Director" means the Director of the Oregon Department of Energy.

(9) "Energy Conservation Measure" means a measure primarily designed to improve the efficiency of energy use in a commercial building, "energy conservation measures" as further defined in these rules include, but are not limited to: Improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(10) "Energy Use Analysis" means an estimate of energy consumed by various systems and components of a commercial building including, but not limited to: the building envelope, lighting, HVAC and water heating system.

(11) "Envelope Weatherization" includes, but is not limited to: insulation for ceilings, walls, floors, ducts or pipes, and storm or thermal windows and doors.

(12) "Furnace and Boiler Efficiency Improvements" include, but are not limited to: Replacement burners, furnaces, or boilers of the same energy fuel type which because of their design reduce energy use due to an increase in combustion efficiency, improved heat generation or reduced heat losses; automatic vent dampers; automatic ignition devices; replacement filters; and cleaning and combustion efficiency adjustments.

(13) "Heat Recovery Devices" means those devices or equipment which recover heat energy from commercial applications by capturing, storing, transferring and using the heat content of liquid or gaseous streams to reduce the need for additional energy resources. Such heat recovery devices include, but are not limited to: Recuperators, heat wheels, regenerators, heat exchangers, and economizers.

(14) "Heating, Ventilating and Air Conditioning (HVAC) System Modifications" include, but are not limited to: Improving controls for utilization of outside air, adjusting temperature and humidity of supply air, reducing energy use of reheat systems and exhaust hoods, replacement air conditioning systems of the same energy fuel type which reduce the amount of energy use due to an increase in efficiency.

(15) "Infiltration Controls" include, but are not limited to: caulking, weatherstripping, sealants, gaskets, airlocks and revolving doors used to reduce air leaks in a building.

(16) "Lighting System Improvements" means devices and actions which reduce overall indoor or outdoor lighting energy consumption while maintaining satisfactory lighting levels. Lighting system improvements include, but are not limited to: Reducing light levels to acceptable minimum levels; installation of task lighting; local switching, time control and sensing devices; and installation of more efficient lamps.

(17) "Net Energy Savings" means the energy savings, resulting from an energy conservation measure taking into account interactions of other known energy conservation measures being implemented and impacts on all energy sources and systems in the building.

(18) "Operation and Maintenance Measures" means any energy conservation measure or practice which is presumed cost-effective because there is little or no cost associated with the measure such that the simple payback period is less than one year. Operations and maintenance measures include, but are not limited to: temperature setbacks, water flow reductions, reduced use of ancillary systems or reduced energy use when a building is unoccupied, repairing air duct leaks and steam system and furnace or boiler maintenance.

(19) "Simple Payback Period" means the estimated total installed cost of an energy conservation measure divided by the estimated first year dollar savings to the customer resulting from the measure.

(20) "Solar Water Heaters" means water heating devices, either active or passive, designed to heat water with radiant energy from the sun.

(21) "Utility" means a publicly-owned utility which sells electricity to the public.

(22) "Water Heating Heat Pumps" means water heating devices designed to heat water by extracting energy from the surrounding ambient environment, including air, earth, and ground water.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.860
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0015

Commercial Energy Conservation Services Programs

(1) Each utility shall be responsible for ensuring that a commercial energy conservation services program which meets or exceeds the requirements of these rules is offered to all commercial building customers within its service territory.

(2) Each utility shall have available on request information about energy saving operations and maintenance measures for commercial buildings. The information may be tailored to special classes of commercial customers.

(3) Each utility shall establish a procedure to notify by mail each commercial building customer at least once a year of the availability of information and materials about energy conservation and of energy audit services. Notification shall include information on the location of the nearest office for obtaining these services, procedures for obtaining such service, and fees, if any.

(4) Each utility shall actively promote the availability of energy audit services whenever it enters into any phase of a contin-

gency or curtailment plan for dealing with an energy supply shortfall.

(5) Each utility shall be responsible for having qualified commercial energy auditors, specialists or engineers or architects available to provide energy audits for commercial building systems and components which exist in its service area.

(6) When a utility receives a request for a commercial energy audit, a commercial energy auditor shall perform an on-site audit to collect data and evaluate energy conservation measures including at least: operations and maintenance measures, simple automatic control systems, envelope weatherization, infiltration controls and lighting systems improvements.

(7) If the commercial building customer uses an average of more than 4,000 kWh of electricity per month, the utility shall provide an energy audit to evaluate more complex energy conservation measures such as sophisticated automatic control systems, furnace and boiler efficiency improvement, heat recovery devices, HVAC system modifications, infiltration controls, lighting system improvements and solar water heaters or water heating heat pumps unless it can substantiate that analysis of the systems in use does not require that level of expertise. The utility shall use a commercial energy specialist or engineer or architect to provide the energy audit described in this section.

(8) Each utility shall be responsible for: having appropriate data recording forms for an energy audit, developing procedures for analyzing energy use in commercial buildings and for calculating potential energy savings, and designing energy audit report forms for recommendations to commercial building customers.

(9)(a) Energy audit reports to a commercial building customer shall include, as a minimum: a brief description of the building's energy using systems and overall condition, an energy use analysis, and recommended operations and maintenance measures;

(b) Commercial energy audits described in section (6) of this rule shall include at least all energy conservation measures for improving existing energy consuming systems which have a simple payback period of three years or less. Commercial energy audits described in section (7) of this rule shall include at least all energy conservation measures for improving existing energy consuming systems which have a simple payback period of ten years or less;

(c) Each energy conservation measure shall be described. Each energy conservation measure description, except for operation and maintenance measures, shall also include estimated costs, and estimated net energy and dollar savings for the first year;

(d) Information about the availability of state and federal tax credits and low-cost financing options for the customer shall also be included.

(10) Each utility shall include in its program description conservation services provided by other federal, state or local government or utility programs that it wishes the Director to review according to OAR 330-066-0020.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.890
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0020

Other Programs

The Director will review any federal, state or local government, or utility commercial energy audit program to determine if that program meets or exceeds the requirements of these rules in whole or in part. Upon a determination that the program meets or exceeds the requirements of these rules, the utility which implements the program or refers eligible commercial building customers to that program shall be considered to have met the requirements in whole or in part of these rules.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.900
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0025

Coordination of Utilities

(1) In the case where gas and publicly owned utilities serve the same building, each publicly-owned utility shall offer to the commercial building customer an audit as described in OAR 330-

066-0015(6) of all energy consuming systems. The publicly-owned utility may offer an audit as described in 330-066-0015(7) of systems using primarily electricity or interacting with the electric system. As an alternative, gas utilities and electric utilities may coordinate on analyses of energy consuming systems and presentations of recommendations to the customer.

(2) If a commercial building customer uses oil, wood or a renewable resource in the commercial building, the utility shall make every effort to determine previous energy use records for that energy system and shall evaluate and report on operations and maintenance aspects of the system.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.880
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0030

Fees

If the utility proposes to charge the commercial building customer a fee for the energy audit the fee should be structured so as not to discourage commercial building owners and tenants from seeking audits from their utility. The fee schedules shall be specified in the commercial energy conservation services program.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.890
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0035

Implementation Schedules

(1) Each utility shall submit for review and approval its commercial energy conservation services program to the Director within 180 days of the effective date of these rules.

(2) Each utility shall describe how it will ensure that personnel are qualified to conduct energy audits. The description shall include at least the utility's minimum requirements for training, education or equivalent experience of auditors and specialists. If consultants will be employed to provide energy audit services the utility shall identify the consulting firm(s) and present sufficient information to support the qualifications of the firms to do energy conservation analyses.

(3) Each utility shall provide to the Director a copy of the training program for energy auditors and energy specialists.

(4) Each utility shall submit to the Director a copy of the data collection form, a description of analysis procedures and report forms.

(5) Each utility shall offer its program within 60 days of its program being approved. Each customer who requests an audit shall receive a report describing the results of the audit performed under OAR 330-066-0015(6) within 120 days of the request for services. A utility may request an extension of this time requirement if program start-up causes delays in the first year of program implementation.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.865
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0040

Reporting Requirements

(1) Each utility shall report to the Director quarterly the number of eligible commercial building customers, number of audits requested, number of audits performed by level of audit, number of referrals to other audit programs, estimated aggregate savings of operations and maintenance recommendations, estimated aggregate savings and retrofit energy conservation measures.

(2) Each utility shall also report when requested by the Department, not to exceed once per year, information on all commercial building customers who have received commercial energy audits in order for the Department to evaluate program performance and effectiveness.

(3) If the utility's service is offered through an association, the association should provide the above information on an individual basis for each utility served.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0045

Coordination with Federal Statutes and Regulations

The Director shall review each commercial energy audit conservation services program to ensure that it does not conflict with federal statutes and regulations applicable to energy conservation in commercial buildings.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 10-1982, f. & ef. 11-1-82

330-066-0050

Exemption for Existing Commercial Energy Conservation Service Programs

(1) Each covered publicly owned utility which has an existing commercial energy conservation services program, as of the effective date of these rules, may submit a description of its program to the Director to request an exemption. The program description shall include: copies of information materials about energy conservation which it has available for commercial building customers, procedures used to regularly notify for commercial building customers, procedures used to regularly notify all customers in commercial buildings of the availability of energy conservation services and a description of audit procedures, auditor qualifications, types of systems audited, example report forms and procedures for estimating costs of energy conservation measures. A fee schedule, if any, shall be included with the program description.

(2) If the Director finds that the existing program meets or exceeds the requirements of Sections 17 to 20 of Chapter 708, Oregon Laws 1981, those sections shall not apply to the covered publicly owned utility.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 10-1982, f. & ef. 11-1-82

DIVISION 67

IMPLEMENTING THE INSTITUTIONAL CONSERVATION PROGRAM

330-067-0010

Purpose

(1) The program rules for grants are set by Title III of the National Energy Conservation Policy Act, Public Law 95-619, 92 Stat. 3238 (42 U.S.C. 6371). These rules are authorized by ORS 469.040, ORS Chapter 183, and 10 CFR, Part 455 in the February 19, 1993, Federal Register.

(2) These rules allow grants to the state for program and technical assistance. The grant for Program Assistance is managed and performed by the state. The purpose of the grant is to provide support and training to eligible institutions to help improve building energy system efficiency and reduce energy costs. Technical Assistance (TA) grants or Technical Assistance Studies (TAS) help institutions identify actions that can be taken and/or measures that can be installed to reduce the use and costs of energy.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469
Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0015

Grantees Must Comply with Other Rules and Laws

TAS in part paid for by the Institutional Conservation Program (ICP) must comply with all local, state and federal rules, regulations, ordinances, statutes, codes, and standards. These rules do not alter the duty of the grantee to comply with all other rules and laws that apply.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469
Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0020

Definitions

(1) "Act," as used in this rule, means the Energy Policy and Conservation Act, Public Law 94-163, 89 Stat. 871 (42 U.S.C. 6201) as amended by Title III of the National Energy Conservation Policy Act, Public Law 95-619, 92 Stat. 3238 (42 U.S.C. 6371) and the State Energy Efficiency Programs Improvement Act of 1990, Public Law 101-440, 104 Stat. 1011.

(2) "Building" means any structure, including a group of closely situated structural units that are centrally metered and are served by a central utility plant, or eligible portion thereof, which:

- (a) Was built on or before May 1, 1989;
- (b) Is owned and occupied by the eligible institution;
- (c) Includes a heating or cooling system or both.

(3) "Built" means the date an occupancy permit for a building was issued. It also means the date the building is ready to be occupied.

(4) "Civil Rights" means civil rights responsibilities of applicants and grantees as stated in 10 CFR 1040.

(5) "Complex" means a closely situated group of buildings on a contiguous site such as a school or college campus or multi-building hospital.

(6) "Coordinating Agency" means a state or any public or private nonprofit (PNP) organization legally set up to act as the agent for the institution.

(7) "DOE" or "US DOE" means the U.S. Department of Energy.

(8) "Eligible Institution" means a public or PNP school, hospital or coordinating agency, as defined in Subpart A, 10 CFR 455.2 in the February 19, 1993, Federal Register.

(9) "Energy Conservation Measure (ECM)" means to install or change an installation in a building and thereby reduce energy use or allow the use of a renewable energy source. ECMs in this program are defined in Subpart A, 10 CFR 455.2 in the February 19, 1993, Federal Register.

(10) "Energy Use Evaluation (EUE)" means the survey of a building or complex by a utility, a contractor, or an institution representative familiar with the building and its systems done in accord with Subpart B of 10 CFR Part 455.20 in the February 19, 1993, Federal Register and ODOE requirements.

(11) "Grantee" means the grant recipient.

(12) "Hardship" or "Severe Hardship Funding" means a grant in excess of the 50 percent federal share, but not more than a 90 percent federal share for a TAS. To qualify for hardship funds, an institution must submit requested hardship information to ODOE. ODOE will notify the institution about hardship eligibility.

(13) "Heating or Cooling System" means any mechanical system for heating, cooling or ventilating areas of a building. This includes a system of through-the-wall air conditioning units.

(14) "Hospital" means a public or PNP hospital, other than one giving mainly care and housing to people who cannot care for themselves. It must be authorized to provide hospital services under the laws of the state.

(15) "Load Management System" means a device(s) which is designed to shift energy use to hours of low demand in order to reduce energy costs and which does not cause more energy to be used than was used before their installation.

(16) "Local Education Agency" means a public or PNP board of education or other authority legally set up within, or recognized by, the state to administer a group of schools.

(17) "Maintenance" means action taken in a building to assure that equipment and energy-using systems work properly and efficiently.

(18) "ODOE" means the Oregon Department of Energy.

(19) "On-Site Assessment" means to:

- (a) Assess the building(s) energy-using systems and make recommendations to replace, upgrade, or repair the systems; and
- (b) Assess the training needs of maintenance staff and make recommendations as to who should be trained and in what areas.

(20) "Operating and Maintenance Changes (O&Ms)" means changes in the maintenance and operation of a building and its equipment and energy using systems to reduce its energy use.

(21) "Owned" or "Owns" means a property interest, including a leasehold interest, which is or shall become, a fee simple title in a building or complex.

(22) "Program Assistance" means a program or activity managed by the state and designed to provide support to eligible institutions to help ensure the effectiveness of energy conservation programs carried out consistent with this part, including such relevant activities as:

- (a) Evaluating the services of consulting engineers;
- (b) Training school or hospital personnel to perform energy accounting;
- (c) Monitoring the implementation and operation of energy conservation measures; and
- (d) Aiding in the procurement of cost effective energy conservation projects.

(23) "Public or PNP Institution" means an institution owned and occupied by:

- (a) The state, a political subdivision of the state or an agency of either; or
- (b) A school or hospital which is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

(24) "School" means a public or PNP institution which provides, and legally can provide, primary, secondary, post-secondary or vocational education on a day or residential basis as defined in 10 CFR 455.2 in the February 19, 1993, Federal Register.

(25) "State" means the State of Oregon.

(26) "State Hospital Facilities Agency" means the State Department of Human Resources, Office of Health Policy.

(27) "State Plan" means the current "State Plan for Implementing the ICP" as prepared by ODOE and approved by US DOE.

(28) "State School Facilities Agency" means the Oregon Department of Education or the Oregon State System of Higher Education.

(29) "TA Analyst (TAA)" means a registered engineer or engineer/architect team or other individuals with knowledge, experience, or expertise in conducting energy audits and studies of public buildings and facilities. This includes, but is not limited to, an understanding of HVAC systems, lighting standards and equipment, weatherization, heat recovery, renewables, and HVAC systems.

(30) "Technical Assistance Study (TAS)" means a report based on an on-site analysis of the building which meets the requirements of ODOE's TAS format. This includes, but is not limited to, an identification of cost-effective operation and maintenance changes and energy conservation measures, their costs, and estimated energy savings.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0023

Program for Technical and Program Assistance

As allowed under Subparts H and K, 10 CFR 455 in the February 19, 1993, Federal Register, ODOE will operate a program to provide technical and program assistance through the following services:

- (1) Resources accounting program and training;
- (2) On-site assessments;
- (3) Building operator training, including trouble shooting and repair;
- (4) Detailed energy studies;
- (5) Assistance to secure financing of identified energy conservation measures; and
- (6) Training on how to operate and maintain installed measures.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0025

Administration of Grants

(1) Technical Assistance (TA) grantees under this program shall comply with all laws, rules and procedures. These include, but are not limited to, the ICP rules in the February 19, 1993, Federal Register, Subpart A, 10 CFR 455.3.

(2) TA grantees shall comply with any new rules and laws that US DOE or ODOE prescribe.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0030

Recordkeeping

TA grantees that receive federal dollars under this program shall make and retain records required by US DOE and ODOE. These include records which fully disclose:

- (1) The amount of the grant and how it was spent;
- (2) The total cost of the activities done under the grant;
- (3) The source and amount of any funds not supplied by US DOE;

(4) Three years of utility data after the TAS is completed; and
 (5) Any information which US DOE and ODOE needs to protect the interest of the United States and the state. US DOE and ODOE shall have access to any documents or records which are related to any grant given under this program.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0035

Cancellation of Grants

ODOE may cancel a TA grant if the grantee fails to comply with the terms and conditions set forth in the application, ODOE Partnership Agreement, and in 10 CFR 455, as amended in the February 19, 1993, Federal Register. ODOE may cancel a grant if the grantee fails to comply with civil rights requirements. A decision to cancel a grant may be appealed to US DOE.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0045

TA Programs for Schools and Hospitals

(1) This section contains the rules under which ODOE shall give grants to schools and hospitals for TASs done in their buildings.

(2) To be eligible to receive TA grants, an applicant must:

(a) Be a school or hospital as defined in OAR 330-067-0020 and 10 CFR 455.2 in the February 19, 1993, Federal Register;

(b) Be in the state;

(c) Submit an EUE for the building for which a TA grant is requested. The EUE must have been done after the most recent construction, remodeling, or use change which changed energy use in the building. If the EUE is 12 months old or older when the request for TA is received by ODOE, ODOE may require an EUE update;

(d) Assure that it will do all O&Ms from the on-site assessment or request ODOE approval for a waiver;

(e) Assure that it will install all ECMs identified in the on-site assessment and the TAS with a combined simple payback of five years or provide in writing a good reason why a particular measure should not be installed;

(f) Submit an EUE that meets the rules set by ODOE.

(3) A TAS shall be done by an ODOE contractor or a TAA who is qualified under the State Plan and under OAR 330-067-0020. The TAA must consider all feasible O&Ms and feasible ECMs for a building. A TAS shall give the costs of, and the energy and cost savings likely to result from doing O&Ms. A TAS shall also give a detailed engineering analysis showing the cost of, and

the energy and cost savings likely to result from installing each ECM that shows a good potential for saving energy.

(4) The TAA shall prepare and submit a report which conforms to ODOE's current TAS format and this rule.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0055

Requests for TA Grants

Institutions shall submit a completed Request for Services Form. If ODOE determines the institution is eligible for a TA grant, the institution shall:

(1) Complete and submit an EUE for each building for which a TA grant is requested;

(2) Complete and submit an ODOE Partnership Agreement; and

(3) Any other information required by ODOE or which the applicant wants considered, such as a hardship request.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0060

Applicant Certifications

TA grant applicants shall certify that they:

(1) Are eligible for TA.

(2) Have met the rules set forth in OAR 330-067-0055.

(3) Will do all O&Ms from the on-site assessment or TAS. If the institution does not intend to do all the Q&Ms, the applicant shall request ODOE approval in writing for a waiver.

(4) If an institution contracts with a TAA, it will obtain from the TAA, before the TAA does any work on a TAS, a signed statement that certifies that the TAA:

(a) Has no conflicting financial interests; and

(b) Is qualified to do the duties of TAA in accord with the rules set by US DOE and the State Plan.

(5) Will commit to doing projects.

(6) Will submit all required reports.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0067

Grant Applications for State Program for Technical and Program Assistance

(1) ODOE will defray the costs of the administration of the special programs for technical and program assistance by requesting a grant from US DOE. US DOE may make a grant award to a state for up to 100 percent of the funds allocated to the state for the grant program cycle provided the state meets the requirements described in 10 CFR 455.121 in the February 19, 1993, Federal Register. Grants may:

(a) Not exceed more than 50 percent of the cost of the technical assistance programs;

(b) Be made for up to 100 percent of the program assistance expenses.

(2) This application shall conform to Subpart K, 10 CFR 121 in the February 19, 1993, Federal Register.

Stat.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0070

Grantee Records and Reports

(1) Each grantee shall keep all the records and submit all reports required by Subpart A, 10 CFR 455.4 and Subpart J, 10 CFR 445.113, in the February 19, 1993, Federal Register.

(2) ODOE shall forward on all grantee reports to US DOE.

(3) For state technical and program assistance grants, ODOE shall submit reports to US DOE as required in Subpart K, 10 CFR 455.122 and 123, in the February 19, 1993, Federal Register.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0075

State Evaluation of TA Grant Requests

EUEs received by ODOE are reviewed to determine eligibility. Those that comply with Subparts E and L of 10 CFR 455, as amended in the February 19, 1993, Federal Register, section (2) of this rule, the State Plan and other laws and rules, will be eligible for a TA grant.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0080

State Review of TA Grant Requests

(1) All eligible TA requests received by ODOE will be reviewed in the manner stated in the State Plan.

(2) Within the limits of available funds, applications will be funded on a first-come, first-served basis.

(3) Up to ten percent of the state's allocation in each cycle will be available for hardship grants. Hardship grants will be available to institutions based on their need or which cannot provide their 50 percent matching share. These funds will be available only to the extent needed to allow such institutions to do the project under the program:

(a) ODOE shall recommend funds for hardship grants in the manner stated in the State Plan;

(b) Applications for hardship funding shall be judged by ODOE to assess the relative need among applicants. The minimum amount of additional US DOE funds needed by the applicant to do the project under the ICP will be set by ODOE.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0090

State Liaison, Monitoring and Reporting

ODOE shall:

(1) Notify institutions and coordinating agencies of any changes to the State Plan;

(2) Notify each applicant if its application will receive funding. If the application will not be funded, ODOE will tell the applicant why;

(3) Monitor projects funded by ICP grants. ODOE will notify US DOE of any failure by grantees to comply with ICP rules and laws; and

(4) Report as required by Subparts J, K, and L of 10 CFR 455, in the February 19, 1993, Federal Register.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0100

TA Grant Awards

(1) ODOE may award grants to schools and hospitals for up to 50 percent of the cost of doing TASs for eligible buildings.

(2) ODOE may award up to ten percent of the state's total allocation to schools and hospitals in cases of severe hardship.

(3) TA grant awards will be made by ODOE in accord with Subpart M, 10 CFR 455.144, in the February 19, 1993, Federal Register and approved State Plan.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

330-067-0110

State Plan Amendments

(1) ODOE's State Plan for ICP includes all the contents set forth in Subpart B, 10 CFR 455.20, in the February 19, 1993, Federal Register.

(2) Any amendments to the State Plan must be submitted to US DOE for its review and approval. With US DOE's consent, ODOE may submit a new or amended plan at any time.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

DIVISION 68

INSTITUTIONAL BUILDINGS PROGRAM

330-068-0005

Purpose

The purpose of these rules is to provide procedures, standards and criteria for administration by the Oregon Department of Energy of a contract agreement with the Bonneville Power Administration to acquire electricity energy savings through subcontracts with schools, hospitals, public care, government buildings and eligible facilities other than buildings.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0010

Definitions

(1) "Bonneville" means the Bonneville Power Administration, an agency of the U.S. Department of Energy.

(2) "Building" means any structure in which the efficiency of electric energy use can be improved through the installation of an energy conservation measure (ECM), and which was completed by October 28, 1982, and which is owned and operated by an Institution.

(3) "Care Institution" means:

(a) An institution for long-term care, a rehabilitation institution, or a health center, as described in Section 1633 of the Public Health Service Act (42 U.S.C. 300s-3; 88 Stat. 2270); or

(b) A residential child care center, other than a foster home, which is primarily intended to provide fulltime residential care with an average length of stay of at least 30 days for at least ten minor persons who are in the care of such institution as a result of a finding of abandonment or neglect, or of being persons in need of treatment or supervision.

(4) "Department" means the Oregon Department of Energy.

(5) "Administrative Costs" are those allowed under OMB Circular A-87, "Cost Principles for State and Local Governments," as amended.

(6) "Effective Date" means October 28, 1982.

(7) "Energy Audit" (EA) means the survey of an Institution by an energy auditor, which is conducted according to standards established by Bonneville, and which provides a description of the energy-using characteristics of the buildings and identifies O&M activities.

(8) "Energy Auditor" means a representative of an institution or a licensed engineer or architect who is certified by the Department to perform energy audits under this program.

(9) "Energy Conservation Measure" (ECM) means an installation of material or equipment or the provision of services for weatherization, water heating, space heating or cooling, ventilation, lighting, food preparation, pumps and motors, automatic energy control, and energy recovery resulting in improved efficiency of electric energy use. An ECM is also a direct application renewable resource.

(10) "Facility Other Than Buildings" means an installation such as, but not limited to, a:

(a) Sewage treatment plant;

- (b) Potable water treatment and pumping system;
- (c) Fish hatchery;
- (d) Parking structure; and
- (e) Stadium or arena, which was completed by October 28, 1982 and which is owned and operated by an institution.

(11) "Hospital" means an institution which is a general or specialized hospital, other than a hospital furnishing primarily domiciliary care, and which is duly authorized to provide hospital services under the laws of the state in which it is located.

(12) "Initial Budget Year" means the period starting with the effective date and ending with the end of the federal fiscal year.

(13) "Institution" means a nonprofit institution or a public institution located within an operating area as listed in rule 330-068-0080.

(14) "Nonprofit Institution" means a hospital, care institution, or school owned and operated by an entity which is exempt from income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954, as amended.

(15) "Occupied Building" (for buildings located within facilities) means an enclosed structure in which people are located for more than seven hours per week, and which contains an operative heating and/or cooling system used for human comfort and/or for process environmental control.

(16) "Operation and Maintenance" (O&M) means the operation of, or scheduled maintenance, repair and adjustment of, equipment or components of buildings to assure improved energy efficiency.

(17) "Program" means the Institutional Buildings Program funded by Bonneville through an agreement with the Department as may be periodically amended.

(18) "Project" means one or more ECMs, defined by the TAS, which are submitted by an institution to the Department for funding.

(19) "Public Institution" means an institution owned and operated by:

- (a) The federal government;
- (b) A state;
- (c) A political subdivision of a state empowered to levy taxes;
- (d) A recognized governing body of an Indian tribe; or
- (e) A body delegated general government functions under state or local legislative authority.

(20) "School" means an institution which provides, and is legally authorized to provide, elementary, secondary, post-secondary, or vocational education on a day or residential basis.

(21) "Technical Assistance Study" (TAS) means a study which is performed according to standards provided by Bonneville which analyzes the potential energy savings in a building and includes recommendations for accomplishing such energy savings through ECMs.

Stat. Auth.: ORS 183 & 469
 Stats. Implemented: ORS 469
 Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0015

Availability

The program is available to institutions for buildings and facilities other than buildings located in the operating area as listed in OAR 330-068-0080.

Stat. Auth.: ORS 183 & 469
 Stats. Implemented: ORS 469
 Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0020

Program Procedures

(1) Energy auditor training: The Department shall provide to representatives of institutions (except for facilities other than buildings), energy auditor training or orientation which meets guidelines and standards provided by Bonneville. The Department shall certify individuals as energy auditors in accordance with procedures approved by Bonneville.

(2) Energy audit: The Department shall provide, at no direct cost to an institution, a list of energy auditors and model forms for

use in conducting energy audits (for buildings and occupied buildings only).

(3) Technical assistance studies (TAS):

(a) The Department shall solicit, evaluate, rank, and select for funding applications for TASs. Ranking shall be in accordance with OAR 330-068-0085(1). The Department shall notify applicants in writing whether or not they have been selected for funding;

(b) The Department shall ensure that the requirements in paragraphs (A), through (E) of this subsection, are met before disbursing funds for a TAS (for buildings and occupied buildings only):

(A) An energy audit has been completed by an ODOE certified energy auditor;

(B) All O&M activities identified in the energy audit have been implemented by the institution, except those which the Department determines, in accordance with guidelines and environmental restrictions provided by Bonneville, need not be implemented;

(C) The institution has solicited qualifications of licensed engineers or licensed architect-engineer teams for accomplishing the TAS before choosing a licensed engineer or licensed architect-engineer team, unless otherwise agreed to by the Department and such Institution;

(D) The TAS has been performed by a licensed engineer or licensed architect-engineer team, and has been reviewed and approved by the Department;

(E) The institution provides the Department with proof of payment to the licensed engineer or architect-engineer team of all agreed upon costs for performing the technical assistance study.

(c) The Department shall ensure that the requirements in paragraphs (A) through (D) of this subsection are met before disbursing funds for a TAS (for facilities other than buildings):

(A) All O&M activities identified in the facilities TAS have been implemented by the institution, except those which the Department determines, in accordance with guidelines and environmental restrictions provided by Bonneville, need not be implemented;

(B) The institution has solicited qualifications of licensed engineers or licensed architect-engineer teams, with at least one year of documented experience in the design or operation of the particular facility other than a building being studied, for accomplishing the TAS before choosing a licensed engineer or licensed architect-engineer team, unless otherwise agreed to by the Department and such institution;

(C) The TAS has been performed by a licensed engineer or licensed architect-engineer team and has been reviewed and approved by the Department;

(D) The Institution provides the Department with proof of payment to a licensed engineer or architect-engineer team of all agreed upon costs for performing the technical assistance study.

(d) The Department shall pay an Institution 50 percent of the amount determined in accordance with the TAS payment formula in rule 330-068-0090, upon completion of the TAS in accordance with the above requirements. The Department shall pay the institution the remaining 50 percent of the TAS amount when the conditions in either of paragraphs (A) or (B) of this subsection are met:

(A) The Institution installs, at its own expense, ECMs recommended in the TAS, the total cost of which is at least equal to the remaining 50 percent of the TAS amount;

(B) The institution agrees in writing to install, upon approval of funding, ECMs recommended in the TAS, the total cost of which is at least equal to the remaining 50 percent of the TAS amount. If an institution which has received the remaining 50 percent of the TAS amount, or any portion thereof, does not install such ECMs upon approval of funding, the Department shall require the institution to return the payment for the remaining 50 percent of such institution's TAS amount, or any portion thereof received, to the Department;

(C) The Department shall not pay the institution the total remaining 50 percent of its TAS if one of either condition in paragraph (A) or (B) of this subsection is not satisfied and if:

(i) The TAS does not recommend any eligible electrical ECMs even though its TAS does satisfy the requirements as stated in subsections (3)(b) and (c) of this rule;

(ii) The total cost of the recommended eligible electrical ECMs does not equal the remaining 50 percent of the TAS amount, even though the TAS does satisfy the requirements as stated in subsections (3)(b) and (c) of this rule.

(4) Energy conservation measures (ECMs):

(a) The Department shall solicit, evaluate, and select Projects for funding at least once but not more than four times annually. The Department shall notify applicants in writing whether or not they have been selected for funding;

(b) The Department shall comply with the procedures in paragraphs (A) through (E) of this subsection prior to approving a Project application for funding:

(A) The Department shall provide a licensed professional engineer, other than the engineer or architect-engineer team who performed the TAS, to review and certify that energy savings and project cost estimates of ECMs recommended in the TAS were calculated using standard engineering practices, and that only ECMs recommended in a TAS are included in a project;

(B) The Department shall rank and select for funding projects in accordance with the ranking formula for ECM's found in OAR 330-068-0085(2)(a), if requests for project funding exceed the portion of the approved budget approved for ECMs;

(C) The Department shall ensure that the following conditions will not occur as a result of project installation:

- (i) Installation of low-pressure sodium vapor lights indoors;
- (ii) Use of toxic transfer fluids in solar heating systems;
- (iii) Use of high pressure sodium vapor lights indoors except for:

(I) General lighting in warehouses with low visual demand activities and short duration occupancies; and for

(II) High visual demand lighting in high bay areas, as defined by IES Lighting Handbook, where the mixture of HPS to incandescent, fluorescent, or metal halide fixtures is at least 1-to-1 with similar lumen output from both types of fixtures and the HPS fixtures are staggered on a multiple phase circuitry.

- (iv) Removal or disturbance of previously installed asbestos;
- (v) Installation of Urea Formaldehyde Foam Insulation (UFFI).

(D) The Department shall ensure that Bonneville funds are not used to pay for ECM's which Bonneville has determined are environmentally restricted;

(E) The Department shall obtain from the institution a written agreement to indemnify Bonneville and hold it harmless from and against all claims and liability and expenses, including reasonable attorneys fees, arising from the negligent or other tortious acts or omissions of the Institution's officers, agents, or employees.

(c) The Department shall comply with the procedures in paragraphs (A) through (D) of this subsection, prior to disbursing funds to institutions for completed projects:

(A) For projects that require the preparation of design documents by, or have had design documents prepared by a licensed professional engineer, a licensed architect or licensed architect-engineer team, the Department shall provide a licensed professional engineer, other than the engineer, architect or architect-engineer team who prepared the design documents, to review and verify prior to bid release, that the project design has been prepared in accordance with standard engineering practice and can reasonably be expected to produce the energy savings identified for the project in the TAS;

(B) The Department shall ensure that the institution has solicited three competitive bids for ECM installations unless otherwise agreed to by the Department and the institution, and has chosen an installer on the basis of price and capability;

(C) The Department shall inspect each project for proper and complete installation of ECMs and confirm such installation in writing in accordance with the following:

(i) Projects that require the preparation of design documents by, or have had design documents prepared by a licensed professional engineer, a licensed architect or licensed architect-

engineer team (except that projects involving the installation of insulation, windows, doors and lighting will not require inspection by a professional engineer), shall be inspected by a licensed professional engineer other than a licensed professional engineer, licensed architect or licensed architect-engineer team installing ECMs as part of such project; and

(ii) Projects that do not require professional design work, or any project involving the installation of insulation, windows, doors and lighting, shall be inspected by an inspector with qualifications approved by Bonneville.

(D) The Department shall obtain from the institution proof of final payment of all agreed upon costs for ECM installations.

(d) The Department shall pay an institution in accordance with OAR 330-068-0090 for installed ECMs.

(5) Performance bond. A performance bond shall be furnished and maintained in the amount of 100 percent of the project amount when the project amount exceeds \$10,000 and when the Department has authorized progress payments for such project.

(6) The Department may limit the amount of TAS or ECM funding any single institution may receive, so long as such limitations do not result in unreasonable discrimination. Eligible institutions shall be notified of funding limitations at the beginning of each program cycle.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0025

Obligated Measures

(1) The Department shall contract with an institution for TAS or ECM projects which meet the requirement of OAR 330-068-0020. The Department shall prepare and submit to Bonneville a request in the form of a table for each additional measure or group of measures for which obligations are created which extends past the end of the federal fiscal year. Each such table shall be prepared in accordance with procedures and format provided by Bonneville, and signed by the Department's authorized contracting officer. Upon execution by Bonneville's authorized contracting officer, such table shall become effective as of the date specified therein, provided such table is received by Bonneville on or before a date to be determined annually by Bonneville.

(2) Each table shall contain the following information, as appropriate:

(a) Name and address of:

(A) The building, or the facility other than a building, in which a measure or measures are being installed or completed; and

(B) The institution owning and operating the building or the facility other than a building;

(b) The estimated cost of ECMs comprising the project which are approved by the Department for funding;

(c) The estimated first year kilowatt hour savings;

(d) The estimated first year energy cost savings;

(e) Related Department administrative costs if applicable; and

(f) The date certain of installation or completion of such measure or measures and an estimated payment schedule for progress payments, if applicable.

(3) Upon execution by both parties of each table, the institution shall be obligated for the completion of the measure or measures in such table no later than the date certain established by such table, or an extension thereof in accordance with OAR 330-068-0065.

(4) Upon completion of such measure or measures, and the Department's findings of compliance with the procedures of OAR 330-068-0020, the Department shall pay the institution in accordance with OAR 330-068-0090 for such measure or measures not to exceed the amounts specified in such table.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0030

Payment Procedures

If a measure or measures recommended in the applicable TAS but not previously eligible for payment due to environmental restrictions become eligible for payment, the Department may:

(1) Pay retroactively for such measure or measures in accordance with the amounts established in OAR 330-068-0090, if such measure or measures were installed prior to the change in environmental restrictions; or

(2) Pay retroactively for the installation of such measure or measures in accordance with amounts established in OAR 330-068-0090 if such measure or measures are subsequently installed.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0035

Limitation of Program Funds

In the event of a notice from Bonneville to the Department that sufficient funds may not be available to continue this program, the Department shall pay, in accordance with amounts established in OAR 330-068-0090, for TASs and ECMs which are completed by the date of such notice, and ECMs which are contractually obligated for by the Department in accordance with 330-068-0025 by the date of such notice, subject to the total amount established for each category in the approved budget.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0040

Other Sources of Payment

The Department shall not pay for measures funded by a cost sharing grant under the U.S. Department of Energy Institutional Buildings Grants Program.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0045

Retroactive Payment

(1) The Department may pay an institution, in accordance with amounts established in rule 330-068-0090, for technical assistance studies meeting the requirements in section (2) of this rule, and for installed energy conservation measures meeting the requirements of section (3) of this rule, the funds for which were contractually committed to on or after December 5, 1980, and prior to the date that the utility serving an institution's building, or facility other than a building, was included in OAR 330-068-0080 as provided.

(2) Technical assistance studies are eligible for retroactive payment if they:

(a) Are comparable in quality and scope to a TAS performed in accordance with these rules;

(b) Resulted in accomplishment of O&M activities; and

(c) Resulted in the installation of energy conservation measures recommended in the technical assistance study, the cost of which were at least equal to the portion of the technical assistance study to be paid for by the Department.

(3) Energy conservation measures are eligible for retroactive payments if they were installed based on a recommendation contained in a study which is comparable in scope and quality to a TAS performed in accordance with these rules:

(a) Conditions:

(A) A measure must be "similar" to a measure included in this program. "Similar" means that a measure accomplishes the same purpose as and is comparable to a measure included in this program in enough ways that its effectiveness can be evaluated to a reasonable degree of certainty;

(B) For measures installed or completed after the date of offering of this program, but before the Department has executed

such program, retroactive payments shall be made only for those measures which achieve conservation to an equal or greater degree than would be achieved by measures under this program, and which otherwise substantially conformed to or exceeded the materials and installation specifications referenced in the most current version of this program offered at the time the measures were installed or completed;

(C) When Bonneville has provided funds for the installation or completion of measures under another agreement which meet the requirements of paragraph (A) or (B) of this subsection, no retroactive payments shall be made with respect to such measures under this program;

(D) Retroactive reimbursement shall be made for measures installed or completed prior to the date the measures were contained in the operating area to the extent such measures reduce the firm load obligations of Bonneville. The Department shall determine such reimbursement by applying a ratio to the payment levels contained in this program for such measures, the numerator being the whole number of years remaining in the useful life of the measure on the date the measures are included in the operating area and the denominator being the total whole number of years in the useful life of the measure.

(b) Amounts: Retroactive reimbursement amounts for each measure installed or completed shall be those provided for in this program when the latter of the following occurred:

(A) The effective date of this program; or

(B) When the measure was accomplished.

(c) Procedures:

(A) The Department shall request retroactive reimbursement using the same form or format as is used for prospective payments. Such request shall clearly indicate that it is a request for retroactive reimbursement. The Department shall also maintain supporting documents and records for verification of costs retroactively reimbursed in accordance with this subsection;

(B) The Department shall pay the amount owing to the institution under this subsection in a lump sum or in no more than six consecutive equal monthly installments, without interest, commencing after the date Bonneville advises the Department that its claims for retroactive reimbursement have been included in the Department's approved budget.

(4) The Department shall inspect all measures for which an Institution is applying for retroactive payment and verify in writing the proper completion or installation of such measures.

(5) Requests for retroactive payment shall be submitted in the initial budget year or within 6 months of the date the operating area is expanded to include buildings, or facilities other than buildings, not previously eligible for retroactive payment.

(6) Any environmental prohibitions or requirement for mitigation measures contained in these rules shall apply to measures which are paid for in whole or in part retroactively in accordance with these rules.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0050

Program Records

The institution shall maintain the following records concerning disbursement of Department funds:

(1) For energy audits (for buildings and occupied buildings only):

(a) O&M activities implemented by the institution in a building;

(b) Reason for not implementing O&M activities in accordance with OAR 330-068-0020(3)(b)(B).

(2) For TAS:

(a) Name and address of institution;

(b) Name and address of building, or facility other than a building;

(c) Purpose for which the building, or facility other than a building, is used;

(d) Name of utility serving building, or facility other than a building;

(e) Total electric energy use expressed in kWh/yr/sq ft;

(f) Building, or facility other than a building, size;

(g) Supporting documents and records necessary to verify actual TAS cost;

(h) Amount of Bonneville reimbursement;

(i) Copy of each completed energy audit for buildings and occupied buildings only;

(j) Copy of each completed TAS;

(k) Instances and reasons for not requiring solicitation of a qualification statement.

(l) O&M activities implemented by the institution in a facility other than a building;

(m) Reason for not implementing O&M activities in a facility other than a building, in accordance with OAR 330-068-0020(3)(c)(A).

(3) For ECM:

(a) Name and address of institution and building, or facility other than a building;

(b) Purpose for which the building, or facility other than a building, is used;

(c) Total building electric energy use expressed in kWh/yr/sq ft;

(d) Total estimated annual kilowatt hour savings;

(e) Building, or facility other than a building, size;

(f) Copy of applicable table of obligated measures, if appropriate;

(g) Date and amount of Bonneville reimbursement(s);

(h) Total cost of ECM installation;

(i) Supporting documents and records necessary to verify actual cost to the institution of all installed ECMs;

(j) Name of utility serving building, or facility other than a building;

(k) Local retail electricity rate at time of application for each building, or facility other than a building, funded;

(l) Ranking results;

(m) Data supporting kWh savings estimates;

(n) Reason for exempting ECM installation from three bid requirement in OAR 330-068-0020(4)(c)(B);

(o) Inspection report including dates of inspection and project completion.

(4) Records maintained by the institution in accordance with this program shall contain the information specified in these rules. The records shall be maintained by the institution in a form determined solely by the institution, so long as the requirements of section (5) of this rule are met. The institution shall keep all records required by these rules for three years after termination of the program. Further, the institution shall provide 90 days' written notice to the Department prior to destruction of any such records.

(5) Program records shall be established and maintained in accordance with generally accepted accounting principles consistently applied, and in conformance with applicable laws and federal regulations, including the provisions of the Privacy Act of 1974. A summary of the system of records developed by Bonneville to comply with the Privacy Act shall be supplied by Bonneville.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0055

Program Audits

The Department may, upon reasonable notice, conduct such audits, examinations, or inspections of the institution's program records, and of the institution's procedures under these rules as it deems appropriate. The number, timing, and extent of such audits shall be at the discretion of the Department, may be conducted by the Department staff or its designee, and shall be in accordance with audit standards established by the Comptroller General of the United States. The Department, at its expense, may:

(1) Audit and examine program records and accounts maintained by the institution pursuant to the program records sections of these rules;

(2) Request copies of such program records and accounts for audit purposes;

(3) Conduct random inspections of installations made under these rules; all such inspections shall be arranged in advance with the institution; and

(4) Review institution procedures employed in accomplishing the provisions of these rules.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0060

Indemnification

The institution shall be an independent contractor in the implementation of this Program.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0065

Extension of Time for Obligated Measures

The institution may, if needed, request an extension of the completion date of an obligated measure or measures contracted in accordance with OAR 330-068-0025. Such request must be submitted in writing, no later than 45 days prior to the approved completion date previously stated in the appropriate table, and shall contain the requested extension date and the reasons therefor. The Department shall notify the institution in writing, prior to the previous completion date, if the request has been granted, if a portion of the requested extension has been granted, or if the request has been denied.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0070

Termination of Obligated Measures

(1) The Department may, by written notice of default to the institution, terminate any obligations created in accordance with OAR 330-068-0025 of this agreement as they pertain to any measure if such measure is not completed within the time specified therein, or by the time specified in an extension of time for an obligated measure or measures in accordance with 330-068-0065.

(2) In the event the Department terminates any obligations created in accordance with OAR 330-068-0025 as provided in section (1) of this rule, the Department may contract for the completion of such measure upon such terms and in such manner as the Department may deem appropriate, services similar to those so terminated, and the institution shall be liable to the Department for any excess costs incurred by the Department as a result of contracting for completion of such measure or measures.

(3) Unless the services to be furnished by the installer or the institution were obtainable from other sources in sufficient time to permit the institution to meet the required delivery schedule, the institution shall not be liable for any excess costs under section (2) of this rule if the failure to perform in accordance with these rules arises out of causes beyond the control and without the fault or negligence of the Department, institution, or installer. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Department, institution, or installer.

(4) The Department may withhold from amounts otherwise due the institution for such completed services such sum as the Department determines to be necessary to protect the Department against loss.

(5) The rights and remedies of the Department provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0075

Termination

If the Department has advanced progress payments for a project pursuant to OAR 330-068-0090, and such project is not completed by the institution in accordance with these rules, the institution shall be liable for excess costs incurred by the Department in contracting for the completion of such project.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0080

Operating Area

The Department may operate this agreement in the service areas (or portions thereof) of the following firm requirements power sales customers of Bonneville:

- (1) Ashland, City of;
- (2) Bandon, City of;
- (3) Blachly-Lane County Cooperative Electric Association;
- (4) Canby Utility Board;
- (5) Cascade Locks, City of;
- (6) Central Electric Cooperative;
- (7) Central Lincoln PUD;
- (8) Clatskanie PUD;
- (9) Columbia Basin Electric Cooperative;
- (10) Columbia Power Cooperative;
- (11) Columbia REA;
- (12) Columbia River PUD;
- (13) Consumers Power, Inc.;
- (14) Coos-Curry Electric Cooperative, Inc.;
- (15) Douglas Electric Cooperative, Inc.;
- (16) Drain, City of;
- (17) Emerald PUD;
- (18) Eugene Water and Electric Board;
- (19) Forest Grove, City of;
- (20) Harney Electric Cooperative;
- (21) Hood River Electric Cooperative;
- (22) Lane Electric Cooperative;
- (23) McMinnville, City of;
- (24) Midstate Electric Cooperative;
- (25) Milton-Freewater, City Light & Power;
- (26) Monmouth, City of;
- (27) Northern Wasco County People's Utility District;
- (28) Salem Electric;
- (29) Springfield Utility;
- (30) Surprise Valley Electrification Corporation;
- (31) Tillamook PUD;
- (32) U.S. Bureau of Mines;
- (33) Umatilla Electric Cooperative;
- (34) Wasco Electric Cooperative;
- (35) West Oregon Electric Cooperative, Inc.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0085

Project Ranking Formula

(1) TAS:

(a) The Department shall rank TAS applications for building or occupied building according to its potential for ECMs determined by a point system based on data presented in the energy audit submitted with the application;

(b) The Department shall fund TAS applications in rank order starting with the application with the highest ranking value.

(2) ECM:

(a) The Department shall rank ECM project applications using the following formula:

$$\text{Project Payment} = \frac{\text{Ranking Value}}{E}$$

(A) Project Payment = Summation of allowable ECM costs where the allowable cost of each ECM is determined by OAR 330-068-0090(2)(a);

(B) E = The summation of electrical energy savings from all ECMs, savings are equal to the life of each ECM multiplied by its estimated annual kilowatt hour savings.

(b) If a project application contains a direct application renewable resource component, that component of the project estimated first year kilowatt hour savings shall be increased by ten percent for ranking purposes only;

(c) The Department shall fund ECM projects in rank order starting with the project with the lowest ranking value.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

330-068-0090

Payment Levels

(1) TAS: The Department shall reimburse the institution for actual costs for a TAS not to exceed \$0.0108 multiplied by the institution's electric energy use expressed in kWh/yr, or not to exceed an amount equal to the total estimated cost of those ECMs recommended in the TAS and approved by the Department, whichever is smaller. The Department reserves the right to question and request adjustments of costs for a TAS which are judged to be unreasonable:

(2) ECM:

(a) The Department shall reimburse the institution actual costs for an ECM. Such costs shall not exceed \$0.292 multiplied by the estimated first year kWh savings, minus the estimated first year dollar savings. These savings are those associated with the energy use reduction determined by multiplying the building's retail electric energy rate by its estimated annual kilowatt hour savings indicated by the TAS for such ECM;

(b) For ECM projects costing more than \$10,000 but less than \$200,000, progress payments may be made for ECMs upon 30 percent, 60 percent, and 100 percent completion, unless otherwise agreed to by Bonneville;

(c) For ECM projects costing more the \$200,000, progress payments may be made for ECMs upon 30 percent, 60 percent, 80 percent, and 100 percent completion, unless otherwise agreed to by Bonneville.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

DIVISION 69

**INVESTOR OWNED UTILITY
INSTITUTIONAL BUILDINGS PROGRAM**

330-069-0005

Purpose

These rules describe how the Oregon Department of Energy (ODOE) will run a two-year Institutional Buildings Program. The program will be funded by four investor-owned utilities. The program is to save electricity in schools, hospitals, public care and government buildings, and eligible facilities other than buildings.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0010

Compliance with Other Rules, Regulations, Codes and Standards

Projects in this program must comply with all applicable local, state and federal rules, regulations, ordinances, statutes, codes, and standards. These rules in no way alter the responsibility of the applicant for such compliance.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0015

Definitions

(1) "IOU" means the investor-owned utilities listed in OAR 330-069-0075.

(2) "Administrative Costs" are costs allowed under **OMB Circular A-87, "Cost Principles for State and Local Governments,"** as amended.

(3) "Building" means any structure in which the efficient use of electricity can be improved through an ECM. Such building(s) must have been completed by October 28, 1982. The building(s) must be owned and operated by an institution.

(4) "Building Owner" means an institution which is the fee owner, mortgagor, or contract vendor of a building; or an institution which is a lessee or other occupant of a building with a lease which ends not before September 30, 1992, and which is authorized to install ECMs.

(5) "Care Institution" means:

(a) An institution for long-term care or rehabilitation, or a health center, as described in Section 1633 of the Public Health Service Act (**42 U.S.C. 300s-3; 88 Stat. 2270**); or

(b) A residential child care center, other than a foster home, which primary use is for fulltime care. Such center must provide care for at least ten minor persons who have an average stay of at least 30 days. Such persons must be in the care of the center because of a finding of abandonment or neglect, or because they need treatment or supervision.

(6) "Effective Date" means February 22, 1985.

(7) "Energy Audit (EA)" means the survey of a building by an energy auditor. Such survey is in accord with standards set by ODOE. The survey describes how a building uses energy. The survey will also find and list low-cost and no-cost operation and maintenance actions (O&M).

(8) "Energy Auditor" means a person certified by ODOE to do EAs under this program.

(9) "Energy Conservation Measure (ECM)" means to install material or equipment or take action to weatherize; or, actions to improve energy efficiency in electric water heating, space heating or cooling, ventilation, lighting, food preparation, motors, automatic energy control, and energy recovery.

(10) "Facility Other Than Buildings" includes but is not limited to:

- (a) Sewage treatment plants;
- (b) Potable water treatment and pumping systems;
- (c) Fish hatcheries;
- (d) Parking structures;
- (e) Stadia or arenas; and
- (f) Outdoor swimming pools which were completed by October 28, 1982 and which are owned and operated by an institution.

(11) "Hospital" means an institution which provides hospital service under the laws of the State of Oregon. In these rules, the term excludes a hospital which main care is domiciliary.

(12) "Institution" means a nonprofit or a public institution in the service area of a utility listed in OAR 330-069-0075.

(13) "Licensed Professional (LP)" means a person who has an active engineer's license granted by the State of Oregon; or is an engineer-architect team. The main members of such teams have active professional licenses granted by the State of Oregon.

(14) "Licensed Professional Engineer (PE)" means a person who has an active engineer's license granted by the State of Oregon.

(15) "Nonprofit Institution" means a hospital, care institution, or a school which owner and operator is exempt from income tax under Section **501(c)(3)** or **501(c)(4)** of the **Internal Revenue Code**.

(16) "Occupied Building" (for buildings within facilities) means an enclosed structure that persons occupy for more than seven hours per week. Such building has a working heating and/or cooling system used for human comfort and/or for process environmental control.

(17) "Operation and Maintenance (O&M)" means to operate, maintain, repair and adjust equipment or components of buildings to improve energy efficiency.

(18) "OPUC" means the Oregon Public Utility Commissioner.

(19) "Owner" means the persons authorized to apply and accept funds for the building or facility and be in accord with section (4) of this rule.

(20) "Program" means the Institutional Buildings Program (IBP) funded by the investor owned utilities through an agreement with ODOE. The program is in effect from February 22, 1985, through October 30, 1987. All program projects must be complete and final payment authorized by October 30, 1987.

(21) "Project" means one or more ECMs, defined by a TAS, for which a building owner seeks ODOE funding approval.

(22) "Public Institution" means an institution owned and operated by:

- (a) The federal government;
- (b) The State of Oregon;
- (c) A political subdivision of the state and which can levy taxes;
- (d) A recognized governing body of an Indian tribe in the state; or
- (e) A body that can perform general government functions under state or local authority.

(23) "School" means an institution which legally provides elementary, secondary, post-secondary, or vocational education on a day or residential basis.

(24) "Technical Assistance Analyst (TAA)" means a person(s) who:

- (a) Has experience in energy conservation; and
- (b) Is a LP as defined in section (13) of this rule.

(25) "Technical assistance study (TAS)" means a study done by a TAA which meets ODOE standards. A TAS analyzes the potential energy savings in a building or facility. It recommends ECMs that will achieve such savings.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0020

Availability

The program funds are only for buildings and facilities for which ODOE accepted TA or ECM applications under the BPA/IBP in 1983. This limit does not apply to Idaho Power Company and CP National. All eligible buildings and facilities must be in the Oregon service area of the IOUs listed in OAR 330-069-0075.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0025

Maximum Payment Levels

(1) TAS: ODOE shall set the maximum payment to the owner for a TAS as the smaller of:

- (a) An amount equal to the actual cost of the TAS; or
- (b) An amount not to exceed \$0.0108 times the building's kWh/yr use at the time the EA is completed or updated. ODOE reserves the right to question and adjust the cost of a TAS. The actual payment will be set as per OAR 330-069-0085(2).

(2) ECM:

(a) ODOE shall set the maximum payment for an ECM as the smaller of:

(A) An amount equal to the estimated cost of the ECM less the first year dollar savings stated in the TAS; or

(B) An amount not to exceed \$0.292 times the estimated first year kWh savings, less the first year dollar savings stated in the TAS. The final payment will also be subject to OAR 330-069-0085(3).

(b) For projects that cost more than \$10,000 but less than \$200,000, progress payments may be made upon 30 percent, 60 percent, and 100 percent project completion, unless otherwise agreed to by the funding IOU and ODOE;

(c) For projects that cost more than \$200,000, progress payments may be made upon 30 percent, 60 percent, 80 percent, and 100 percent project completion, unless otherwise agreed to by the funding IOU and ODOE.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0030

Obligated Measures

(1) ODOE shall contract with an owner for projects that comply with OAR 330-069-0085. ODOE shall prepare and submit to each IOU a summary report for ECMs approved under such contract.

(2) When the owner and ODOE have signed a contract, the owner must complete the project no later than the date set by the contract, or its amendment in accordance with OAR 330-069-0060.

(3) When ODOE finds that the completed project complies with OAR 330-069-0085, ODOE shall request the funding IOU to pay the owner an amount not to exceed that set in 330-069-0025.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0035

Payment Procedures

(1) ODOE shall approve TAS and ECM payments according to OAR 330-069-0025 and 330-069-0085. ODOE shall request the funding IOU to make payments.

(2) All payout of program funds shall be by the IOU as per ODOE's approved requests.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0040

Other Sources of Payment

ODOE shall not approve payment for a TAS or ECM funded by a cost sharing grant under the U.S. DOE/ICP.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0045

Program Records

ODOE shall keep the following records about payment of program funds. ODOE shall make quarterly reports to the IOUs listed in OAR 330-069-0075 and the OPUC. The reports shall cover the status of all funded projects and of all funds approved:

(1) For energy audits (for buildings and occupied buildings only):

- (a) O&M actions taken by the owner in a building;
- (b) Reason why the owner did not take O&M actions in accord with OAR 330-069-0085(2)(b)(B).

(2) For TAS:

- (a) Name and address of owner;
- (b) Name and address of building, or facility other than a building;

- (c) Purpose for which the building or facility is used;
- (d) Name of utility serving building or facility;
- (e) Total electricity use in kWh/yr/sq ft;
- (f) Building or facility size;
- (g) Records that prove actual TAS cost;
- (h) Amount of the IOU payment;

(i) Copy of each completed EA (for buildings and occupied buildings only);

(j) Copy of each completed TAS;

(k) Reasons why the building owner did not submit a TAA qualification statement;

(l) O&M actions taken by the owner in a facility other than a building; and

(m) Reason why the owner did not take O&M actions in a facility other than a building, as per OAR 330-069-0085(2)(c)(A).

(3) For ECM:

(a) Name and address of owner and of building or facility;

(b) Purpose for which the building or facility is used;

(c) Total building, or facility electricity use in kWh/yr/sq ft;

(d) Total estimated yearly kilowatt hour savings;

(e) Building or facility size;

(f) Date and amount of the funding IOU payment(s);

(g) Total cost of ECM;

(h) Records that prove actual cost of all installed ECMs;

(i) Name of utility serving building, or facility other than a building;

(j) Local retail electricity cost for each funded building or facility other than a building. This shall be the serving utility cost of energy in effect at the time of the ECM application;

(k) Ranking results;

(l) Data that support kWh savings estimates;

(m) Reason for exempting ECM installation from competitive fixed price bids required by OAR 330-069-0085(3)(c)(B); and

(n) Report that includes the date and results of the on-site visit and project completion date.

(4) Records on this program kept by the owner shall contain the information stated in these rules. The records shall be kept by the owner in any form, so long as the requirements of section (5) of this rule are met. Such records shall be kept for three years after the program ends.

(5) Program records shall be set up and kept in accord with sound accounting rules and shall conform with laws and federal regulations that apply, including the Privacy Act of 1974.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0050

Program Audits

ODOE, the funding IOU and/or the OPUC, upon reasonable notice and at their expense, may:

(1) Audit and inspect program records and accounts kept by the owner pursuant to these rules;

(2) Request copies of such program records and accounts for audit purposes;

(3) Conduct random inspections of ECMs done under these rules. All such inspections shall be arranged in advance with the owner; and

(4) Review methods by which the owner complies with these rules.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0055

Indemnification

The owner shall be an independent contractor in this program.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0060

Extension of Time for Obligated Measures

The owner may request to extend the completion date of a project contracted in accord with OAR 330-069-0030. A written request must be received by ODOE no less than 30 days before the completion date stated in the contract. The request shall include the new date to complete the project and the reason to extend the date. ODOE shall notify the owner in writing, if all or part of the request

has been granted or denied. Requests for extension will be judged on a case by case basis. In no case will more than two extensions be granted for a single contract. In no case will an extension be granted that would prevent completion of the project in accord with OAR 330-069-0015(20).

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0065

Termination of Obligated Measures

(1) ODOE and/or the funding IOU, by written notice of default to the owner, may terminate the contract and request that any funds received be paid back. This also includes any obligations created in accord with OAR 330-069-0030 if any measure is not completed within the time stated in the contract or any amendment thereof.

(2) ODOE may request the funding IOU to withhold payment from the owner for completed services. Such amount will be that which ODOE deems necessary to protect the IOU and ODOE against loss.

(3) The rights and remedies of OPUC, the IOU and ODOE set forth in this section shall not be exclusive. They are in addition to any other lawful rights and remedies.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0070

Termination

If the IOU has made progress payments for a project under OAR 330-069-0025, and such project is not completed by the owner in accord with these rules, the owner shall be liable for excess costs paid by the funding IOU to complete such project. The owner shall be liable for refund to the IOU all or part of any payments received, as ODOE may decide.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0075

Operating Area

ODOE shall run this program in the Oregon service areas of these IOUs:

- (1) CP National;
- (2) Idaho Power Company;
- (3) Pacific Power and Light Company;
- (4) Portland General Electric Company.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0080

Project Ranking Formula

(1) TAS:

(a) ODOE shall rank TAS applications for a building or occupied building by its potential for ECMs. Rank shall be set by a point system based upon data in the EA;

(b) ODOE shall approve for funding qualified TAS applications in rank order starting with the highest ranked application.

(2) ECM:

(a) ODOE shall rank ECM Project applications by this formula:

$$\text{Project Payment} = \frac{\text{Ranking Value}}{E}$$

(A) Project Payment = The sum of allowable ECM costs where the allowable cost of each ECM is determined by OAR 330-069-0025(2)(a);

(B) E = The sum of electricity savings from all ECMs; savings are equal to the life of each ECM times its estimated yearly kilowatt hour savings.

(b) Any direct application renewable resource part of a project shall not be ranked or funded;

(c) ODOE shall approve for funding qualified ECM project applications in rank order starting with the lowest ranked.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0085

Program Procedures

ODOE shall run the program for the IOUs listed in OAR 330-069-0075. ODOE will provide information and monitor the program to insure the program is in accord with these rules:

(1) Energy audit (EA). ODOE shall give owners a list of ODOE certified energy auditors and forms for energy audits for buildings and occupied buildings only.

(2) Technical Assistance Studies (TAS):

(a) ODOE shall ask for, judge, rank, and select for funding applications for TAS. Ranking shall be in accord with OAR 330-069-0080(1). ODOE shall inform applicants in writing whether or not they have been chosen for funding;

(b) ODOE shall ensure that the requirements in paragraphs (A) through (E) of this subsection are met before authorizing payment for a TAS (for buildings and occupied buildings only):

(A) An EA has been done by an ODOE certified energy auditor;

(B) All O&M actions listed in the EA have been taken by the owner, except those which ODOE judges need not be done;

(C) The owner has sought TAA qualifications of doing the TAS before choosing a TAA, unless otherwise agreed to by ODOE and the owner;

(D) The TAS has been done by a qualified TAA and has been reviewed and approved by ODOE;

(E) The owner has given ODOE proof of payment to the TAA of all agreed upon costs for the TAS.

(c) ODOE shall ensure that the requirements in paragraphs (A) through (D) of this subsection are met before authorizing payment for a TAS (for facilities other than buildings):

(A) All O&M actions listed in the facilities TAS have been taken by the owner, except those which ODOE judges need not be done;

(B) The owner has sought qualifications of TAAs. The TAAs chosen must have at least one year of proven experience in the design or operation of the particular type facility under study unless otherwise agreed to by ODOE and the owner;

(C) The TAS has been done by a qualified TAA and has been reviewed and approved by ODOE;

(D) The owner gives ODOE proof of payment to the TAA of all agreed upon costs for doing the TAS.

(d) ODOE shall authorize payment to an owner an amount not more than that which is in accord with OAR 330-069-0025(1). Such payment shall be authorized when the TAS is done in accord with the above requirements and when conditions in either of paragraph (A) or (B) of this subsection are met:

(A) The owner has installed or agrees in writing to install, at the owner's own expense, approved ECMs recommended in the TAS. The total cost of these ECMs shall be at least equal to 50 percent of the TAS amount;

(B) The owner agrees in writing to install, upon approval of funding, approved ECMs recommended in the TAS. The total cost of these ECMs shall be at least equal to 50 percent of the TAS amount. If an owner has received any part of the TAS amount and does not install such ECMs, ODOE shall require the owner to pay back the funding IOU any part of the payment which exceeds 50 percent of the TAS amount;

(C) ODOE shall not authorize payment to the owner the total of its TAS amount if one of either paragraph (A) or (B) of this subsection is not satisfied and if:

(i) The TAS does not recommend any eligible electricity ECMs even if the TAS does meet the requirements in subsection (2)(b) or (c) of this rule. In this case, ODOE will authorize payment of an amount equal to 50 percent of the TAS amount only; or if

(ii) The total estimated cost of doing the recommended eligible ECMs is less than 50 percent of the TAS amount, even if

the TAS meets requirements in subsection (2)(b) or (c) of this rule. In this case, the payment to the owner authorized by ODOE will be reduced by an amount equal to the difference between 50 percent of the TAS amount and the total estimated implementation cost.

(3) Energy Conservation measures (ECMs):

(a) ODOE shall ask for, judge, and select projects for funding. ODOE shall inform applicants in writing whether or not they have been chosen for funding;

(b) ODOE shall comply with paragraphs (A) through (F) of this subsection before approving a project application for funding:

(A) ODOE shall provide a PE, other than the TAA who did the TAS, to review and certify that energy savings and project cost calculations of ECMs recommended in the TAS were done by standard engineering methods. The PE will also certify that only ECMs recommended in a TAS are included in a project;

(B) ODOE shall rank and select for funding projects in accord with the ranking formula for ECMs in OAR 330-069-0080(2)(a), if requests for project funding exceed the funds available from the funding IOU;

(C) ODOE shall ensure that these things will not occur as a result of a funded ECM:

(i) Installation of low-pressure sodium (LPS) vapor lights indoors;

(ii) Use of high pressure sodium (HPS) vapor lights indoors, except for:

(I) General lighting in warehouses with low visual demand activities and short duration occupancies, with warning signs and danger signals that have an independent lightsource, where HPS fixtures or rows of fixtures are staggered on a multiple phase circuitry; and for

(II) High visual demand lighting in high bay areas, as defined by the **Illuminating Engineering Society Lighting Handbook**, where the mixture of HPS to incandescent, fluorescent, or metal halide fixtures is at least 1-to-1 with similar lumen output from both types of fixtures and the HPS fixtures are staggered on a multiple phase circuitry.

(iii) Removal or disturbance of previously installed asbestos;

(iv) Installation of Urea Formaldehyde Foam Insulation (UFFI).

(D) ODOE shall ensure that program funds are not used for ECMs which are environmentally restricted, and/or for projects which affect indoor air quality;

(E) ODOE shall not approve funding for any ECM based on a direct application renewable resource;

(F) ODOE shall obtain from the owner a written agreement to indemnify the funding IOU and hold it harmless from and against all claims and liability and expenses, including reasonable attorneys fees, arising from the negligent or other tortious acts or omissions of the owner's officers, agents, or employs.

(c) ODOE shall comply with paragraphs (A) through (D) of this subsection before authorizing the payment of funds to owners for completed projects:

(A) For projects that have had design documents prepared by a LP, ODOE shall provide a PE, other than the LP who prepared the design documents, to review the design documents before bid release. The PE will verify that the project design is in accord with the TAS and with standard engineering practice. The PE also will verify if the project can be expected to produce the energy savings stated in the TAS;

(B) ODOE shall ensure that the owner has sought competitive fixed price bids for doing the project unless otherwise agreed to by ODOE and the owner. ODOE shall also ensure that the installer has been chosen on the basis of price and capability;

(C) ODOE shall inspect each project for proper and complete installation of ECMs;

(D) ODOE shall obtain from the owner proof of payment of all agreed upon costs for the project.

(d) ODOE shall authorize payment to an owner in accord with OAR 330-069-0025(2) for installed ECMs.

(4) ODOE may limit the amount of ECM funding any single owner may receive, so long as such limits are applied fairly.

[Publication: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469
Stats. Implemented: ORS 316.088
Hist.: DOE 5-1985, f. & ef. 6-17-85

330-069-0090

Amendments

These rules may be amended from time to time as needed on agreement of the IOUs listed in OAR 330-069-0075, OPUC and ODOE.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 316.088
Hist.: DOE 5-1985, f. & ef. 6-17-85

DIVISION 70

TAX CREDIT ELIGIBILITY CRITERIA FOR RESIDENTIAL ALTERNATIVE ENERGY DEVICES

330-070-0010

Purpose

(1) The department will grant or deny tax credits in accordance with ORS 469B.100 through 469B.118 and ORS 316.116 which allow tax credits for Alternative Energy Devices (AEDs).

(2) These rules establish the criteria and standards for issuance of tax credits for AEDs. None of these rules replace any building code requirements.

(3) All decisions made by the department regarding AED eligibility, approval of tax-credit technician status, complaints regarding performance of tax-credit technicians, revocation of tax-credit technician status and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) The amendments to these rules apply to AEDs purchased on or after January 1, 2016.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0013

Definitions

For the purposes of Oregon Administrative Rules, chapter 330, division 70 the following definitions apply unless the context requires otherwise:

(1) "Alternative Energy Device" (AED) — has the meaning provided in ORS 469B.100 and includes a category one alternative energy device or a category two alternative energy device.

(2) "Alternative Fuel" — means any fuel other than gasoline or diesel oil such as electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director.

(3) "Alternative Fuel Device" — has the meaning provided in ORS 469B.100, and includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment. Does not include the purchase of an alternative fuel vehicle.

(4) "Annual Fuel Utilization Efficiency" (AFUE) — means a thermal efficiency measurement of combustion equipment like furnaces, boilers, and water heaters. The AFUE differs from the true 'thermal efficiency' in that it is not a steady-state, peak measure of conversion efficiency, but instead attempts to represent the actual, season-long, average efficiency of that piece of equipment.

(5) “Applicant” — means an individual, estate or trust subject to tax under ORS chapter 316, who applies for a residential energy tax credit under this division of rules.

(6) “British Thermal Unit” (Btu) — means a unit of energy. One Btu is the amount of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

(7) “Coefficient of Performance” (COP) — means the measurement of how efficiently a heating or cooling system (particularly a heat pump in its heating mode) will operate at a given outdoor temperature condition. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(8) “Department” — means the Oregon Department of Energy, unless specified otherwise.

(9) “Domestic Water Heating” — has the meaning provided in ORS 469B.100 and does not include space heating systems.

(10) “Dwelling” — Has the meaning provided in ORS 469B.100.

(a) Dwelling includes, but is not limited to, a single-family residence or an individual unit within multiple unit residential housing.

(b) Dwelling does not include a mobile home or recreational vehicle as defined in ORS 446.003.

(11) “Energy-Efficient Appliance” — has the meaning provided in ORS 469B.100, which includes emerging technologies that exceed code or standards as specified in ORS 469B.100 and these rules.

(12) “Energy Factor” (EF) — means a metric used to compare relative efficiencies of water heaters. The higher the EF is, the more efficient the water heater. EF is determined by the USDOE test procedure, Code of Federal Regulations, Title 10, Section 430.

(13) “Energy Use Index” (EUI) — means an index used for Energy Recovery Ventilators (ERV) or Heat Recovery Ventilators (HRV) to determine its electric efficiency, and calculated by dividing a model’s power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(14) “Fireplace Efficiency (FE)” — means a measure of a natural gas or propane fireplace’s energy efficiency performance over an entire heating season and is expressed as a percentage. The higher the rating, the more efficient the unit. The testing method used to establish Fireplace Efficiency is CAN/CSA-P.4.1-09 (R2014).

(15) “First Year Energy Savings” — means the first year energy yield as defined in ORS 469B.100. Energy savings is calculated under average conditions by an AED in 12 consecutive months of typical operation.

(16) “Fuel Cell Stack” — means the portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(17) “Fuel Cell System” — means a system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy.

(18) “Geothermal System” — means a heating and air-conditioning system, earth-coupled heat pump, geothermal heat pump or ground loop AED.

(19) “Heating Season Performance Factor” (HSPF) — means the measurement of how efficiently a heat pump will operate in a heat mode over an entire normal heating season. HSPF is measured according to test procedures defined by Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in its Standard 210/240 as well as American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 116 and the USDOE Test Procedure in 10 CFR; Part 430, Appendix M.

(20) “Ineligible Costs” — means the costs not allowed for determining the tax credit, including, but not limited to, finance

charges, maintenance costs, service contracts, or extended warranty.

(21) “Operating Guidelines” (OG) — means the guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory.

(22) “Operational Date” — means the date when final inspection is completed by a local jurisdiction for an AED and the AED is fully operational.

(23) “Owner-Built” — means an AED that is assembled and installed on an owner’s property and with an owner’s labor only.

(24) “Passive” — means a solar AED that relies on heated liquid or air rising to collect, store and move heat without assistance from any mechanical devices.

(25) “Passive Solar Space Heating” — means a system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun’s energy using only convection, radiation and conduction of energy.

(26) “Pass-through Amount” — means the sum, equal to the present value of the credit, paid to an eligible AED owner in exchange for the right to claim the tax credit. The present value of the tax credit will be determined periodically by the Director.

(27) “Pass-through Partner” — means an individual, estate or trust subject to tax under ORS chapter 316 that pays the pass-through amount to an applicant and receives the tax credit in place of the applicant.

(28) “Pass-through Verification” — means a determination based on information collected by the department that the approved pass-through amount has been provided, that the applicant has relinquished any claim to the tax credit and has assigned the credit to the pass-through partner.

(29) “Photovoltaic System” — means a complete solar electric power system capable of delivering power to either the main or sub-panel in a dwelling. Necessary components include solar electric modules, inverter, mounting system, and disconnection equipment.

(30) “PowerClerk” — means an online incentive application processing tool used in processing residential photovoltaic system applications.

(31) “Premium Efficiency Biomass Combustion Device” — means any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(32) “Purchase Date” — means the date when the first down payment is made by the applicant on a contract or invoice for an AED. The applicant must provide confirmation of the purchase date to the department.

(33) “Sealed Duct System” — means a forced air duct system that has been repaired or constructed for premium efficiency. For purposes of the tax credit, sealed duct systems are considered energy-efficient appliances.

(34) “Sensible Recovery Efficiency” (SRE) — means, in an HRV or ERV, the measurable (sensible) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(35) “Solar Domestic Water Heating System” — means any configuration of plumbing equipment and components to collect, convey, store and convert the sun’s energy for the purpose of heating water.

(36) “Solar Electric AC Module” — means a solar photovoltaic module coupled with a utility interactive inverter (i.e. micro inverter). The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(37) “Solar Labor Costs” — means the cost of labor necessary for the installation of a solar powered AED.

(38) “Solar Material Costs” — means the total cost of all parts necessary for the installation of a solar powered AED.

(39) “Solar Site Assessment Worksheet” — means a form or report issued or approved by the department, and completed, signed and dated by a tax-credit technician demonstrating the Total Solar Resource Fraction (TSRF) at the site of the solar thermal collector(s) or photovoltaic array. The worksheet must represent the point on the array with the lowest TSRF, depict whether any plant life near the array is made up of evergreen or deciduous trees and estimate the effects of 20 years future plant growth.

(40) “Standard Test Conditions” (STC) — As applicable to photovoltaic panels, means 25 degrees Celsius cell temperature and 1000 watts per square meter (W/m²).

(41) “System Certification” — means the certification that an AED as described in an application for tax credit meets all criteria for the tax credit.

(42) “System Cost” — means the costs allowed for determining the tax credit, include material cost, labor cost, and costs for design and acquisition.

(43) “Tax-Credit Technician” (TCT) — means a person who has received a “contractor system certification” as used in ORS 469B.106(5). A technician who has been approved by the department to implement the tax credit program. A tax-credit technician is responsible for assuring that AEDs are installed in accordance with the department’s rules and must verify system installation quality and performance.

(44) “Thermal Efficiency” (TE) — means the performance measurement of the output energy divided by the input energy in a system. Thermal efficiency indicates how well an energy conversion or transfer process is accomplished.

(45) “Third-party” — means the owner, or the owner’s representative, of the alternative energy device for the duration of the third-party agreement.

(46) “Third-party alternative energy device installation” — has the definition given in ORS 469B.100.

(47) “Total Solar Resource Fraction” (TSRF) — means the fraction of usable solar energy that is received by the solar panel/collector throughout the year, which accounts for impacts due to external shading, collector tilt and collector orientation.

(48) “Uncertified Woodstove” — means a solid fuel burning device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water heating purposes that has not been certified as meeting emission performance standards set by the U.S. Environmental Protection Agency.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0014

Pass-Through Eligibility

(1) An individual, estate or trust subject to tax under ORS chapter 316 that pays the present value to purchase the approved tax credit from the applicant may be eligible to claim the tax credit in place of the applicant.

(2) In accordance with ORS 469B.106(10), the department establishes the following rates for calculating the present value of the tax credit:

(a) For tax credits greater than \$1,500 the present value is 90 percent of the tax credit amount.

(b) For tax credits less than \$1,500 the present value is 95 percent of the tax credit amount.

(3) The department will issue a credit certificate to the pass through partner when the applicant confirms receipt of an amount

equal to the present value of the tax credit and relinquishes any claim to the credit.

(4) A tax credit may be transferred or sold only once.

(5) A tax credit may not be transferred in portions. Only the whole tax credit amount may be transferred.

Stat. Auth.: ORS 469.040, 469B.106; 469B.109

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 9-2014, f. 12-29-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0020

Eligibility

(1) To qualify for a credit, a person must meet all of the following:

(a) Be subject to Oregon personal income tax.

(b) Purchase an AED, complete construction, install an AED in or at an Oregon dwelling, and obtain a certification in accordance with OAR 330-070-0010 through 330-070-0097.

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner:

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a primary or secondary residence.

(2) Notwithstanding (1)(b), a residential property owner may qualify for a credit for an AED that is a third-party alternative energy device installation by meeting the following additional requirements:

(a) Installations must include a minimum 10-year agreement between the residential property owner and the third-party owner of the AED. The agreement must cover maintenance of the AED and either the use of the AED or the power generated by the AED for the entire length of the agreement.

(b) The third-party must comply with OAR 330-070-0029.

(c) The applicant must provide system cost information for third-party AED installations. System cost can be demonstrated by providing either a copy of an invoice for the purchase of the AED by the third-party owner, or a declaration from the third-party owner of representative market value for an AED that includes the costs of supply and installation. Such a declaration must include a list of primary system components and their pricing, itemizing material pricing separately from installation pricing.

Stat. Auth.: ORS 469.040; 469B.100; 469B.103; 469B.106

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0021

Eligible Devices

(1) To be eligible for a tax credit, an AED must meet all of the following:

(a) Be a complete system that is currently operating and meets these rules.

(b) Be a system that is built, installed, and operated in or at an Oregon dwelling in accordance with ORS 469B.100 through 469B.118, the AED manufacturer’s instructions and all applicable codes and standards.

(c) Be a system with manufacturers’ warranties against defects in products and materials, including remanufactured equipment.

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems and listed in OAR 330-070-0059 through 330-070-0097.

(e) Be a single system, which must be fully functional without the assistance of or component sharing with another system. Regardless of the number of components, a system must be controlled and able to distribute its result separate of any other system. Two or more units that share controls, a ductwork distribution system or hydronic distribution system will be considered a single system. This subsection does not apply to category two alternative energy devices.

(2) The following devices are not eligible for an AED tax credit, including those listed in ORS 469B.112:

- (a) Standard efficiency furnaces;
- (b) Standard back-up heating systems;
- (c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;
- (d) Heat pump water heaters that are part of a geothermal heat pump space heating system;
- (e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;
- (f) Swimming pools and hot tubs used to store heat;
- (g) Photovoltaic systems installed on recreational vehicles;
- (h) Additions to existing spa and hot tub systems;
- (i) Above-ground, uninsulated swimming pools, spas and hot tubs;
- (j) Conversions of systems from one type to another. An example is a conversion of a drainback solar hot water system to a drainback solar hot water system;
- (k) Used equipment, which is any product or any piece of equipment not under a current manufacturer's warranty or which has been acquired by a previous owner or user, not including remanufactured equipment that meets program standards;
- (L) Repairs and maintenance of systems having received prior certification for an AED tax credit;
- (m) Hydro systems;
- (n) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water;
- (o) Systems or projects that received certification under the Energy Incentives Program or the Business Energy Tax Credit program;
- (p) Air Conditioning Systems;
- (q) Boilers;
- (r) Dishwashers;
- (s) Refrigerators and Freezers;
- (t) Clothes Washers and Dryers; and
- (u) Photovoltaic systems participating in the pilot Feed-In Tariff program under ORS 757.365.

Stat. Auth.: ORS 469.040; 469B.100; 469B.103; 469B.106
 Stats. Implemented: ORS 469B.100-469B.118; 316.116; 317.115
 Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0022

Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy savings of an eligible AED. The department has determined first-year energy savings estimates for eligible AEDs and associated tax credit amounts, which are listed in the RETC Rate Chart. The energy savings basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

(2) The amount of the AED tax credit may not exceed the lesser of:

(a) For AEDs used for space heating, cooling, electrical energy or domestic water heating, other than an AED using solar radiation for domestic water heating or electric heat pump water

heater, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 60 cents. The amount of the credit may not exceed 50 percent of the cost of the system components and their installation.

(b) For electric heat pump water heaters rated as a Northern Climate Specification Product Tier 1, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 28 cents. The amount of the credit may not exceed 50 percent of the cost of the device.

(c) For electric heat pump water heaters rated as a Northern Climate Specification Product Tier 2 or greater, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 38 cents. The amount of the credit may not exceed 50 percent of the cost of the device.

(d) For AEDs that use solar radiation for domestic water heating:

(A) The incentive rate is based on when the system is certified as operational as of the date of the final inspection:

(i) Before September 1, 2015, \$1,500 or the first-year energy savings of the AED in kWh multiplied by 60 cents. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation.

(ii) On or after September 1, 2015 and for tax years beginning on or after January 1, 2015, the first-year energy savings of the AED in kWh multiplied by \$2.00, or 50 percent of the cost of the system, not to exceed \$6,000. The maximum credit claimed per year may not exceed \$1,500.

(B) The tax credit is calculated:

(i) Prior to September 1, 2015, by multiplying the Solar Rating and Certification Corporation (SRCC) savings estimate for the appropriate zone, times the Total Solar Resource Fraction (TSRF), times the incentive rate.

(ii) On September 1, 2015 through December 31, 2016, by multiplying the Solar Rating and Certification Corporation (SRCC) savings estimate for the appropriate zone times the incentive rate.

(iii) On or after January 1, 2017, by multiplying the Solar Rating and Certification Corporation (SRCC) savings estimate for the appropriate zone, times the Total Solar Resource Fraction (TSRF), times the incentive rate.

(e) For AEDs used for swimming pool, spa or hot tub heating, other than an AED using solar radiation for swimming pool heating, the first-year energy savings of the AED in kWh multiplied by 15 cents, up to 50 percent of the eligible cost of the AED or \$1,500.

(f) For AEDs using solar radiation for swimming pool heating:

(A) The incentive rate is based on when the system is certified as operational as of the operational date reported on the RETC application form:

(i) Before September 1, 2015, the first-year energy savings of the AED in kWh multiplied by 15 cents, up to 50 percent of the eligible cost of the AED, or \$1,500.

(ii) On or after September 1, 2015 and for tax years beginning on or after January 1, 2015, the first-year energy savings of the AED in kWh multiplied by \$0.20, or 50 percent of the cost of the system, not to exceed \$2,500. The maximum credit claimed per year may not exceed \$1,500.

(B) The tax credit is calculated:

(i) Prior to January 1, 2017, by multiplying the collector area in square feet, times the number of collectors, times the solar output by zone, times the incentive rate.

(ii) On or after January 1, 2017, by multiplying the collector area in square feet, times the number of collectors, times the solar output by zone, times the Total Solar Resource Fraction (TSRF), times the incentive rate.

(C) The solar output by zone is:

(i) 30 kWh/ft² for systems located in Zone 1 which is areas not in Zone 4 of the following counties: Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill.

(ii) 30 kWh/ft2 for systems located in Zone 2 which is areas not in Zone 4 of the following counties: Coos, Curry, Douglas, Jackson and Josephine.

(iii) 35 kWh/ft2 for systems located in Zone 3 which is the following counties: Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler.

(iv) 20 kWh/ft2 for systems located in Zone 4 which is areas within 10 miles of the coast.

(g) For each alternative fuel device, 50 percent of the eligible cost of the alternative fuel device or \$750.

(h) For fuel cell systems, \$3.00 per watt of the installed capacity or \$6,000, and not to exceed 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year may not exceed \$1,500.

(i) For wind AEDs, the first-year energy savings of the AED in kWh multiplied by \$2.00, not to exceed the lesser of \$6,000 or 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year may not exceed \$1,500, over a four year period.

(j) For premium efficiency biomass combustion devices, the average heating need times the stove efficiency improvement times 60 cents, up to \$1,500. The amount of the credit may not exceed 50 percent of the cost of the device. The department will use the EPA default efficiency as of January 1, 2016 when calculating the stove efficiency improvement for:

(A) Wood or pellet stoves without full efficiency testing listed on the EPA list of EPA Certified Wood Heaters,

(B) Wood or pellet stoves without full efficiency testing with the testing data submitted and approved by EPA, or

(C) Pellet stoves on the List of EPA Exempt Wood Heating Appliances that submitted testing certificates to the department.

(3) For photovoltaic systems:

(a) On or after January 1, 2012 and before January 1, 2014, the credit allowed under this section is equal to \$2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(b) On or after January 1, 2014 and before January 1, 2015, the credit allowed under this section is equal to \$1.90 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(c) On or after January 1, 2015, and before January 1, 2016, the credit allowed under this section is equal to \$1.70 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(d) On or after January 1, 2016, the credit allowed under this section is equal to \$1.50 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(e) A maximum of one credit valued at \$6,000 is allowed per residence, per AED. The maximum amount of credit allowed per year, beginning in the year in which the AED was installed, is \$1,500 per year over a four-year period. The total credit may not exceed 50 percent of the cost of the system.

(4) The amount of the tax credit may not exceed the system cost of the AED to the applicant. The sum of any rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed system costs.

(5) Each of the following device types installed at a dwelling within in a 5-year period will be considered a single device:

(a) Photovoltaic,

(b) Solar radiation for domestic water heating, or

(c) Solar radiation for swimming pool heating.

(6) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0059 through 330-070-0097, as those rules apply;

(b) Be the system cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have system cost prorated. System cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case the system cost must be prorated. System cost must be based on the largest useful size of an AED for the dwelling. The department will determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and any addition may not exceed \$1,500 per year.

(7) For purposes of the tax credit, the eligible system cost of the AED is only those costs necessary for the system to yield energy savings or produce renewable energy such as:

(a) The cost to purchase the AED.

(b) The cost of materials directly associated with installation or construction of the AED.

(c) For solar thermal systems, the cost of solar collectors; thermal storage devices; monitors, meters and controls; photovoltaic devices used to supply electricity to parts of the system; installation charges; fees paid for design or building; and ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings.

(d) For solar photovoltaic systems, solar labor costs and solar material costs including photovoltaic modules; inverters; storage systems and regulators; monitors, meters, and controls; wiring and framing materials; trackers; mounting or racking structures only, no structures beyond those needed for mounting or racking purposes; shipping; and for owner-built system inspections by a tax-credit technician, up to \$400; permits and fees.

(e) For wind systems, the cost of wind turbine generators; DC/AC converters, inverters and synchronous inverters; energy storage (batteries or other methods); tower, foundation and guys; electric transformers and lines and supports; safety equipment; up to \$500 of wind permitting cost; windmills; pumps, linkage, pump heads, and vacuum chambers; and obtaining a project site specific computer model wind speed estimate from a nationally recognized service as approved by the department, not to exceed \$100.

(8) Eligible system cost do not include:

(a) Unpaid labor (including the applicant's labor);

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Vendor rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system;

(L) Any part of the purchase price which is optional, such as an extended warranty; or

(m) Support structures beyond the mounting or racking hardware necessary for securing equipment.

[ED. NOTE: Tables referenced are not included in rule text.]

[Tables: Tables referenced are available from the agency.]

Stat. Auth.: ORS 469.040; 469B.103; 316.116

Stats. Implemented: ORS 469B.100-469B.118; 316.116; 317.115

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 4-2015, f. & cert. ef. 10-5-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16; DOE 3-2016, f. & cert. ef. 6-2-16

330-070-0024

Year Credit Claimed

(1) The tax credit must be claimed pursuant to ORS 316.116 (or ORS 317.115, if applicable).

(2) The tax credit allowed in any one year may not exceed a person's tax liability for that year. Unused credit may be carried forward for a maximum of 5 years as allowed under ORS 316.116.

(3) The tax year for which the tax credit may be claimed is determined by the operational date of the AED:

(a) If the operational date of the AED is before April 1 of the tax year following the year it was purchased, then the tax credit must be claimed for the tax year in which the AED was purchased. Proof of purchase is established using the "Purchase Date" as defined in OAR 330-070-0013.

(b) Otherwise, the tax credit must be claimed for the tax year in which the AED became operational. Proof of operation is established using the "Operational Date" as defined in OAR 330-070-0013.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89;

DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1999, f. 12-21-99, cert. ef. 1-

1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-

21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert.

ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0025

Application for System Certification

(1) Applicants for a tax credit must obtain a system certification from the department.

(2) All applications for a system certification must meet all of the following:

(a) Provide all requested information and include a statement that the system and technician or owner-builder will meet all federal, state and local requirements.

(b) Include the applicant's social security number for use as an identification number in maintaining internal records. The applicant's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) State:

(A) The system cost of the AED;

(B) The location of the AED; and

(C) That the applicant has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) Include an agreement by the tax-credit technician to make any changes required by the department for the system to comply with ORS 469B.100 through 469B.118 and 316.116.

(e) Be signed by the applicant and tax-credit technician, if any. Alternatively, a form of electronic signature acceptable to the department may be provided.

(f) Include no false or misleading information about an AED.

(g) For third-party installations, include a valid reference number as issued to the third-party by the department under OAR 330-070-0029.

(h) The contractor's certification that the AED was installed in accordance with manufacturer's installation specifications and all applicable codes and standards.

(3) System certification applications for solar water heating AEDs must contain:

(a) All the data required in section (2);

(b) The number of collectors;

(c) The manufacturer and/or supplier;

(d) The collector dimensions and/or the net area of the collectors;

(e) The amount of heat storage;

(f) The system type;

(g) A declaration of Solar Rating and Certification Corporation (SRCC) Standard 300 certification status or equivalence, as determined by the department;

(h) The system model;

(i) A description of the orientation and tilt of the collector;

(j) A solar site assessment worksheet for the collector location;

(k) A consumer disclosure signed by the applicant and technician or supplier, if any. The disclosure must be provided to the applicant and include estimated energy savings of the AED, required conservation items, required maintenance and freeze protection information; and

(L) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A solar site assessment worksheet for the collector location; and

(e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) All the data required in section (2) above;

(b) A copy of the building permit plans;

(c) A copy of the window specifications used;

(d) The type and amount of thermal storage;

(e) A solar site assessment worksheet taken at the center of the solar glazing; and

(f) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

- (a) The data required in section (2);
- (b) Retail customer pricing information for:
 - (A) Total project labor, and
 - (B) Total project materials;
- (c) The number of modules;
- (d) The brand name of the module(s);
- (e) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);
- (f) A description of the storage provided if storage is a part of the system;
- (g) Storage brand and model;
- (h) Storage capacity in kWh;
- (i) The brand name of the inverter if an inverter is part of the system;
- (j) The capacity of the inverter;
- (k) The Total Solar Resource Fraction (TSRF);
- (L) Other data the department requires to determine eligibility;
- (m) The permit number and date of final inspection from the applicant's local jurisdiction; and
- (n) All applications submitted by a tax-credit technician (TCT) after June 1, 2015, must be submitted through PowerClerk.

(7) System certification applications for geothermal systems must contain:

- (a) All the data required in section (2) of this rule;
- (b) For all systems connected to a well, data on the well including:
 - (A) Depth;
 - (B) Diameter (cased);
 - (C) Temperature;
 - (D) Static water level below grade;
 - (E) A copy of the well driller's log, if available; and
 - (F) Other data the department requires to determine eligibility.
- (c) For systems connected to a heat pump:
 - (A) Brand name and model number of the heat pump;
 - (B) Rated output at the entering water temperature;
 - (C) Estimated system COP rated by AHRI under ANSI/AHRI/ASHRAE/ISO Standard 13256-1, at an entering water temperature of 50 degrees Fahrenheit; and
- (D) Any other data the department requires to determine eligibility.

- (d) For geothermal systems:
 - (A) All the information in subsection (7)(b) of this rule;
 - (B) Brand name, rated output, estimated COP;
 - (C) Length and depth of the loop;
 - (D) Materials and spacing used;
 - (E) Type of heat transfer fluid; and
 - (F) Other data the department requires to determine eligibility.
- (8) System certification applications for energy-efficient appliances must contain:

- (a) All the data required in section (2) of this rule;
- (b) The brand name, make, model number, capacity and/or size of the appliance;
- (c) A signed copy of the sales agreement, which must include all of the following:

- (A) Verification of applicant's name and address,
- (B) Verification of model of appliance, and
- (C) Verification of actual price paid for appliance;
- (d) Certification of new equipment warranty;
- (e) For air source ducted heat pumps systems and furnace systems a description of the distribution system; and
- (f) Other data the department requires to determine eligibility.

(9) System certification applications for alternative fuel devices must contain:

- (a) Taxpayer's name;
- (b) Taxpayer identification or social security number;
- (c) Installation location by street address;
- (d) The name of the licensed and bonded company employing the technician;
- (e) The employing company's business location;

(f) The brand name, make, model number, or component list of the alternative fuel device;

(g) A signed copy of the sales agreement, which will include all of the following:

- (A) Verification of applicant's name and address,
 - (B) Verification of model of, or components used for alternative fuel device, and
 - (C) Verification of actual price paid for the alternative fuel device;
 - (h) Certification of new equipment warranty; and
 - (i) Other data the department requires to determine eligibility.
- (10) System certification applications for fuel cells must contain:

- (a) All of the data required in section (2) of this rule;
- (b) The rated fuel cell stack peak capacity, in kW;
- (c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);
- (d) Whether or not the system is grid connected;
- (e) The fuel used by the system;
- (f) The type of fuel stack (PEM, PAFC, SOFC, etc.);
- (g) An estimate of the average load, in kW, expected to be placed on the system;
- (h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;
- (i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and
- (j) Other data the department requires to determine eligibility.

(11) System certification applications for premium efficiency biomass combustion devices must contain:

- (A) The manufacturer, model, capacity, serial number of the device;
- (b) The device characteristics, defined as catalytic, non-catalytic, or pellet stove or boiler;
- (c) Vendor name and address;
- (d) Price paid for the device, any parts or installation;
- (e) Efficiency information, as described in OAR 330-070-0073;

(f) For replacement of uncertified woodstoves, the applicant must additionally provide:

(A) A signed certification from the applicant verifying that the wood burning device being replaced has been rendered unusable, can no longer be used as a heating device, and will be retired permanently from service; and

(B) Documentation, in the form of a disposal receipt from a metal recycler, landfill or licensed contractor, verifying that the wood burning device being replaced is an uncertified woodstove and has been rendered unusable; and

(g) Other data the department requires to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third-party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100-469B.118; 316.116; 317.115

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0026

Tax-Credit Technician

(1) Technicians may apply for the department's tax-credit technician (TCT) status for a technology listed in section (2) of this section. Tax-credit technician status is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician status is valid for two years and must be renewed to remain in effect.

(2) A tax-credit technician status applies only to the following products:

- (a) Solar water heating systems;
- (b) Geothermal systems; and
- (c) Photovoltaic systems.

(3) The tax-credit technician's status is based on the following:

(a) Knowledge and understanding of the tax credit program requirements and expectations;

(b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty and department rules; and

(c) Employment by a company with a Construction Contractors Board (CCB) license.

(4) Those who do not maintain the competencies in section (3) are subject to revocation of the status.

(5) Tax-credit technician status entitles a technician to:

(a) Inform the AED system owner that he or she has attended the department's online training and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meets department standards for performance and longevity.

(6) Tax-credit technician status requires that the technicians must follow department requirements including:

(a) Solar technicians must show at least one of the following, a valid and current:

(A) North American Board of Certified Energy Practitioners (NABCEP) certification,

(B) Limited Renewable Energy Technician (LRT) license for solar electric,

(C) Solar Thermal License (STL) for solar thermal,

(D) Successful passage of the NABCEP Entry-Level Exam for the appropriate AED, or

(E) Other certification approved by the Director to maintain their tax-credit solar technician status with the department.

(b) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(c) Solar and geothermal tax-credit technician applicants must complete the department's online training at least once every three years unless otherwise specified in department rule.

(d) Technicians must verify the AED owner has a user manual for the equipment/system.

(e) Technicians must provide the AED owner with a completed application and a copy of the final, itemized and dated invoice for the system that is marked "inspected and paid for." And they must verify the owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(f) Technicians must maintain tax-credit technician status by completing the following technology-specific requirements during the period between awarding initial status and the renewal period or between renewal periods:

(A) For solar technology:

(i) Technicians must:

(I) Submit and have approved two (2) Residential or Energy Incentives Program applications for systems in a technology in which the tax-credit technician is listed and complete four (4) hours of related technical continuing education;

(II) Submit and have approved one (1) Residential or Energy Incentives Program application for a system in a technology in

which the tax-credit technician is listed and complete six (6) hours of related technical continuing education; or

(III) Complete eight (8) hours of related technical education.

(ii) Technicians must provide information on the number of job hours directly associated with the installation of RETC qualified photovoltaic systems within the prior two years. Job estimates should be submitted in hours.

(iii) Technicians are subject to the renewal period on the second year from the year of initial status or renewal year.

(iv) The two month renewal period begins every year on June 1st and ends prior to August 1st.

(v) Proof of related technical continuing education must be provided during the renewal period.

(vi) Failure to complete requalification during the renewal period will result in the revocation of TCT status for one year. TCT status may be reinstated during the following year's renewal period.

(B) For geothermal systems, technicians must submit and have approved a minimum of one (1) tax credit application or provide proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(7) Tax credits for installation of geothermal systems, solar electric and solar thermal systems must be verified by a tax-credit technician.

(8) A tax-credit technician must notify the department within 30 days if changes are made in any of the information in the TCT application.

(9) Tax-credit technicians inspect owner-built systems to verify that the system appears to be installed in a workman-like manner. As part of an owner-built inspection, a tax-credit technician is not required to provide a warranty or guarantee of the owner-built system.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100-469B.118; 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0027

Application Review Process

(1) The department must review applications for AED tax credit approval. AEDs must comply with OAR 330-070-0010 through 330-070-0097. Specific rules for each type of AED are provided in OAR 330-070-0059 through 330-070-0097.

(2) The department will return applications that are not complete and will identify the additional information needed.

(3) The department may require more details to complete its review of an application.

(a) If the department requests additional data and does not receive it within 30 days, the department may deny the application.

(b) During review, the department may ask for proof that the AED complies the rules. The department may also suggest changes to allow the AED and application to comply with these rules.

(4) To obtain the information needed to evaluate an application or to verify eligibility and first year energy savings, the department may, with the owner's consent, inspect an installed AED:

(a) The department may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow the department to inspect the AED;

(b) The department may require corrections necessary to bring the AED or tax credit application into compliance with the rules to be made within 30 days;

(c) If such changes are not made within this time limit, the department may reject the application; and

(d) The department may use the results of utility, Energy Trust of Oregon or jurisdictional inspections in lieu of its own inspection.

(5) The department may reject any application if the AED does not comply with ORS 469B.100 through 469B.118, 316.116 and OAR 330-070-0010 through 330-070-0097. The department will provide an explanation for all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include a written explanation of the basis for the determination.

(6) If the department rejects an application for system certification or approves a certification for lesser cost than claimed by the applicant, an applicant may appeal the rejection. The appeal must be filed within 60 days of the mailing of the rejection notice by the department, in accordance with ORS 183.310 through 183.500.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0029

Third-Party Alternative Energy Device Installations

(1) A third-party who intends to complete a third-party alternative energy device installation must obtain a reservation before commencing installation.

(2) The third-party must apply to reserve potential tax credits by submitting a completed reservation request to the department. A reservation request may only be submitted after the owner of the residential property has entered into a contract for a third-party alternative energy device installation. The reservation request must contain the information required by the department on its form or within PowerClerk.

(3) The department may require the third-party to provide a copy of the signed contract at any time after the submission of a reservation request. Failure to provide requested documents within 30 calendar days may result in the loss of reservations made by the third-party.

(4) A third-party may reserve no more than 25 potential tax credits in each reservation request application. The following limits on reservation requests also apply:

(a) A third-party may request the reservation of up to 50 potential tax credits each week.

(b) A third-party may request no more than 900 reservations between January 1 and September 30 and may request no more than 1,300 total reservations in a calendar year.

(c) The department will not accept reservation request applications once the annual limit in Oregon Laws 2011, chapter 730, section 75 has been reached.

(5) The department will reserve the requested potential tax credits from the amount allowed by Oregon Laws 2011, chapter 730, section 75 and will provide the third-party with a reference number for each potential tax credit. The owner of the residential property at which the alternative energy device is installed must include the reference number on their tax credit application.

(6) A third-party may release a reservation by submitting a written request or notification within PowerClerk, including the reference number, to the department. If reservations are released in the same tax year they are reserved the department will re-allocate the potential tax credits to new reservation requests in the order the requests are received. Reservations of potential tax credits may not be transferred, except to a purchaser or owner of the residential site address where the AED is located.

(7) The department will continually monitor the rate of allocation of tax credits to ensure that the total amount of tax credits do not exceed the amounts specified in Oregon Laws 2011, chapter

730, section 75. The department will allocate potential tax credits according to these rules and in the order in which requests are received. The department will return any excess reservation requests. A third-party may not commence installation until a reservation reference number is issued by the department.

(8) The department will issue tax credits based on the year the potential tax credit is reserved if the installation is completed, as verified by an approved final inspection issued by the local jurisdiction, before April 1 of the following tax year. Tax credits for installations completed after April 1 of the tax year following reservation will be issued for the tax year in which the installation is completed.

(9) Reservation of potential tax credits does not guarantee approval of tax credit applications.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100-469B.118; 316.116

Hist.: DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0040

Other Rules and Regulations

(1) AEDs must comply with all state, federal and local laws and rules that apply.

(2) The policy of the department is:

(a) To accept the findings of local, state and federal agencies which license or permit projects to be built or run;

(b) To avoid influencing any of those agencies to approve or deny a license or a permit; and

(c) To provide facts from tax credit files to such agencies when asked.

(3) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project;

(b) Agree to comply with the express terms and conditions of each permit and license; and

(c) Agree to comply with all state rules and laws that apply to the project.

(4) System certification and tax-credit technician status are based on the applicant's promise that each needed local, state and federal license and permit has been or will be obtained. Failure to obtain those approvals will cause the department certification or status approval to be revoked.

(5) If any license or permit named in these rules does not apply to the project, the licensing or permitting agency must certify that the license or permit is not required. This does not apply to residential DHW, pool, spa and hot tub systems.

(6) AED technicians must install all systems in compliance with the system manufacturer's published specifications.

(7) The department will assign an energy savings for all solar domestic water heating systems. For systems approved by the department that are not Solar Rating and Certification Corporation (SRCC) certified, the department will assign an energy savings based on requirements determined comparable to SRCC ratings.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0045

Enforcement

(1) Actions that are cause for revocation of a residential alternate energy tax credit:

(a) A system certification may be revoked pursuant to ORS 469B.118 if the Director finds any of the following:

(A) The applicant obtained the system certification as a result of misrepresentation.

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

- (i) Failure to follow applicable standards;
- (ii) Failure to comply with required codes or obtain required permits or inspections;
- (iii) Return of the AED to the seller or installer for a refund; or
- (iv) Sale or removal of the device so that it no longer operates on the property of the applicant.

(C) The applicant refuses to allow the department to inspect the AED after a reasonable written request by the department. A reasonable request must allow applicant to choose a day within three weeks of the request from the department.

(b) Following revocation, the applicant will forfeit the tax credit, and the Oregon Department of Revenue will proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) A technician's tax credit status may be revoked pursuant to ORS 469B.118 if the Director finds that:

(a) The system or tax-credit technician status was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if false statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax credit status as defined in OAR 330-070-0026.

(b) The technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469B.106 does not meet industry standards. The Director may find that the technician's performance does not meet industry standards under any one or more of the following conditions:

(A) The technician or employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding.

(B) The technician or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040.

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0059 through 330-070-0097.

(D) The technician fails to install the AED system to comply with manufacturers' published specifications.

(E) The technician or employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation.

(F) The technician or employing company fail to honor a warranty that they are contractually obligated to perform.

(G) The technician or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (F) of this subsection, as requested by the department, within 30 days of written notification from the department of the problem, unless a time extension is granted by the department.

(H) A tax credit for an AED sold or installed under the tax-credit technician status is ordered revoked under subsection (2)(a) of this rule.

(I) Information indicates that the AEDs installed under the tax-credit technician status or the employing company do not meet eligibility requirements.

(c) The technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under any of the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other

misleading information about the program implemented under ORS 469B.100 through 469B.118.

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on an energy savings chart without providing accurate calculations to the customer and to the department to substantiate the energy savings. For geothermal systems, the technician or employing company has claimed savings higher than other units of similar efficiency.

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469B.100 through 469B.118.

(D) The technician or employing company has misrepresented a competitor's product or service.

(E) The technician or employing company fails to make corrections requested in writing to the department to remedy violations of (A)–(D) of this subsection within 30 days, unless more time is allowed by the department.

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0048

Administrative Process for Review and Revocation of the Tax-Credit Technician Status

(1) If the department receives a complaint, the tax-credit technician and employing company must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractors Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of tax-credit technician status.

(b) In all other cases, the department must evaluate the technician's or employing company's response and determine whether a violation occurred. The department must notify the technician and employing company of its determination and, if appropriate, the necessary remedy. The department must give the technician and employing company 30 days to remedy a violation. The department may grant the technician and employing company additional time where appropriate.

(2) If the technician and employing company do not take appropriate action within the time specified, the department may begin enforcement proceedings. An enforcement proceeding may be brought to revoke the tax-credit technician status, remove the company name from the department listing and to collect tax credit amounts.

(3) The department may commence an enforcement proceeding by sending the technician and employing company a notice of violation. The notice must describe the violation(s) and notify the technician and employing company of the proposed penalty (revocation or collection of tax credit amounts).

(4) Before the Director imposes a penalty, the technician and employing company must be given 21 days in which to request a hearing pursuant to ORS 183.310-183.550 and the applicable Attorney General's Uniform and Model Rules of Procedure. The

hearing will be to contest the revocation of a system or technician tax credit status based on actions listed under OAR 330-070-0045.

(5) Re-application: To reapply after the revocation of a technician tax credit status, the technician and employing company must prove to the satisfaction of the department that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that technician or employing company or any other firm with any of the same shareholders may reapply for status.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0055

Consumer Information

(1) A tax-credit technician must inform the owner in simple terms:

- (a) How to tell if the device is running correctly, and who to call if it is not;
- (b) How to tell if the freeze protection is in effect, and who to call if it is not;
- (c) What maintenance is needed, annually and long term;
- (d) Who will honor warranties; and
- (e) The conditions of the warranties including, but not limited to, how to start and keep warranties in force.

(2) A tax-credit technician or employing company must provide all AED purchasers with a copy of materials listed in section (1) of this rule prior to sale of the system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0059

Solar Swimming Pool, Spa and Hot Tub AEDs

(1) Installations must be installed according to manufacturer's instructions; and comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar swimming pool, spa or hot tub heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

- (a) Clear instructions on how to monitor the system performance;
- (b) Description and recommended frequency of homeowner maintenance;
- (c) Diagram of the system noting location of valves and monitoring devices; and
- (d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs.

(3) Swimming pool heating system designs and installations must comply with the following additional requirements:

- (a) Collectors and piping must be securely mounted to withstand local wind loads.
- (b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Any building insulation disturbed due to the system installation must be restored to previous condition.

(d) Swimming pool collectors must come with a minimum 10-year manufacturer's full warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system,

not require any special tools, and be in an easily accessible location.

(f) Collectors must be mounted in a manner to enable seasonal drainage by gravity for proper freeze protection.

(g) The system must have a minimum Total Solar Resource Fraction (TSRF) of 75 percent.

(h) Swimming pool collectors must be certified by the Solar Rating and Certification Corporation (SRCC), Florida Solar Energy Center (FSEC) or other certification body approved by the department.

(i) Swimming pool heating collectors will be limited to no more than 125 percent of the pool area for the purposes of calculating the tax credit.

(j) To estimate annual savings, swimming pools are assumed to be heated to a maximum of 85 degrees F. Swimming pools, spas or hot tubs heated beyond 85 degrees F will be considered a spa or hot tub for tax credit purposes.

(4) Spa and hot tub heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the department. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) The system must have a minimum Total Solar Resource Fraction (TSRF) of 75 percent.

(5) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy savings; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(6) The department will calculate first year energy savings of a system addition by subtracting the estimated savings of the original AED from the increased first year energy savings with the addition.

(a) The department will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED that received an AED tax credit in a prior five years will be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0060

Solar Domestic Water Heating AEDs

(1) Installations of solar domestic water heating systems must comply with all applicable state, county or local codes and regulations and be verified by a tax-credit technician.

(2) Consumers who purchase a solar domestic water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

- (a) Clear instructions on how to determine if the system is functioning properly; and
- (b) How to protect the system from overheating due to stagnation during periods when the system is not in use.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads.

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures.

(d) Any building insulation disturbed due to the system installation must be restored to previous condition.

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system.

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes.

(4) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(5) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(7) Annual energy savings will be based on the annual performance simulations provided by the Solar Rating and Certification Corporation (SRCC).

(a) The SRCC annual energy savings must be adjusted for site specific conditions as documented by a Solar Site Assessment Worksheet.

(b) The system must have a minimum Total Solar Resource Fraction (TSRF) of 75 percent.

(8) All systems must meet the standards established by the SRCC Standard-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0062

Passive Solar Space Heating AEDs

(1) Installations of passive solar space heating systems must comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy savings for the system must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Such systems must:

(a) Have sufficient solar access not jeopardized by future buildings or tree growth;

(b) Provide usable heat for the heated space;

(c) Provide adequate thermal storage for solar heat gained;

(d) Prevent overheating of the heated space that requires mechanical space cooling; and

(e) In addition, sunspaces must:

(A) Have no backup heating device; and

(B) Be able to be isolated from the heated space.

(4) Determination of annual performance must be based on one of the following approved methods:

(a) Using the department's prescriptive passive solar heating path to achieve 20 percent savings.

(b) Annual hourly simulation using an approved energy modeling software (e.g.: Energy-10).

(c) Monitored data from system before and after installation of AED.

(5) Costs eligible for passive solar space heating systems include:

(a) The cost for thermal storage;

(b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;

(c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and

(d) The cost of passive heat distribution components.

(6) The department will use data supplied by the applicant to determine the amount of the tax credit.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0063

Combined Active Solar Space and Domestic Water Heating AEDs

(1) Combined active solar space and domestic water heating systems use air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(2) Installations of active solar space and domestic water heating systems must comply with all applicable state, county and local codes and regulations, and be verified by a tax-credit technician.

(3) The estimated first-year energy savings must be based on the following:

(a) The house design prior to installation of the solar energy equipment, not a base code design or reference design.

(b) An annual solar utilization calculation method approved by the Director that accounts for the operating temperature of the energy storage and collector system and gives no credit for any insulation measures not directly associated with the solar AED.

(c) Typical residential occupancy setpoints and operating behavior. Savings will not be granted for consumer behavior options.

(4) Applicant must provide the following information:

(a) Complete system design documentation with component list and controls sequence;

(b) Documentation showing that the system has a minimum Total Solar Resource Fraction (TSRF) of 75 percent;

(c) Annual estimated savings calculations; and

(d) Solar equipment specifications and performance test data.

(5) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0064

Photovoltaic AEDs

(1) Installations of photovoltaic systems must be installed according to manufacturer's instructions, comply with all applicable Oregon codes and be verified by a tax-credit technician.

(2) System size will be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC). The minimum system size must be 200 Watts DC output under STC.

(3) All modules must have a minimum Total Solar Resource Fraction (TSRF) of 75 percent over the entire module. Solar electric AC modules with a TSRF of less than 75 percent will not be counted in the system size.

(4) The department may verify that the modules and inverters are listed on the California Energy Commission (CEC) eligible list as of the date of the application.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100–469B.118; 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0070

Geothermal Systems

(1) Geothermal systems must comply with OAR 330-070-0025 and 330-070-0040. Installations must be verified by a tax-credit technician.

(2) System parts must have adequate:

- (a) Structural strength;
- (b) Resistance to weather and fire;
- (c) Ease of upkeep; and
- (d) Durability.

(3) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code and be designed for the least impact on ground water.

(4) Direct use geothermal systems must include a summary report from Oregon Institute of Technology or other source approved by the Director which describes the system and indicates that it will deliver sufficient heat and the design meets current good practice guidelines. These systems will be reviewed on a case-by-case basis.

(5) The system Coefficient of Performance (COP) must be at least 3.3 for all systems including energy used by pumps, except 3.5 for direct expansion (DX) systems including energy used by pumps. COP will be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ANSI/AHRI/ASHRAE/ISO Standard 13256-1, at an entering water temperature of 50 degrees F.

(b) For solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(6) All other types of geothermal systems must be reviewed on their COP.

(7) Geothermal upgrade systems must comply with the following requirements:

(a) All units must be installed on systems that comply with these rules.

(b) All units must be installed on systems that use an operational closed-loop ground coupled heat exchanger.

(c) The compressor upgrade unit must be sized within 15 percent of the unit it is replacing, based on rated cooling capacity in Btus. The department may grant an exception to this limit for an upgrade that is accompanied by a written justification including measured data and appropriate engineering calculations.

(d) All units must be manufactured by a company appearing in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Unitary Directory.

(e) Post-upgrade system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP must be determined by the following methods:

(A) For water source heat pumps, the COP must be determined

in accordance with ANSI/AHRI/ASHRAE/ISO Standard 13256-1,

at an entering water temperature of 50 degrees F.

(B) For water source or ground loop heat pumps using

ambient surface water as an energy source and for solar assisted

heat pumps, the COP must be the measured ratio of the heating sea-

son energy output divided by the heating season energy input. Both

energy values must be expressed in the same units.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-

1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82,

ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86;

DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE

2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-

1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00;

DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04;

DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 7-2008, f. 10-31-08, cert. ef.

11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert.

ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-

14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0073

Energy-Efficient Appliances

(1) Energy-efficient appliances must meet or exceed the United States Department of Energy (USDOE) energy efficiency standards, as applicable, the department will designate a nationally recognized test procedure that will apply where USDOE standards do not exist.

(2) Water Heating Appliances.

(a) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the “Northern Climate” specifications by the Northwest Energy Efficiency Alliance (NEEA). AEDs meeting the Northern Climate Specification Product Tier 1 must provide configuration options for semi-conditioned spaces such as unheated basements and unconditioned spaces such as garages or crawl spaces. Tier 1 AEDs must be Energy Star compliant and rated at a minimum 1.8 Energy Factor.

(b) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the “Northern Climate” specifications by NEEA. AEDs meeting Northern Climate Specification Product Tier 2 or greater must provide configuration options for semi-conditioned, unconditioned and conditioned spaces such as heated utility rooms. Tier 2 or greater AEDs must be Energy Star compliant and rated at a minimum 2.0 Energy Factor.

(c) Storage gas water heaters, which heat and store water within the appliance at a thermostatically controlled temperature for delivery, and natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have either an Energy Factor of 0.70 or greater as tested with natural gas fuel or a thermal efficiency of 0.80 or greater.

(d) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011. Integrated water-space heating combination devices will be evaluated as if they were an instantaneous water heater with at least a 93.3 Annual Fuel Utilization Efficiency (AFUE) rating.

(e) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(3) Wastewater Heat Recovery Device is a device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling’s domestic hot water system. Field performance data submitted to and approved by the department will be the basis for tax credit qualification. The following rules also apply:

(a) The system must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling’s wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling’s hot water supply system.

(4) Sealed Duct Systems must meet the following requirements:

(a) Have all work must done by technician with a current or valid certification with Performance Tested Comfort System (PTCS), ACCA Quality Installation or approved by the department as equivalent.

(b) To apply for a sealed duct tax credit, the following information must be submitted on the department approved application form:

(A) Certification that Bonneville Power Association’s Prescriptive Duct Sealing Specifications have been completed; and

(B) Itemized invoice identifying costs.

(5) Energy Recovery Ventilators (ERVs) are devices that provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream. ERVs must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating on the lowest fan speed. LRMT is the moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. For example, LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is recovered for the incoming supply air stream;

(c) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 67 percent at 32°F/0°C when operating at the highest fan speed.

(6) Heat Recovery Ventilators (HRVs) are devices that provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream. HRVs must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 67 percent at 32°F/0°C when operating at the highest fan speed.

(7) High Efficiency Air Source Ducted Heat Pump Systems are devices that use heat pump technology to create heated or cooled air, for distribution through ductwork. An air source ducted heat pump device consists of one or more factory-made assemblies which normally include an indoor conditioning coil, compressor and outdoor coil. These devices must:

(a) Have all work done by technician with a current or valid certification with Performance Tested Comfort System (PTCS), Proctor Engineering CheckMe!, ACCA Quality Installation or approved by the department as equivalent;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the AHRI directory;

(d) Have a minimum USDOE Region IV HSPF rating of 9.5 or greater; and

(e) Systems must be installed and attested to the protocols of tested and serviced as needed to confirm correct refrigerant charge and air flow by a technician authorized by the department and by an approved Performance Tested Comfort System (PTCS), Proctor Engineering CheckMe!, ACCA Quality Installation or approved by the department as equivalent.

(8) High Efficiency Furnace Systems are devices that heat and distribute air through the dwelling using a system of ductwork. A high efficiency furnace system is determined by its Annual Fuel Utilization Efficiency, (AFUE). These devices must:

(a) Be rated by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.95 (95 percent);

(c) Use direct ducted outdoor air for combustion; and

(d) Must be listed in the AHRI directory of Certified Energy Rating in effect at the time these rules are adopted as an “e” “electrically efficient” furnace.

(9) High Efficiency Ductless Air Source Heat Pump Systems are air-source heat pumps consisting of an outdoor unit connected

directly to one or more indoor units through which conditioned air is delivered directly to the room or zone of a home rather than through a central furnace. These devices must:

- (a) Include an inverter-driven variable speed compressor;
- (b) Be listed in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products;
- (c) Deliver at least 50 percent of its AHRI-certified rated heating capacity at 17°F outside temperature;
- (d) Have a minimum USDOE Region IV HSPF rating of 10.0 or greater;
- (e) Include no integrated electric resistance backup heat;
- (f) Be sized and installed per manufacturer specifications; and
- (g) Be installed by a technician trained by the equipment manufacturer.

(10) High Efficiency Direct Vent Gas Fireplace Devices are direct vent sealed combustion natural gas or propane fireplace devices that take combustion air directly from outside through a dedicated air inlet and vent combustion products directly outside. These devices must:

- (a) Meet CAN/CSA-P4.1-09 (R2014) Fireplace Efficiency (FE) of 70 percent or greater.
- (b) Be direct vented to the outside with sealed combustion.
- (c) Have an electronic ignition that is either an intermittent or Pilot on Demand system meeting American National Standards Institute (ANSI) Z21.20-2014.

(11) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, or systems as determined by the Director.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 4-2014(Temp), f. & cert. ef. 5-15-14 thru 11-10-14; Administrative correction, 11-24-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0076

Premium Efficiency Biomass Combustion Alternative Energy Devices

(1) To qualify for a tax credit, a premium efficiency biomass combustion device must be:

- (a) Less than <250,000 Btus per hour heat output.
- (b) Installed with a dedicated outside combustion air intake within five feet of the device, which may be a duct, barometric damper or grill.

(c) Efficiency tested, as evidenced by:

(A) A listing in the United States Department Environmental Protection Agency (EPA) List of EPA Certified Wood Stoves with emissions of 3.5 grams of particulate per hour or less designated in that list as a non-catalytic wood stove;

(B) A listing in the List of EPA Certified Wood Stoves with emissions of 2.5 grams of particulate per hour or less if it is designated in that list as a catalytic wood or pellet stove;

(C) Having a certificate of performance for the specific manufacturer and model of wood burning device from a current US EPA certified woodstove testing laboratory, tested in accordance with CSA B415.1 and submitted and approved by EPA. The certificate must show emissions of 3.5 grams of particulate per hour or less designated as a non-catalytic wood stove purchased or emissions of 2.5 grams of particulate per hour or less if it is designated as a catalytic wood or pellet stove; or

(D) A certificate of performance including the grams of smoke per hour, for pellet stoves on the List of EPA Exempt Wood Heating Appliances, for the specific manufacturer and model from a currently US EPA certified stove testing laboratory, tested in accordance with CSA B415.1. The certificate must be submitted to

the department. The department will use the EPA default efficiency for pellet stoves as the device efficiency beginning on January 1, 2014.

(2) To qualify for a tax credit when installing a premium efficiency biomass combustion device, the dwelling must have an approved carbon monoxide detector alarm device in compliance with the Regional Technical Forum Residential Weatherization Specifications as of August 30, 2011.

(3) Any other standards adopted by the department for premium efficiency biomass combustion devices as determined by the Director.

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0078

Alternative Fuel Devices

(1) To qualify for a tax credit, an alternative fuel device must be permanently installed to meet all state and local safety codes.

(2) Electric charging stations must be a Level 2, 240 volt AC or similar.

(3) Non-electric alternative fuel fueling stations must be capable of re-fueling an alternative fuel vehicle within 14 hours.

(4) Other standards adopted by the department for alternative fuel devices as determined by the Director.

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0085

Fuel Cell Systems

To be eligible for a tax credit under these rules, fuel cell systems must have a minimum rated stack capacity of 0.5 kW and a maximum rated system capacity of 10 kW.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0089

Wind Alternative Energy Devices

(1) A qualifying wind energy conversion system is a device that uses wind to produce mechanical or electrical power or energy, and includes turbines, towers and their associated components needed to form a complete system.

(2) To qualify for a tax credit:

(a) A minimum annual average wind speed of 10 miles per hour at hub height or lower must be demonstrated at the wind AED site.

(b) A wind AED system manufacturer must make available estimated monthly or annual energy production data (kWh) at various annual average wind speeds for each model or system they produce.

(c) The wind AED system model must meet industry standards as approved by the department.

(d) A wind AED system application must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

(e) A wind system must have a minimum five-year manufacturer's warranty.

(3) The department reserves the right to deny eligibility for any wind AED for reasons including, but not limited to, poor generator performance, concerns about wind generation system design, the quality of data presented, lack of manufacturing support for maintenance or warranties.

(4) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(5) Materials used will assure that the wind AED has adequate:

- (a) Strength;
- (b) Resistance to ice, moisture, corrosion and fire;
- (c) Durability; and
- (d) Low maintenance cost.

(6) No part of a wind AED project may result in toxic substances entering into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(7) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(8) Shutdown: All wind AEDs must have a way to stop the rotor from turning. This method must work safely during high winds and routine service.

(9) Overspeed Control: Rotor overspeeds must be prevented by the wind AED's design.

(10) Tower Safety: All parts of a wind AED project must meet accepted engineering standards. Tower design must include consideration of:

- (a) Gravity load; and
- (b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(11) Tower Height: A minimum tower height of 70 feet is required. All portions of the rotor disc of the wind AED must be at least 30 feet above any object within a 400 foot radius of the wind AED's base. Future growth of trees for the next 20 years must be taken into consideration.

(12) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 6-2015, f. 11-9-15, cert. ef. 1-1-16

330-070-0097

Electricity Producing AEDs

Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be installed per the state electrical code.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12

DIVISION 75

ENERGY SUPPLIER ASSESSMENT RULES

330-075-0005

Purpose

These rules specify the form and content of information regarding Oregon gross operating revenues and energy sales to be submitted to the Department of Energy by energy resource suppliers. Such submittals are pursuant to ORS 469.421 as amended by **Oregon Laws 2009, Chapter 753**. The information will be used to calculate annual assessments on energy resource suppliers.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

330-075-0015

Definitions

For the purposes of OAR division 330, division 75, unless otherwise specified, the following definitions shall apply:

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

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

(3) "Electric Utility" has the meaning given that term in ORS 469.300.

(4) "Energy Resource Supplier" has the meaning given that term in ORS 469.421.

(5) "Gross Operating Revenue" has the meaning given that term in ORS 469.421.

(6) "Imported" relates to natural gas and petroleum products and includes those products not produced or salvaged from the earth or waters of the State of Oregon.

(7) "Natural Gas Utility" means a person engaged in or authorized to engage in the business of supply, transmission or distribution of natural or synthetic gas.

(8) "Petroleum Products" means those petroleum products subject to assessments under Section 3(4) and Section 5(4) of Oregon Laws 1981, Chapter 792. These products include:

- (a) Crude petroleum;
- (b) Fuel oil (distillate and residual);
- (c) Kerosene;
- (d) Liquefied petroleum gases;
- (e) Motor vehicle fuel (when used as fuel for agricultural purposes); and

(f) Petroleum coke (when used as fuel in metal processing). "Petroleum products" does not include fuels subject to the requirements of Section 3 of Article IX of the Oregon Constitution, ORS 319.020 relating to aircraft and motor vehicle fuel, and ORS 319.530.

(9) "Petroleum Supplier" has the meaning given that term in ORS 469.421.

(10) "Person" has the meaning given that term in ORS 469.300.

(11) "Proprietary Information" means information in which its owner has an important, established financial or competitive interest and value. Proprietary information shall be determined by these indicators:

(a) Whether the information is treated as confidential by its owner;

(b) Whether its owner has made the information available to others, and the reason for such disclosure;

(c) The potential for competitive advantage that the information provides;

(d) The cost of developing the information;

(e) The potential for financial or competitive loss to its owner if the information is disclosed;

(f) Whether the information legally is protected by patents or copyrights, etc.

(12) "Retail Sales" means sales to the ultimate consumer.

(13) "Synthetic Gas" means a gas or gas mixture that is produced or collected for use as fuel. Synthetic Gas includes landfill gas, digester gas, biogas and biomethane.

(14) "Ultimate Consumer" means a customer who purchases energy for his own use and not for resale.

(15) "Utility" has the meaning given that term in ORS 469.300.

(16) "Wholesale sales" means sales of electricity, natural gas or petroleum products for subsequent resale.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-

1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

330-075-0025

Energy Resource Suppliers Gross Operating Revenue Reporting Requirements

(1) Energy resource suppliers with one or more locations or service areas in Oregon shall complete and submit the appropriate Department-supplied form or forms based on the suppliers energy type. The information provided on the forms shall when appropriate:

(a) Contain information relating to total gross operating revenue derived from the energy resource supplier's operations within Oregon during the most recently completed calendar year. Energy resource suppliers whose energy generation, transmission or distribution activities within Oregon are undertaken to directly supply the suppliers operations at the same location and not for the primary purpose of distribution or sale, shall report only gross operating revenue from supplying, transmitting or distributing energy to another person. Energy resource suppliers who receive revenue from multiple business activities shall report only the gross operating revenue from supplying, generating, transmitting or distributing energy.; and

(b) Contain gross operating revenues relating to wholesale and retail sales by the petroleum supplier of distillate fuel oil within Oregon during the most recently completed calendar year.

(2) Except as provided in OAR 330-075-0035, every energy resource supplier with one or more locations in Oregon shall submit a completed Department-supplied form on or before May 1 of each year. Forms shall be considered submitted as of the post mark date or receipt at the Department, whichever is earlier.

[Forms: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

330-075-0030

Submission Deadline

(1) Except as provided in OAR 330-075-0035, every energy resource supplier shall submit the completed ODOE Form ESA-1 required by 330-075-0025(1) on or before May 1 of each year.

(2) Except as provided in OAR 330-075-0035, every petroleum supplier shall submit the completed ODOE Form ESA-2, required by 330-075-0025(2), on or before May 1, of each year.

(3) Forms subject to this rule shall be deemed submitted as of the post mark date or receipt at the Department, whichever is earlier. Submissions shall be properly addressed and postage shall be prepaid. Each form shall be legible and complete.

[Forms: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; Suspended by DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

330-075-0035

Extension of Submission Deadline

(1) Any energy resource supplier which finds it cannot meet the deadline set forth in OAR 330-075-0025 may apply to the Director for an extension of time. The written application shall include the following:

(a) The reasons why the deadline cannot be met;

(b) The measures being taken to comply with the deadline; and

(c) The date on which the energy resource supplier intends to submit the required form(s).

(2) A petition for extension of time must be submitted no later than 15 days before the deadline from which an extension is sought.

(3) The Director may grant an extension of not more than fifteen days if:

(a) The energy supplier makes a showing of hardship caused by the deadline;

(b) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(c) The extension of time does not prevent the department from fulfilling its statutory responsibilities.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

330-075-0040

Proprietary Information

An energy resource supplier may request that information submitted pursuant to OAR 330-075-0010 to 330-075-0035 be treated by the Director as proprietary information and maintained in confidence. Any such request shall be made at the time the information is submitted. Such request shall comply with the procedure set forth in 330-010-0005 to 330-010-0030. The Director's decision on the request will be made in accordance with 330-010-0030.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84

330-075-0045

Retention of Supporting Documentation by Energy Resource Suppliers

Supporting documentation used by the energy resource supplier in compiling the information submitted pursuant to OAR 330-075-0010 to 330-075-0045 shall be kept available by the energy resource supplier for inspection by the Department for three years from the date of submission.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84

DIVISION 80

STATE ADMINISTRATION OF FEDERAL PETROLEUM ALLOCATION PROGRAMS FOR MOTOR GASOLINE AND MIDDLE DISTILLATES

330-080-0005

Purpose

(1) In response to the Arab oil embargo of 1973, the federal government has, through the Emergency Petroleum Allocation Act of 1973 and other statutes, and through regulations adopted pursuant thereto, established a series of programs governing the allocation and pricing of crude oil and refined petroleum products. Among these are:

(a) The "state set-aside program" (10 CFR 211.17), whereby a percentage of the total expected supply of a product is received each month to be allocated to alleviate hardships and emergencies; and

(b) A program (10 CFR 211.12(f)), whereby new end-users can apply for an assignment of an allocated product or a supplier.

(2) Administration of the described programs may be delegated to states. Oregon has requested the Region X Office of the U.S. Department of Energy (US DOE) for this authority as to motor gasoline and middle distillates only.

(3) The purpose of these rules is to provide the substantive framework for administering these federal programs as to motor gasoline and middle distillates only. To the extent possible, definitions of terms and substantive provisions have been taken directly from existing federal regulations. Copies of federal regulations incorporated herein by reference are available from, Oregon Department of Energy (ODOE).

(4) The basic philosophy of ODOE in implementing these programs is to alleviate emergency or hardships of actual end-users of motor gasoline and middle distillates and to alleviate regional

shortages of gasoline available to the general public. Therefore, in making decisions under these rules, the emphasis will be to assure needed supplies to such end-users, taking into consideration the allocation priorities established by federal law.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & ef. 5-24-79; DOE 4-1979(Temp), f. & ef. 9-20-79; DOE 5-1979, f. & ef. 10-29-79

330-080-0010

Definitions

(1) Unless the context clearly requires otherwise, the following definitions shall apply:

(a) The terms “action,” “adjustment,” “aggrieved,” “assignment,” “duly authorized representative,” “EPAA,” “EPCA,” “exception,” “exemption,” “order,” “person,” and “proceeding” shall be as defined in 10 CFR 205.2;

(b) The terms “adjusted base period volume,” “base period,” “end-user,” “firm,” “motor gasoline,” “prime supplier,” “purchaser,” “state set-aside,” “supplier,” “total supply,” “wholesale purchaser-reseller,” and “wholesale purchaser-consumer” shall be as defined in 10 CFR 211.51.

(c) “Middle distillate” means No. 1 heating oil, No. 1-D diesel fuel, No. 2 heating oil, No. 2-D diesel fuel and kerosene, as those products are defined in 10 CFR 212.31.

(d) “Hardship” means a situation involving a potentially substantial physical discomfort or danger, or substantial economic dislocation, caused by a shortage of motor gasoline or middle distillates.

(e) “Emergency” means a situation of substantial hardship which is imminent and not remediable without state assistance.

(f) “State Office” means the Oregon Department of Energy.

(g) “Allocation Officer” means the person or persons within the State Office authorized to receive, evaluate, and act upon applications.

(h) “Reviewing Officer” means the person or persons designated by the Director of the State Office, none of whom shall serve as an “Allocation Officer,” authorized to review, evaluate, and act upon appeals of orders issued by Allocation Officers.

(2) References herein to Title 10, Code of Federal Regulations, are to those sections thereof as adopted (even if on a standby basis) on the effective date of these rules, including special rules issued by the U.S. Department of Energy.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & ef. 5-24-79; DOE 4-1979(Temp), f. & ef. 9-20-79; DOE 5-1979, f. & ef. 10-29-79

330-080-0015

State Set-Aside Program

(1) Scope and Purpose: The state set-aside shall be utilized by the State Office to meet hardship and emergency requirements of all wholesale purchaser-consumers and end-users of motor gasoline and middle distillates within Oregon. The State Office may direct that a wholesale purchaser-reseller be supplied from the state set-aside in order that it can supply wholesale consumers and end-users experiencing hardship of emergency.

NOTE: Under Special Rule 7, the wholesale purchaser-seller must have had a supplier/purchaser relationship with the wholesale purchaser-consumer or end-user on March 1, 1979.

(2) Who May Apply: A wholesale purchaser-consumer or an end-user seeking an assignment from the state set-aside system to meet a hardship or emergency requirement, and a wholesale purchaser-reseller seeking an assignment to enable him to supply such wholesale purchaser-consumer and/or end-user, may apply.

(3) Where to File: All applications under these programs shall be made to the State Office, Department of Energy, Room 102 Labor and Industries Building, Salem, OR 97310, Attention: Allocation Officer.

(4) What to File: Applications for assignment from the state set-aside system may be by the appropriate State Office form, or other written communication, or by oral (including telephonic) request. Oral applications must be supplemented with a written

certification of the hardship or emergency circumstances within ten days. The federal and state penalties for falsifying information for written applications also apply to information submitted as oral applications. The State Office may require any reasonable information needed to verify the validity of the applicant’s claims.

(5) Content of Application:

(a) An applicant shall provide sufficient information to enable the State Office to determine that the proposed allocation satisfies the objective of the EPAA and 10 CFR Part 211. An applicant must file its application on the application form required by the State Office;

(b) If the applicant is a wholesale purchaser-reseller, it shall describe the wholesale purchaser-consumers and end-users that will be supplied and their hardship and emergency requirements;

(c) The State Office may return incomplete applications or require additional information needed to verify information contained in an application.

(6) State Office Evaluation:

(a) Investigation: The State Office may initiate an investigation of the application and utilize in its evaluation any relevant facts obtained. The applicant shall be afforded an opportunity to respond to any third-person submissions obtained. The State Office may convene a conference if it considers that doing so will advance its evaluation;

(b) Criteria:

(A) Assignments shall be made only to applicants who demonstrate hardship or emergency requirements. Pursuant to 10 CFR Subsection 211.103(b), the following uses are considered top priority uses: essential military and readiness-oriented operations of the Department of Defense; agricultural production; emergency services; energy production; sanitation services; telecommunication services; passenger transportation services; aviation ground support vehicles and equipment; and cargo, freight and mail hauling by truck. The State Office will consider these priorities for both gasoline and diesel oil. While considering these priorities, the State Office will also give due consideration to the degree of hardship or emergency suffered, or likely to be suffered, if an assignment is not given. The State Office may also take action to avoid localized or regional hardships which can be alleviated by state assignments. Any situation which poses an immediate threat to life, health, or safety will take precedence over other priorities;

(B) The State Office may use the set-aside for motor gasoline to meet the supply needs of motor gasoline retailers who have experienced or will experience a supply shortage resulting in hardship or economic dislocation. Gasoline retailers applying for assignments of volumes to alleviate a supply shortage must follow the procedures set forth in these rules. Assignments to meet the hardship and emergency requirements of wholesale purchaser-consumers and end-users will be given priority by the State Office over assignments to motor gasoline retailers;

(C) Any assignment ordered by the State Office shall conform to the requirements of Section 4(b)(1) of the EPAA and 10 CFR 211.17.

(7) State Action:

(a) All hardship and emergency applications for assignment from the state set-aside shall be filed with and resolved by the State Office in accordance with these rules. Applicants shall identify their existing supplier, or if they do not have a supplier, make reasonable efforts to locate two suppliers which could provide the allocated product. The State Office may assign a supplier to an applicant who does not have a supplier or whose existing supplier terminates service;

(b) If the State Office approves a hardship or emergency application, it shall assign a prime supplier and an amount from the state set-aside to the applicant. To determine an appropriate prime supplier, the State Office may coordinate with the state representative of the prime suppliers;

(c) The State Office has the authority to cross-assign end-users or wholesale purchasers, if such cross-assignment does not result in undue hardship and is necessary to alleviate inadequate supply allocation problems consistent with federal regulations;

(d) Any order by the State Office is binding on the applicant and its supplier and is effective immediately upon issuance;

(e) The final decision of the State Office as embodied in the order issued at the completion of any appellate proceeding regarding an application for assignment due to hardship or emergency requirements shall be subject to judicial review as prescribed by Section 211 of the Economic Stabilization Act of 1970.

NOTE: With respect to final decisions on middle distillates, the final decision of the State Office may be appealed to the Region X Office of the US DOE.

(8) Authorizing Document: The State Office shall issue to an applicant granted an assignment an authorizing document, and shall provide a copy to the designated state representative of the assigned prime supplier and to the designated distributor, jobber or reseller, if any. The authorizing document is effective upon issuance, and represents a call on the prime supplier's set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month. An order shall be issued by the State Office for all applications unless the application is withdrawn by the applicant or unless the applicant fails to complete the application as required by section (5) of this rule. If not presented to either the prime supplier or its designated local distributor within ten days of issuance, the document expires.

(9) Decision and Order:

(a) The State Office shall issue its decision in the form of an order denying or granting the application. (For purposes of this section, an order may be the "authorizing document" referred to in section (8) of this rule.);

(b) The order shall include a brief written statement summarizing its factual and legal bases, and shall provide that any person aggrieved by it may file an appeal with the State Office;

(c) The order shall state that it is effective upon issuance and, if affirmative, that it expires within ten days unless presented to the prime supplier or its designated local representative;

(d) The State Office shall provide a copy of the order upon the applicant, and the prime supplier's designated state representative.

(10) Timeliness:

(a) If the State Office fails to take action on an application under the state set-aside program within ten days of filing or, under the assignment to new end-users program, within 90 days of filing, it shall be deemed denied in all respects, and the applicant may appeal;

(b) The State Office may temporarily suspend the running of the ten-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the State Office deems the deficiencies cured and so notifies the applicant.

(11) Appeal: Any person aggrieved by the state set-aside assignment order may file an appeal with the State Office in accordance with the procedures established in these rules. The appeal shall be filed within 15 days of services of the order in a set-aside proceeding and within 30 days of service of the order in an assignment proceeding. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & ef. 5-24-79; DOE 4-1979(Temp), f. & ef. 9-20-79; DOE 5-1979, f. & ef. 10-29-79

330-080-0020

Prime Supplier's Responsibilities

(1) State Representative: Each prime supplier shall notify in writing the State Office of its designated representative, which shall be a firm with a place of business in Oregon. The State Office shall, to the maximum extent possible, consult with the designated representative prior to issuing any authorizing document affecting state set-aside volumes to be provided by the prime supplier.

(2) State Set-Aside Volume:

(a) A prime supplier shall inform the State Office and the Region X Office of US DOE monthly in accordance with 10 CFR

211.222(b) of the estimated volume of motor gasoline and middle distillate subject to state set-aside to be sold into Oregon for consumption within Oregon;

(b) At the time of issuance of these rules state set-aside percentage level is five percent of motor gasoline and four percent of middle distillates. Any change in these percentages will be published by the State Office. The State Office has the authority, subject to federal approval, to revise the set-aside percentage level upwards or downwards as the supply situation requires;

(c) The set-aside volume available for a particular month shall be the sum of the amounts calculated by multiplying the state set-aside percentage level by each prime supplier's estimated portion of its total supply for that month which will be sold into Oregon's distribution system for consumption within Oregon.

(3) Release of State Set-Aside:

(a) All prime suppliers shall supply products from their state set-aside volume each month, as directed by the State Office, based on the actual volume delivered by the suppliers to purchasers in the state. Suppliers shall provide the applicant with the assigned amount of an allocated product from any convenient local distributor. Wholesale purchaser-resellers of prime suppliers shall honor authorizing documents upon presentation, and shall not delay deliveries required by the authorizing document while confirming such deliveries with the prime suppliers, and shall receive from its supplier an equivalent volume of the allocated product;

(b) Any portion of a state set-aside volume which is not allocated during a particular month or which is not subject to an authorizing document issued no later than the last day of that month is part of the prime supplier's total supply for the subsequent month, and shall be distributed according to the allocation procedures in 10 CFR Part 211;

(c) At any time during a month, the State Office may order part or all of a prime supplier's set-aside volume released for normal distribution;

(d) The State Office may designate geographical areas within Oregon as suffering from an intra-state supply imbalance, and may order some or all of the prime suppliers with purchasers within such geographical areas to release part or all of their set-aside volume through their normal distribution systems to increase the allocations within such areas;

(e) Orders issued by the State Office are effective upon presentation to the designated state representative, and represent a call on the prime supplier's set-aside volumes for the month of issuance even though delivery cannot be made until the following month.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & ef. 5-24-79; DOE 4-1979(Temp), f. & ef. 9-20-79; DOE 5-1979, f. & ef. 10-29-79

330-080-0025

Appeals of Allocation Officer's Order

(1) Who may file: The applicant, or any other person aggrieved by an order issued by an Allocation Officer may appeal.

(2) What to file:

(a) An appellant shall file a written, signed, and clearly labeled "Appeal of Order" with the Reviewing Office, State Office, Oregon Department of Energy, 102 Labor and Industries Building, Salem, OR 97310;

(b) The appeal shall contain a citation to the order appealed from, a concise statement of all factual and legal grounds upon which it is brought, and a description of the relief sought. If the appeal includes a request for relief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(3) Notice:

(a) The appellant shall mail a copy of the appeal and any other documents relating thereto, to each person who it reasonably anticipates will be aggrieved by the action sought, including those who

participated in the proceeding before the Allocations Officer. The copy shall be accompanied by a statement that the person may submit comments regarding the appeal to the Reviewing Officer within ten days. The appeal shall include certification to the State Office that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was sent;

(b) The Reviewing Officer shall serve notice on any other person readily identifiable by it as one who will be aggrieved by the action sought, inviting written comments regarding the appeal within ten days of service of that notice;

(c) Any person submitting written comments to the Reviewing Officer shall send a copy thereof to the appellant, and shall certify to the Reviewing Officer that it has done so;

(d) The appellant shall state whether he requests a conference with the Reviewing Officer regarding the appeal.

(4) Reviewing Officer's Evaluation:

(a) Processing:

(A) The Reviewing Officer may initiate an investigation of any statement in an appeal and utilize in its evaluation any relevant facts obtained by such investigation. The Reviewing Officer may convene a conference or hearing to advance its evaluation;

(B) If the Reviewing Officer determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the Reviewing Officer may dismiss the appeal with leave to amend within a specified time. If the appellant fails to provide the notice required by 10 CFR 205.104, the Reviewing Officer may dismiss the appeal without prejudice.

(b) Criteria:

(A) An appeal may be summarily denied if:

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its fact for failure to state and to present facts, and legal argument in support thereof, that the Allocation Officer's action was erroneous in fact or in law, or that it was arbitrary or capricious;

(iii) The Reviewing Officer may deny all appeals if the appellant does not establish that:

(I) The appeal was filed by an aggrieved person;

(II) The Allocation Officer's action was erroneous in fact or in law; or

(III) The Allocation Officer's action was arbitrary or capricious.

(5) Decision and Order:

(a) The Reviewing Officer shall render its decision by issuance of an appropriate order, which may include the modification of the order that is the subject of the appeal;

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of which the appellant may seek judicial review;

(c) The Reviewing Officer shall serve a copy of the order upon the appellant, and any other person who participated in the proceeding.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & ef. 5-24-79; DOE 4-1979(Temp), f. & ef. 9-20-79; DOE 5-1979, f. & ef. 10-29-79

330-080-0030

Stays Pending Appeal

(1) Scope: An application for a stay will only be considered:

(a) Incident to or pending an appeal from an order of the Allocation Officer; or

(b) Pending judicial review.

(2) What to file:

(a) A person filing under this subpart shall file a written, signed and clearly labeled "Application for Stay" with the Reviewing Officer;

(b) The application shall contain a full and complete statement of all relevant facts pertaining to the act or transaction, including,

but not limited to, all information that related to the criteria in OAR 330-080-0030(4)(b).

(3) Notice:

(a) When administratively feasible, the Reviewing Officer shall notify and accept written comments from each person readily identifiable as one who would be aggrieved, that the applicant has filed for a stay;

(b) Any person submitting written comments to the Reviewing Officer shall send the applicant a copy thereof, and shall certify to the Reviewing Officer that it has complied with the requirements of this subsection;

(c) The applicant shall state whether it requests a conference regarding the application.

(4) Reviewing Officer's Evaluation:

(a) Processing:

(A) The Reviewing Officer may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained. The Reviewing Officer may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third-person submissions. In evaluating an application, the Reviewing Officer may consider any other source of information. The Reviewing Officer may convene a conference to advance its evaluation of the application;

(B) The Reviewing Office shall process applications for stay as expeditiously as possible. When administratively feasible, the Reviewing Officer shall grant or deny the application for stay within ten business days after receipt of the application.

(b) Criteria. The grounds for granting a stay are:

(A) A showing that irreparable injury will result in the event that the stay is denied;

(B) A showing that denial of the stay will result in a more immediate serious hardship or gross inequity to the applicant than to the other persons affected by the proceeding;

(C) A showing that it would be desirable for public policy or other reasons to preserve the *status quo* pending a decision on the merits of the appeal or exception;

(D) A showing that it is impossible for the applicant to fulfill the requirements of the original order; and

(E) A showing that there is a likelihood of success on the merits.

(5) Decision and Order:

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the Reviewing Officer shall issue an order granting or denying the application;

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the decision, and the terms and conditions of the stay;

(c) The Reviewing Officer shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the Reviewing Officer as one who is aggrieved by such decision.

(6) Temporary Stay:

(a) The Reviewing Officer may issue an order granting a temporary stay if it determines that an applicant has made a compelling showing that it would incur irreparable injury unless immediate stay relief is granted pending the submission of or determination on an application for stay pursuant to this subpart. An application for stay shall describe the facts and circumstances which support the applicant's claim that it will incur irreparable injury unless immediate stay relief is granted. The Reviewing Officer on its own initiative may also issue an order granting a temporary stay upon a finding that a person will incur irreparable injury if such an order is not granted;

(b) An order granting a temporary stay shall expire by its terms within such time after issuance, not to exceed 20 days, as the Reviewing Officer specifies in the order, except that it shall expire automatically five days following its issuance if the applicant fails within that period to file an application for stay, unless within that

period the Reviewing Officer, for good cause shown, extends the time during which the applicant may file and application for stay.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & ef. 5-24-79; DOE 4-1979(Temp), f. & ef. 9-20-79; DOE 5-1979, f. & ef. 10-29-79

DIVISION 90

BUSINESS ENERGY TAX CREDITS (BETC)

330-090-0105

What a BETC Is

(1) A Business Energy Tax Credit (BETC) for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 but excluding wind facilities with an installed capacity of more than 10 megawatts for which preliminary certification is issued on or after January 1, 2010 are eligible for a tax credit equal to 50 percent of eligible costs. Wind facilities with an installed capacity of more than 10 megawatts, for which preliminary certification is issued on or after January 1, 2010, are eligible for a tax credit equal to 5 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities are eligible for a tax credit of up to \$9,000 and qualifying high performance homes are eligible for a tax credit of up to \$12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment.

(2) The Oregon Department of Energy (Department) must issue a final certificate pursuant to ORS 469B.161 before the credit can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules chapter 330, division 90 applies to all BETC applications. These rules apply to all applications pending as of the effective date of these rules.

(3) The Department may also apply these rules to applications currently being reviewed by the Department where a final determination is pending or has been made, when the Department finds that its failure to apply the new criteria set forth in these rules may hamper the Department's efforts to reduce the costs of the BETC program.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0110

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 90, the following definitions apply unless the context requires otherwise:

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must

have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)" is a vehicle designed to operate on an alternative fuel and includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. AFV does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles or vehicles leased by an investor-owned utility (IOU) to others. For purposes of qualifying for a BETC, gasoline-hybrid AFVs purchased on or after January 1, 2010 must also be designed for electrical plug-in.

(4) "Applicant": An applicant means:

(a) A person who applies for a preliminary certification of a BETC under this section includes:

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification. These entities must follow all procurement processes, including competitive bid, where applicable.

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.

(b) A person who applies for a final certification of a BETC under this section must be the facility owner listed on the preliminary certification.

(c) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.

(d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(5) "Biofuels": A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act,

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend,

(c) Ethanol (CH₃CH₂OH) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007,

(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007,

blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and

(e) “E85,” a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

(6) “Biomass”: An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis. This definition excludes cordwood or wood used for burning in fireplaces.

(7) “Building Automation Controls Facility”: Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice and applicable building code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as defined in these rules. Facilities are eligible when energy saving features meet the following requirements and applicable code:

(a) For existing systems within their service life, the following standards apply:

(A) The baseline will be based on the existing system’s capabilities in fully functional and operating condition.

(B) Eligible costs will be based on the incremental cost and energy savings of the proposed system as compared to a fully functioning baseline system (savings and costs associated with maintenance and repair activities are not eligible).

(b) For systems beyond service life or new buildings, the following standards apply:

(A) Eligible costs and energy savings will be based on the incremental cost and energy savings between the proposed system and the baseline system.

(B) Only the components of the project that achieve energy savings will be considered eligible. If the component does not achieve energy savings it will not be considered an eligible cost.

(C) The baseline system must incorporate similar technologies to the proposed system. The minimum standard or baseline system will have the following features, plus any additional features required by code: a start/stop program, night setback program, enthalpy control program (economizer), lighting control program (sweep > 5,000 sq.ft.) and a variable flow (10 hp and above).

(8) “Building Code”: Applicable state and local codes as defined in ORS 455.010 that are in effect the date the Department receives the application for preliminary certification.

(9) “Building Envelope”: That element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.

(10) “Car Sharing Facility”: A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(11) “Certified cost”: The cost certified in the final certification issued pursuant to ORS 469B.161.

(12) “Combined Heat and Power (Cogeneration)”: Means a facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate calculation demonstrating a heat rate of 6,120 Btu/kWh or less (10 percent better than the 6,800 Btu/kWh current standard generation). This facility may be eligible for a 35 percent BETC. Facilities that do not meet this heat rate requirement may still qualify in part for a credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(13) “Commercial New Construction Facility”: An energy facility which includes a new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility’s ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(14) “Commercial Process”: An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(15) “Commuter Parking Space” means a facility that is a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee’s use:

(A) Separate from the lease for the business premises.

(B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee’s job duties.

(16) “Completed Application”: Contains all of the information required in these rules and payments under ORS 330-090-0150. All questions on the application must be answered. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, a completed application for final certification must also include a completed, signed pass-through partner(s) agreement form, where the facility owner chooses to transfer the tax credit. Except as provided in ORS 469B.167(2)(c) and ORS 330-090-0133, no application for a final certification in which the facility owner has indicated a choice to transfer the tax credit under ORS 469B.148 is considered complete until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to the pass-through partner.

(17) “Completed Facility”: A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director determines the applicant has made all reasonable efforts to operate, including making changes required by the Department.

(18) “Component Parts of Electric Vehicles”: means component parts for use solely in Electric Vehicles and not in conventional vehicles. Component parts shall be distinguished by their absence from conventional vehicles and shall not include components that can be used interchangeably in both electric and conventional vehicles. For the purpose of this definition, “conventional vehicle” is a production vehicle that is powered with an internal combustion engine, excluding hybrids.

(19) “Cooperative Agreement Organization”: The Department may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by the Department based on the

qualifications of the organization and subject to conditions specified in the agreement.

(20) "Cost": The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a BETC. Costs that are incurred to bring a facility up to building code standards or otherwise repair the building in order to install the facility are considered necessary features, and may not be eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150, and shipping;

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and

(iv) Costs for employee's or contractor's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system) under the American with Disabilities Act.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC review charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;

(F) Routine operational or maintenance costs associated with the facility, other than a transportation services facility, including services, supplies and labor;

(G) Expenses related to training, education or other related expenses;

(H) Expenses that are directly or indirectly offset with federal fee waivers; or

(I) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. The Department may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features. Cost may be limited to incremental cost for conservation applications for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.

(A) In commercial new construction, it is the difference between building to code, or standard practice if this exceeds code, and building to meet or exceed the standards for substantial energy savings.

(B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Eligible facility costs are limited by the following:

(A) Facilities must have a more than one to 15-year simple payback period unless otherwise specified in these rules. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.

(C) Rental dwelling weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic (PV) facilities are limited by the maximum eligible facility cost ratio (MEC), expressed in terms of \$/watt. PV facility eligible cost shall be calculated by multiplying the appropriate rate provided below by the facility size. Once a facility has received preliminary certification the calculated cost shall be effective for 36 months for facilities to be owned by the public and 12 months for all other facilities, from the date of certification. If the Department has not received a complete application for final certification within this time, the cost shall be recalculated based on the rate in effect at that time the final application is submitted. The minimum module performance certified by the manufacturer shall be used to calculate eligible cost. The MEC for a facility rated to produce:

(i) Up to and including 30 kW is \$7.50/watt.

(ii) More than 30 kW, but less than 200 kW, is $-0.01 \times (\text{system size in kW}) + 7.8$.

(iii) 200 kW or more is \$5.80/watt.

(E) Costs for a facility, or portion thereof, that has previously received a BETC.

(F) Costs to replace the same baseline facility more than once. The Department may require the baseline facility to be specifically identified and/or permanently decommissioned.

(G) For solar thermal (ST) systems,

(i) The maximum eligible cost (MEC), not including pool heating facilities, shall be calculated using the following formula: $\text{MEC} = \text{SOC} \times \text{Number of modules} \times \text{Solar Thermal Rate}$. Standard Oregon Conditions (SOC) is based on the OG-100 collector performance data published by the Solar Rating and Certification Corporation (SRCC) on the date the preliminary application is issued. SOC is calculated using a weighted average of the values in the "Mildly Cloudy" (1500Btu/ft²-day) test data using the following equation:

$$\text{SOC} = 0.1(\text{Category A}) + 0.2(\text{Category B}) + 0.3(\text{Category C}) + 0.4(\text{Category D}).$$

(ii) The system size is defined as the SOC multiplied by the number of collectors in the system. The following thermal rates are divided into three tiers based on the system size:

(I) For a system size of less than 100KBtu/day, the rate is \$220/KBtu/day

(II) For a system size that is 100 KBtu/day or greater, but less than 250 KBtu/day, the rate is \$210/KBtu/day

(III) For a system size greater than 250 KBtu/day, the rate is \$200/KBtu/day.

(H) Sustainable building practices facilities, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities, excluding efficient truck technology, are exempt from simple payback requirements.

(I) For renewable energy facility installations, the following are ineligible costs: roofing, re-roofing and engineering for roofing on renewable facilities.

(g) Costs for space conditioning or individual metering of a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be limited to the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(h) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D), purchasing or otherwise obtaining alternative fuel vehicles that are designed to transport five or more passengers, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.

(i) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. The Department may determine the incremental cost as a portion of the facility cost based on similar facilities up to forty percent of the purchase cost.

(j) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by the Department prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to the Department, however, payments required by OAR 330-090-0150(3) do apply.

(k) Sustainable building practices facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using data established in Table 1. [ED. NOTE: Table reference is available from the agency.]

(l) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization or federal grants or credits and the BETC may not exceed total costs.

(21) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Department's website.

(22) "Director": The Director of the Oregon Department of Energy or designees.

(23) "Energy Department": The Department of Energy.

(24) "Energy Facility": is defined in ORS 469B.130.

(25) "Facility": is defined in ORS 469B.130 and also includes a Research, Development & Demonstration (RD&D) facility that complies with these rules. A facility must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development.

(a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building.

Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the following BETC program requirements:

(A) A report demonstrating any mercury-switch thermostats that is replaced or have been recycled and, if so, how.

(B) Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in these rules, of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(e) For a solar photovoltaic facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) Facility must be permitted and in compliance with all applicable building and electrical codes.

(B) All facility equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All facility components must be new (modules, inverter, batteries, mounting hardware).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include all building code required signage and a customer manual.

(F) A customer manual must contain the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed and the wiring design, including wire sizes, and estimated length of wire runs.

(II) Facility site plan that indicates array and inverter location.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(ii) Warranties and installation documentation

(I) Minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for PV modules and inverter

(III) Permit documentation

(iii) Manuals and data sheets

(I) Bill of material listing all primary facility components including part numbers

(II) Inverter owner's manual

(III) Manufacturer data sheets for major components, including but not limited to: inverters, modules, racking/mounting facility, charge controller and batteries.

(G) All facilities must include one or more meters that are capable of recording the facility's total energy production. Meters must be equivalent to American National Standards Institute (ANSI) certified revenue meters with a 0.5 or better accuracy class and, if digital, it must have non-volatile data memory.

(H) Array must be sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer. The temperature-adjusted voltage must remain within the inverter limits at the historical record low temperature for the location in which it is installed.

(I) Wires must be sized to keep the total voltage drop below 2 percent on the DC conductors from the array to the inverter including the existing wire whips on the PV modules, and/or 2 percent on the AC conductors from the inverter to the point of interconnection (total not to exceed 4 percent).

(J) The installing contractor must provide a minimum 24-month full warranty on parts and labor to the facility owner.

(K) The solar array must be used exclusively for business purposes. The applicant must supply a recent utility billing statement and a power purchase or net metering agreement, with a local utility in the name of the business. If the system is being placed on a rental dwelling, a signed rental agreement must be provided and the property must remain a rental property for at least five years. Arrays erected at a location that includes a residence that is not a rental dwelling, must be separately metered from the residence to qualify for a BETC.

(L) Facilities participating in the pilot Feed-In Tariff program under ORS 757.365 are not eligible to receive a BETC.

(f) For a solar thermal facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) The facility must be permitted and in compliance with all applicable building, electrical, and plumbing codes.

(B) All equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All primary facility components must be new (collectors, tanks, controls, pumps).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include a customer manual containing the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed, including a valve chart.

(II) Facility site plan that indicates the location of collectors and storage tank.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(V) Permit documentation.

(ii) Warranties and installation documentation, including:

(I) A minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for collector, tanks, pumps and heat exchanger (if present) and any other components under warranty by the manufacturer.

(III) Permit documentation.

(iii) Manuals and data sheets, including:

(I) Bill of material listing all primary facility components, including part numbers

(II) Facility controller owner's manual

(III) Manufacturer data sheets for major components, including, but not limited to: collectors, tank, controllers, pumps, Btu meter, expansion tank, etc.

(F) Facility is sized appropriately for the load. The solar savings fraction is not to exceed 0.70 for domestic water heating systems without a means of rejecting heat once the load is met.

(G) Thermal storage is adequate to accommodate daily use pattern. For typical domestic load profiles, this is defined as a minimum of 1.25 gallons per square foot of collector area. For facilities with loads that are coincident with solar generate this storage amount may be reduced if documentation is provided.

(H) All solar storage tanks must be insulated with not less than R15 insulation.

(I) The following standards are for pipe insulation:

(i) Collector loop insulation must be rated for conditions in which it operates. Pipe insulation shall have a maximum K value of 0.25 Btu in/hr. sq. ft. F° and a minimum thickness of 0.75 inches.

(ii) Potable water pipe located outdoors must be insulated to a minimum R-value of 12. Pipe insulation must be protected with a U-V rated tape or pipe jacket. U-V paint is not sufficiently durable.

(J) Anti-convective pipe loop or trap is required on the inlet and outlet of the storage tank. These loops or traps shall have a minimum 8-inch vertical drop to constitute an effective convective

heat barrier. Heat trap nipples alone are not reliable in stopping heat migration, and will not meet this requirement.

(K) Install thermometers on collector supply and return pipes. One movable thermometer for two wells is sufficient.

(L) Install a BTU meter capable of measuring total delivered energy on all facilities with standard Oregon conditions rating greater than 250 KBtu/day. A Btu meter must have a designated flow meter and temperature sensors and be located on the load side of the system.

(M) Install a properly sized thermostatic mixing valve on the output of the domestic hot water system to ensure that delivered temperature does not exceed 140°F.

(N) Solar thermal facilities must be installed in compliance with the Oregon Mechanical Specialty Code (Chapter 14 OMSC), the Oregon Residential Specialty Code (Chapter 23), the Oregon Plumbing Specialty Code and all other local regulations with jurisdiction.

(O) Facilities must be designed and installed for complete automatic operation including protection from freeze damage and overheating of collectors.

(P) Pressurized storage tanks must not be allowed to be heated above 180°F.

(g) A facility does not include:

(A) A residential structure or dwelling that is being used for a residence, except for residential structures that are used exclusively as a rental dwelling or that qualify as a licensed homebuilder installed renewable energy facility or high performance home facility.

(B) A renewable energy system or device, other than a homebuilder installed renewable energy facility or high performance home facility, that is placed on or at a residence, except for those used exclusively as a rental dwelling, for the purpose of supplying energy to the residence.

(C) Swimming pools and hot tubs used to store heat.

(D) Wood stoves.

(E) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC rules.

(F) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(G) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(H) Devices or materials which are standard practice.

(I) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(J) Conservation in rental dwellings, for applicants listed in ORS 469B.145(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(K) Other items the Director finds are not allowed under ORS 469B.130 to 469B.169.

(26) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Practices Facility, facility eligible square footage includes all temperature-conditioned floor areas, and one level of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

(27) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.

(28) "Facility Owner": An applicant who purchases and owns a qualified facility.

(29) "Facility Start" prior to erection, construction, installation or acquisition: The earliest date on or after the date of the application that meets one of the following criteria:

(a) A non-refundable deposit will be placed on the facility equipment;

- (b) A purchase order will be placed for the equipment;
- (c) A contract for the design of the facility will be executed;
- (d) A document that obligates the applicant to proceed with a facility will be executed; or

(e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility. or

(f) For a Sustainable Building Practices Facility, the eligible cost date is within 30 days of receiving the LEED registration number, before 50 percent of Design Document for the facility are complete, or prior to receiving building permits for the facility. or

(g) For a renewable energy facility, the applicant shall not be considered to have started erection, construction, installation or acquisition of a proposed facility until excavation or actual physical construction of the renewable energy facility has begun. Eligible costs include all costs as defined in these rules, including costs incurred prior to the receipt by the department of the preliminary certification application related to site and facility development and approval. Applicants who start a facility prior to issuance of preliminary certification shall not be eligible to reapply.

(30) "Federal Grant": Any grant received from the federal government in connection with a facility, includes grants authorized under §1603 of the American Recovery and Reinvestment Act of 2009 (ARRA).

(31) "Final Certification": Final certificate issued after completion of an approved BETC facility.

(32) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(33) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative energy device that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent BETC.

(34) "High Efficiency Combined Heat and Power" (Cogeneration): means a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent is eligible for a 50 percent BETC. The fuel chargeable-to-heat rate calculations shall demonstrate a heat rate of 5,440 Btu/kWh or less (20 percent better than the 6,800 Btu/kWh current standard generation). Facilities that do not meet this requirement may still qualify for a 35 percent tax credit (see Combined Heat and Power) or in part for a tax credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(35) "High Performance Home": Meets the criteria in ORS 469B.130(8) and 469B.139 and is a home that is a dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code with its own space conditioning and water heating facilities and intended for sale to an end-use homebuyer. The facility must meet the following requirements:

(a) Shall be certified through the ENERGY STAR® Homes Northwest program.

(b) Designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources;

(c) Meet the criteria established for a high-performance home under ORS 469B.139;

(d) The building shell shall be constructed to at least the minimum values specified in the following prescriptive path:

(A) Ceilings: $U \leq 0.030$.

(B) Walls: above grade $U \leq 0.050$.

(C) Walls: below grade $U \leq 0.060$.

(D) Floors: above grade $U \leq 0.025$.

(E) Floors: on grade, [slab edge] perimeter R-15 min. 2 feet vertical or combined vertical/horizontal — heated slab also requires R-10 foam board under slab.

(F) Windows and glass doors: $U \leq 0.32$ (weighted average). Exception: solar glazing that is part of a passive solar design may have a higher U-factor. Glass doors are doors that contain 50 percent or more glazing.

(G) Glazing area: glazing to floor area ratio ≤ 16 percent (including windows, skylights, and glass doors considered as glazing in the code) for homes larger than 1,500 square feet of conditioned space floor area and < 18 percent for homes 1,500 square feet of conditioned space floor area and smaller.

(H) Shell tightness: 5.0 ACH50 Pa confirmed by blower door test.

(e) HVAC system and air ducts shall be incorporated into conditioned space, or eliminate forced-air ductwork.

(f) Space conditioning equipment shall meet one of the following requirements:

(A) Two-stage gas or propane furnace, minimum AFUE 0.92.

(B) Gas or propane boiler, minimum AFUE 0.88.

(C) Central AC SEER ≥ 14 (if installed).

(D) Ducted heat pump \geq HSPF 8.5, air source, and ground source COP ≥ 3.0 .

(E) Ductless mini-split heat pump with inverter drive, no incorporated electric backup heat, sized and installed as per ENERGY STAR® Homes Northwest specifications in affect at the time the preliminary application is issued.

(g) A Renewable Energy Facility shall provide on-site energy savings or generation of not less than 1kWh/yr per square foot of conditioned floor space.

(h) Water heating systems shall meet ENERGY STAR® Homes Northwest specifications including secondary water heating equipment that backs up solar domestic water heating facilities.

(i) Includes at least one of the following measures:

(A) Obtain certification through a Green Building program recognized by the Department.

(B) Meet ENERGY STAR Homes Northwest Builder Option Package #2 ventilation specifications through the use of a heat or energy recovery ventilator, except that the sensible recovery efficiency shall be > 50 percent at 32°F and the EUI shall be < 1.5 Watts/cfm.

(C) Use a gas or propane water heater with a minimum EF of 0.80 for primary water heating. The water heater may not also be used for space heating or as the backup to a solar water heating facility to be considered a qualifying measure under this section.

(j) A High performance home may meet a package of alternate shell or HVAC measures that are equivalent to these requirements. Shell measures may be increased to offset HVAC efficiency, however HVAC measures may not be used to reduce minimum shell requirements.

(A) Shell measures shall be a combination of assemblies that together have a total $U \times A$ no higher than a base case home described in section (C)(c), above. Trade-offs will be evaluated according to the thermal trade-off procedure in Oregon Residential Specialty Code Chapter 11, Energy Efficiency, Table N1104.1(1).

(B) Mechanical facilities will be evaluated for comparable annual energy use.

(k) Shall be a detached single-family dwelling unit or a single-family dwelling unit constructed in a group of two or more

attached units in which each unit extends from foundation to roof and with open space on at least two sides.

(36) “Homebuilder Installed Renewable Energy Facility” is defined in ORS 469B.130. The amount of the tax credit for homebuilder-installed renewable energy facilities shall be capped at \$9,000 per high performance home. For purposes of this section, renewable energy resource facilities may include: photovoltaic, solar domestic water heating, active solar space heating, passive solar, and ground source heat pumps. The following requirements must be met:

(a) Photovoltaic: The credit amount is based on \$3 per watt of installed capacity as determined by the Department. Eligible installations have a Total Solar Resource Fraction of at least 75 percent using the Total Solar Resource Fraction (TSRF) method as described in the BETC application. Installations must be verified by a Tax Credit Certified Solar PV Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor for two years.

(b) Solar domestic water heating: The credit amount is equal to \$0.60 per kWh saved annually. The savings are based on values published by the Solar Rating and Certification Corporation (SRCC) plus 100 kWh, which are added to represent Oregon water heating loads. Solar thermal domestic water heating installations must have a Total Solar Resource Fraction (TSRF) of at least 75 percent and be designed to provide no less than 25 percent but not more than 70 percent of the annual domestic water heating load. Installations must be OG-300 certified. Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(c) Active solar space heating: The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by Department staff. Active solar space heating installations must demonstrate a whole building annual energy savings of at least 15 percent to be eligible. Installations that combine space heating and domestic water heating are allowed providing that the solar storage tank is not heated by a backup heat source (e.g. gas or electric water heater). Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(d) Passive solar: The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space. Passive solar design strategies must demonstrate a whole building annual energy savings of at least 20 percent to be eligible. This can be achieved by either meeting the prescriptive requirements for a passive solar home under the Residential Energy Tax Credit or demonstrated with whole building energy modeling and certified by a professional engineer.

(e) Ground source heat pumps: Ground source heat pumps must have a coefficient of performance (COP) of 3.5 or greater. The savings is based on the incremental savings over the energy savings provided by the ground source heat pump with a COP of 3.0. The credit amount is equal to \$0.60 per kWh saved.

(f) Other: Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to \$0.60 per kWh saved. Facilities must be connected to home’s main service panel and installers must provide a warranty covering all parts and labor of the facility for two years.

(37) “HVAC Equipment”: Heating, Ventilation, and Air Conditioning (HVAC) systems are eligible for a 35 percent BETC.

(a) Eligible combustion equipment (furnaces, boilers, water heaters, and burners) must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating. An exception may be granted if the system efficiency is proven to be higher due to application of a different distribution system (e.g.:

radiant systems in high infiltration spaces), control strategies (e.g.: pony boilers), or reduced stand-by losses (e.g.: low-mass boilers).

(b) Heat pumps must have an energy input that is entirely electric and be rated with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows or higher:

(A) Air source heat pumps: 8.5 HSPF

(B) Water source heat pumps: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(2)

(C) Air Conditioning: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(1)

(38) “Hybrid Electric Vehicle”: An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A vehicle purchased after January 1, 2010 is not eligible to receive a BETC.

(39) “Individualized Travel Behavior Change Program”: A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(40) “Lease Contract”: A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

(41) “Lighting Facility”: An energy facility that will reduce the affected lighting energy use by at least 25 percent or by at least 10 percent for a new facility. For non-residential structures, an eligible facility must also report whether there will be any lamps in the facility that will be subsequently replaced and if those lamps will be recycled, how.

(42) “Low Interest Loan”:

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(43) “Mass Transit District”: A mass transit district included in ORS 184.675(7).

(44) “Metropolitan Service District”: A metropolitan service district included in ORS 184.675(7).

(45) “Necessary Feature”: A necessary feature does not qualify as an eligible cost and is a feature for which the primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted under the definition of “Recycling Facility” in ORS 469B.130; or

(c) Routine maintenance or repair, such as replacing water damaged insulation, a broken window, dry-rotted wood siding or trim.

(46) “Net Present Value”: A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140. This is also referred to as the “pass-through rate.”

(47) “Organization”: A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(48) “Pass-through Option”: An option that allows a facility owner to transfer the facility’s tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.

(49) “Pass-through Partner”: A personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(50) “Preliminary Certification”: Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(51) “Premium Efficient Appliance”: An energy facility that is an appliance that has been certified by the Department to have premium energy efficiency characteristics. Residential appliances are listed in the Department’s Alternative Energy Devices Systems Directory. Commercial appliances are listed in the Department’s Premium Efficient Commercial Appliances Directory.

(52) “Public Purpose Organization”: The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(53) “Qualified Transit Pass Contract”: is defined in ORS 469B.130.

(54) “Recycling”: A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an “Energy Facility” or “Waste to Energy Facility” where they include characteristics required to meet those definitions.

(55) “Recycling Facility”: is defined in ORS 469B.130.

(56) “Recycling Market Development Facility”: Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

(a) The facility uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(57) “Renewable Diesel”: A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and

(c) Has a producer’s Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

(58) “Renewable Energy Resource”: is defined in ORS 469B.130.

(59) “Renewable Energy Resource Facility”: means an energy facility used in the processing utilization, or storage of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(60) “Renewable Energy Storage Device”: A facility that enables the storage of energy derived from Renewable Energy Resources as defined in ORS 469B.130. To qualify as a renewable energy storage device a facility does not need to be directly connected to a renewable energy resource, but a beneficial relationship must be demonstrated between the energy output of the resource or resources and the charge and discharge capabilities of the facility. A Renewable Energy Storage Device includes, but is not limited to, batteries or similar devices used to provide propulsive energy in electric vehicles. The storage device may be designed to store energy for transmission lines provided that the transmission lines serve, at least in part, renewable energy resources.

(61) “Rental Dwelling”: means any property that meets the requirements of the state building codes and contains a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.

(62) “Rental Weatherization”: means energy conservation and efficiency measures that improve the energy efficiency of a rental dwelling. In order to qualify for a BETC, an applicant must meet requirements (a) through (c):

(a) An applicant must be planning to perform a minimum of two weatherization measures on the rental dwelling if one of the measures is to replace windows on the rental dwelling. Eligible second measures include one of the following:

(A) Adding floor insulation to R-21,

(B) Attic/ceiling/roof insulation to R-38 or cavity fill,

(C) Wall insulation to R-13 or cavity fill,

(D) Replacing exterior doors to R-5,

(E) Duct sealing and testing by a contractor certified by the Residential Energy Tax Credit program, or

(F) An applicant can demonstrate that the measures (A) through (E) above have already been completed by providing an energy audit from the Energy Trust of Oregon or the applicant’s utility, if unavailable the Department may approve another type of energy audit.

(b) Prior to being eligible to receive a BETC for installing a renewable facility on a rental dwelling, all standard weatherization measures, including roof insulation to a minimum of R-38, floor to minimum of R-21 and walls to a minimum of R-13 (where achievable on outside walls where no insulation is present) must be completed. An applicant shall provide appropriate documentation, such as an energy audit as described above in section (a)(F), to verify standard weatherization measures.

(c) For purposes of meeting the requirements of ORS 469B.151, when a utility audit is not available, a vendor-provided audit demonstrating substantial savings and approved by the Department will suffice. A self-audit based upon the following list may be substituted when accompanied by U-values, areas, and other appropriate general information regarding the measures, including:

(A) Caulking, weather-stripping and other prescriptive actions to seal the heated space and ducts in a dwelling;

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs and associated ventilation;

(C) Insulation of outside walls to a nominal R-13 if achievable in areas where no insulation is present, of unfinished walls adjacent to unheated areas to R-21 if achievable in areas where no insulation is present, and of finished walls adjacent to unheated areas to R-11 if achievable in areas where no insulation is present;

(D) Insulation of floors over unheated spaces to at least R-25 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

(E) Insulation and sealing of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least 10 feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;

(G) Double-glazed windows (including sliding doors) with a U-value of 0.30 or lower, when replacing single-glazed windows;

(H) Insulated exterior doors with a U-value of 0.20 or lower (R-5 or higher);

(I) Programmable thermostats; or

(J) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Department's Residential Energy Tax Credit technician certification program.

(d) If an applicant undertakes envelope measures, the following requirements apply:

(A) Replacement windows must have a U-value of 0.30 or less for residences.

(B) U-values must be 10 percent better (lower) than code requirements for commercial.

(C) Insulation that exceeds code requirements or when not required by code is an eligible measure if substantial savings and economic criteria required in the OARs are met.

(63) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (f):

(a) A facility that is not standard practice and that is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized. BETC RD&D applicants' total lifetime project costs will be determined for a defined period established at the time of the initial application and will be capped at \$20,000,000 for renewable energy RD&D and high efficiency CHP RD&D and \$10,000,000 for all other RD&D project types. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs;

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment; or

(F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent BETC; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.

(d) Eligible costs for a Research, Development or Demonstration facility may include:

(A) Engineering, design and administrative costs

(B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:

(i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.

(ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(C) The following costs related to demonstration model(s) may be considered eligible:

(i) Materials for the demonstration model(s).

(ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).

(iii) Testing and monitoring the demonstration model(s).

(D) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110(20)(f).

(E) Other eligible costs defined by Oregon Administrative Rule.

(e) Ineligible costs for a Research, Development or Demonstration facility may include:

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.

(B) Other ineligible costs defined by Oregon Administrative Rule.

(f) A Research, Development or Demonstration facility is not eligible to receive a BETC when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.

(64) "Residential Dwelling": means a structure or the part of a structure that meets the requirements of the state building codes and is used as a permanent home, residence or sleeping place by one or more persons who maintain a household or by two or more persons who maintain a common household. A BETC may not be claimed for a renewable energy facility located in, adjacent to, or on a one or two family home unless the home is used exclusively as a rental dwelling.

(65) "Residential Energy Tax Credit Qualifying Equipment": means equipment that qualifies under the standards and rules for the Residential Energy Tax Credit from the Department. The equipment is eligible for the BETC in either of the two following methods:

(a) A facility that consists solely of equipment that is on the qualifying equipment list at the time of the application submittal may apply as outlined in the Oregon Administrative Rules 330-090-0105 using operating schedules, capacity, efficiency and cost information to prove qualification; or

(b) The facility, made up of qualifying equipment may also effectively qualify what would otherwise be an eligible Residential Energy Tax Credit facility through the BETC Program by using the following formula. Residential tax credit amount (from qualifying appliance list) \div 0.35 = BETC eligible cost.

(66) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(67) "Service Life": Equipment service life is as established in the 2007 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook or as determined by the Director for equipment not rated by ASHRAE. The Department may prorate the eligible project cost based on the remaining service life of the equipment. If the baseline facility has

exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(68) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(69) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(70) "Substantial Energy Savings": Means that the Department has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building practices facility as defined under "Sustainable Building Practices Facility" of this rule; or

(d) The facility measures are measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(71) "Sustainable Building Practices Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:

(a) Is rated and certified LEED-NC™, LEED-CS™, or LEED-CI™ under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party. In addition, a facility must:

(A) In achieving its LEED™ rating, the facility must earn at least two points under Energy & Atmosphere Credit 1 (Optimize Energy Performance).

(B) In achieving its LEED™ rating, the facility must earn at least one point under Energy & Atmosphere Credit 3 (Enhanced Commissioning).

(b) Each LEED-NC™ or LEED-CS™ facility must calculate and report the building's annual solar income in Btu (not the site income). The calculation must account for the contribution from each face (orientation with surfaces exposed to direct sunlight) and must take into account any existing or reasonably expected shading (by other buildings or vegetation, e.g.) of these surfaces. Calculations may ignore such things as rooftop or wall-mounted mechanical facility components.

(c) Facilities using on-site renewable energy production technologies such as photovoltaic or wind technologies may treat these elements as a separate renewable energy resource facility for tax credit purposes, provided that any points earned for such features in the LEED™ rating are not required to achieve the rating on which the Sustainable Building facility credit is to be based. In cases where subtracting such points would result in a lowering of the LEED™ rating (e.g. from Gold to Silver), the tax credit will be awarded on the basis of the lower rating. The rating point total, net

of renewable generation credits, can never be less than that required for a Silver rating.

(72) "Total Cost": The eligible cost of a facility not limited by ORS 469B.142.

(73) "Transportation District": A transportation district included in ORS 184.675(7).

(74) "Transportation Facility": A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

(a) Telework defined as working from home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes the purchase or cost of the vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility. Applicants must subtract any employee contributions for transit passes from eligible costs.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Maximum eligible costs of \$800 include purchase of bicycles and equipment used to store bicycles. Accessory items, such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or nonprofit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs. Applicants must subtract any farebox contributions from eligible costs.

(j) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(k) Vanpool Program is defined as a facility that is an employer-sponsored or organization sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but do not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.

(l) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.

(A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served.

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.

(m) The purchase of efficient truck technology for trucks and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011. Eligible efficient truck technology, such as an auxiliary power unit (APU), must be recognized as a verified technology by the U.S. Environmental Protection Agency (USEPA) SmartWay Transport Partnership to potentially qualify.

(A) Eligible projects must meet the following requirements:

(i) Retrofit a truck or add to a newly manufactured truck one or more USEPA SmartWay efficiency measures. With a newly manufactured truck, a new trailer with one or more SmartWay efficiency measures may also be included with this project. The new trailer and newly manufactured truck must independently qualify for tax credits; and

(ii) Eligible vehicles must demonstrate Oregon registration with a current Cab Card as part of the Application for Preliminary Certification by:

(I) Commercial (Oregon-only registration operated solely in Oregon) with a red Oregon-only commercial "YC" plate from the Oregon Motor Carrier Transportation Division (MCTD); or

(II) International Registration Plan (IRP), also referred to as Apportioned registration, with a red Apportioned "YA" plate from the Oregon MCTD. For IRP vehicles, eligible facilities must meet the following requirements as part of the application for preliminary certification:

(II-a) Provide the two most recent calendar year IRP billing notices that document the percentage of a vehicle's annual mileage that was driven in Oregon.

(II-b) For proposed eligible facilities that have no recent calendar year IRP billing notice documentation, provide a signed project owner statement indicating the anticipated percentage of miles that will be driven in Oregon over the next two years.

(B) Applicants that can document that 15 to 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit equal to 35 percent of 71.5 percent of the facility's otherwise eligible certified costs.

(C) Applicants that can document that more than 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit of 35 percent of the facility's eligible certified costs.

(D) Proof that the applicant has a sufficient nexus with the state of Oregon. This includes a dedicated location in Oregon for maintenance, dispatch, and monitoring of facilities.

(E) The facility's simple payback period must be between more than one and fifteen years.

(75) "Transportation Provider": is defined in ORS 469B.130.

(76) "Transportation Services Contract": is defined in ORS 469B.130.

(77) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(78) "Vanpool Program": means a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(79) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(80) "Waste-to-Energy Facility": means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.

(d) The facility does not divert materials from a higher value use.

(e) The facility has an acceptable energy balance as determined by the Director.

(81) “Wind Facility”: means a facility that converts wind power into another energy resource.

(82) “Year”: Calendar year.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0120

Preliminary Certificate Application Requirements for a BETC

(1) Eligible facilities

(a) The Department may issue only one BETC for each separate and distinct facility under these rules. The following facilities, as further defined in these rules, are eligible for a BETC: An energy facility, recycling facility, rental dwelling weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system or a research development & demonstration facility that complies with these rules.

(b) A proposed facility must meet applicable codes and standards, must include a warranty and must be serviceable locally.

(2) Required information

(a) Persons requesting a BETC shall apply on the Department-approved form for a preliminary certificate. In addition to the information required in ORS 469B.145, the applicant shall provide the following information:

(A) The name, address, and phone number of the applicant, owners of the facility, and the developers of the project.

(B) The applicant’s federal tax identification number or social security number which may be shared with the Department of Revenue to facilitate the administration of the state tax law.

(C) Proposed facility construction and operational start and finish dates. A facility’s start date is the date that the project applicant financially commits to the project. Financial commitment includes, but is not limited to: making a down-payment or deposit, signing a contract with a vendor, ordering material or equipment, beginning construction or installation.

(D) The proposed facility location within the geographical confines of Oregon or in the case of an alternate fuel vehicle demonstrated intent that the vehicle will be titled in the State of Oregon.

(E) Information demonstrating that the proposed facility will comply with or have a variance from the land use laws of the city or county where the facility will be located;

(F) Information demonstrating that the proposed facility will comply with all other local, federal, and state laws, including but not limited to the following:

(i) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Proof of permits, licenses, or exemptions from DWR and the FERC must be submitted to the Department before a facility is eligible to receive final certification. Also, if the facility uses water from the Columbia

River basin, it must comply with the Northwest Power and Conservation Council’s Fish and Wildlife Program.

(ii) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(iii) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).

(G) A list of appropriate authorizations for all work performed including but not limited to appropriate licenses, permits, or other authorizations that are required by state or local jurisdiction for the facility.

(H) Information demonstrating the intended operation, maintenance and use of the facility, including but not limited to, where appropriate, the amount and type of jobs potentially created or eliminated in the construction, installation and operation of the facility in Oregon, the benefits of the facility with regard to overall economic activity in this state, the amount of projected energy saved, generated or transmitted and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is operational. Except that, as a condition of the preliminary and final certificate, the following facilities must remain in operation for one year: Tele-working equipment, transit passes, transportation services, incentive programs, car-share programs and individualized travel behavior change programs, and van-pool programs. If an applicant expects that a facility not listed in this subsection will operate less than five years, the applicant may submit a request for approval of the shorter operating period as part of their application for preliminary certification. This request shall include information describing the proposed facility and supporting the proposed operating period. The Director will determine whether to approve the shorter operating period and may include conditions, reductions or other limits on any potential tax credits.

(I) A declaration from the applicant that all property taxes for the facility have been paid and there are no delinquent property taxes associated with the facility.

(J) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130 shall provide all information required as part of the tiered priority system under OAR 330-090-0350.

(b) The Department may request additional information from the applicant in order to determine whether multiple applications have been made for the same facility. The department will make its determination based on the following:

(A) All applications under consideration will be reviewed against other current applications, facilities that have received preliminary certification and facilities that have received final certification within the past 12 months. Further review shall be given to applications which:

(i) when combined exceed the annual limit for a tax credit found in ORS 469B.142.

(ii) are individually below the threshold for one year tax credit found in ORS 315.354, but if combined exceed this threshold; or

(iii) when combined, result in assessment within a different category or tier, or against different criteria or cost allowances.

(B) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130 will be determined to be a single facility, despite the number of applications, owners or construction phases, if three or more of the following apply:

(i) The facility is located on one or more adjacent parcels of land or parcels;

(ii) The facility has been recognized in a license or permit as a single facility by a federal, state, county, city or local authority including, but not limited to siting council, state or local boards or commissions, or the facility has obtained or applied for siting or land use approval and other applicable permits, licenses or site certificates as a single facility or on a single application;

(iii) When the facility is designed to generate energy, the construction of the facility is performed under the same contract with a general contractor licensed under ORS 701 or multiple contracts

entered into within one year of each other with one or more general contractors licensed under ORS 701. If facilities will be completed in phases over time, the applicant must demonstrate that each of the phases of the facility would independently qualify as an eligible facility and that each phase of the facility is not interdependent in purpose or the manner in which it will be owned, financed, constructed, operated, or maintained or the facilities or phases of the facility will be determined to be one facility for the purposes of these rules;

(iv) The facility owners have entered into or expect to enter into agreements to share project expenses, personnel, capital investments including generating equipment or other resources related to the facility;

(v) The generating equipment for the facility and the related facility was purchased by the same person or persons who own or operate the facility or have taken action under any of the above factors;

(vi) A facility is connected to the grid through a single connection or multiple connections when there is a shared net metering, power purchase or other applicable transmission agreement; or

(vii) Other factors or considerations which demonstrate that the facility is not a separate and distinct facility based on its construction, operation, maintenance and output.

(C) Applications other than those described in subsections (B) will be considered a single facility if three or more of the following apply:

(i) shared ownership of facilities,

(ii) shared location of facilities,

(iii) project permits are issued to a common entity or at the same time or

(iv) a shared contract to construct the facilities.

(c) Anticipated capital expenditures and other costs as defined in these rules for the erection, construction, installation or acquisition of the proposed facility, its expected operational life, and its simple payback as defined in ORS Chapter 469B and these rules.

(d) Information demonstrating anticipated substantial energy savings or a description of products that will result from the facility and how those products will result in substantial energy savings.

(e) For a proposed renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.

(A) For a solar energy facility: A sun chart and solar insolation data for the site. Facilities must have a Total Solar Resource Fraction of at Least 75 percent.

(B) For a wind energy facility:

(i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or

(ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or

(iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or

(iv) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(v) In the event that estimated wind resource data are used as described under section (iii) and (iv) above, the project owner shall provide to the Department not later than 14 months after the start-up date, one year of actual monthly energy production data and, if

available, actual monthly average wind speed data at wind energy facility's site.

(vi) Proposed equipment must meet the following:

(I) Each proposed model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or

(II) Proof that the proposed wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSER-DA) in effect on April 30, 2010; or

(III) The proposed manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).

(vii) The Department reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented, lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generation.

(C) For a geothermal energy facility (except a heat pump system): A plot of well temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of actual or predicted average monthly stream flows. If flows are predicted, describe the method used to predict flows.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy requirements for a period of a minimum of five years.

(F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.

(G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 grams per hour for non-catalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(f) The payment required by OAR 330-090-0150(3).

(g) For proposed alternative fuel vehicle facilities: proof that the proposed vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(h) For proposed alternative fuel vehicle facilities: the proposed number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(i) For proposed alternative fuel fueling station facilities: a description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(j) For proposed transportation facilities: required documentation for each category specified under the definition of "Transportation Facility" in these rules.

(k) For a proposed waste-to-energy renewable energy resource facility that meets the definition of waste stream includes the anticipated percentage of waste stream product to be recovered and a remediation plan for anticipated emissions and byproducts.

(3) Standards When Reconstructing a Facility: If a facility is reconstructed and an application for preliminary certification is filed seeking a tax credit on the reconstructed facility, any tax credit certified for the reconstructed facility will be reduced by the amount of the original tax credit remaining for the original facility.

(4) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and con-

ditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0130

How the Oregon Department of Energy Processes a BETC Application

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the BETC final certificate.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department. Applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources as defined under ORS 469B.130, must be submitted under the tiered priority system described in OAR 330-090-0350 and include any additional requirements under this section.

(c) A facility owner planning to use a Pass-through Partner will select the pass-through option on the Application for Preliminary Certification.

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director.

(e) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

(2) Pre-Approval of Preliminary Certifications: The Director has pre-approved preliminary certifications for the following facilities that the Department has reviewed and determined to be otherwise qualified under these rules:

(a) Alternate energy devices qualifying for a tax credit under the Residential Energy Tax Credit Program, OAR 330-070-0010 through 330-070-0097, for which the Department has determined qualified costs, energy savings, and eligible tax credits. A facility owner may file for a preliminary certification to present documentation supporting different determinations for review and approval.

(b) Pre-qualified hybrid-electric vehicles.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(1) and (2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS

469B.130 to 469B.169 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a BETC up to the maximum amount of certifiable costs under ORS 496.200. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0133(4).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a preliminary certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) Preliminary Certification After Start of a Facility:

(a) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0120 and OAR 330-090-0130(5)(b).

(b) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

(5) How Preliminary Certification Can be Revoked: The Director may alter, condition, suspend, deny or revoke a preliminary certification for a reason listed in this section

(a) A facility is not completed and a complete final certification application received before 1,095 days (3 years) after the preliminary certification was issued or a further 730 days (2 years) if an extension has been approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Department before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(d) Any other reason allowed by ORS 469B.157(3).

(6) Amendments to Preliminary Certifications: To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.

(a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, the location, or other

matters that demonstrate substantial change in the project's scope. The request must be accompanied by the appropriate fee.

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director, the department will provide the applicant a written notice relating to the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no changes will be made to the preliminary certification.

(c) Preliminary certifications issued for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130, shall not be eligible for consideration of amendments other than those listed below in (A) through (C). An eligible amendment cannot change the tier within which the application was reviewed.

(A) Equipment capacity within 10 percent of the approved specification;

(B) Amendments to the facility that do not result in an increased potential tax credit amount, but increase output or otherwise improve the facility; or

(C) Changes in ownership.

(d) Amendment requests received after January 13, 2012, will not be approved if the amendment would result in an increased tax credit.

(e) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.

(f) The amendments to ORS 315.354, 315.356 and 469.220 [renumbered 469B.167] by Oregon Laws, 2011, Chapter 693 do not provide a basis for applicants to obtain amendments to certifications issued under ORS 469.210 [renumbered 469B.157] or 469.215 [renumbered 469B.161].

(7) If the facility does not proceed: The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a Pass-through Partner must complete and file the Pass-through Option Application form supplied by the Department.

(b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner pays the pass-through fee and provides evidence to the Department that the owner has received the pass-through payment in full.

(9) Extension of Preliminary Certification: Applicants who have not previously extended their certification and whose preliminary certification is anticipated to expire prior to completion of the facility may apply for an extension of an additional two years from the current expiry of the preliminary certification.

(a) Applicants must submit a written request to the department, accompanied by the appropriate fee, describing the progress made in developing the facility since the department issued the preliminary certification and verifying that the project will be developed in accordance with the initial approval, within two years from the current end of the preliminary certification and prior to the sunset date of the program. The request shall include the new proposed facility completion date. Requests may be made no earlier than 6 months prior to the expiration of the existing preliminary certification.

(b) If an applicant wishes to make changes other than to the completion date, the applicant must submit a request for amendment as described in ORS 330-090-0130(7).

(c) If a request or original application does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185469B.130 to 469.225469B.169 and any applicable rules or standards adopted by the Director the department will provide the applicant a written notice specifying the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no extension will be made to the preliminary certification expiration date.

(d) The department will review the previously approved application against current statute and rules. Within 60 days after the department receives the extension request, the Director will decide if the request complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the extension and provide written reasons for the denial.

(10)(a) Final Certification Review Process and Application: An application for final certification must be filed after the facility is completed as defined in these rules.

(b) An application for final certification must include:

(A) Evidence to demonstrate that:

(i) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469B and the rules adopted thereunder;

(ii) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval; and

(iii) The facility will be maintained and operated for at least five years after the facility is placed into operation, or a lesser period if approved and specified on the preliminary certification.

(B) An account of the facility costs, including prorated costs.

(i) If facility costs are less than \$50,000, the account may be records of facility costs paid or incurred based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required under these rules unless required by the Director to supply verification from a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner. If an applicant has an outstanding binding contract or loan agreement, the account shall demonstrate that payments on contract or loan are not in default; or

(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules. If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default.

(iii) The application must include information regarding any federal grants applied for or received in connection with the facility including, without limitation, the grant(s) applied for, the date of each application, the amount of the requested grant(s), when applicant expects to receive notice of grant approval or denial and any other information that may be required by the director. Final total costs will be reduced dollar for dollar by any federal grant amount received by a taxpayer in connection with the facility.

(C) For a Sustainable Building Practices Facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the rules and method of calculation will be accepted in lieu of facility cost receipts.

(D) Proof the facility is completed and operating.

(E) If the facility is leased or rented, a copy of the lease or rental agreement.

(F) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(G) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and

(H) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate

(I) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0133

Final Certification

(1) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.

(a) Applications shall be considered received for the purposes of ORS 469B.167 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date on which all of the required information has been received is the date upon which the department will consider a completed application received by the department.

(A) When a facility owner chooses to transfer the tax credit under ORS 469B.148, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, any application in which the facility owner has indicated a choice to transfer the tax credit under 469B.148 is not a "completed application" until the Department receives both the completed final certification application form from the facility owner, the pass-through fee and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner. The receipt of the completed application by the Department begins the certification period, as provided in 469B.167.

(B) As provided in ORS 469B.167(2)(c), a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469B.161 after January 1, 2010, a final certification application shall be considered complete without the identification of a transferee for purposes of ORS 469B.148 or 469B.154.

(C) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the

Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18 months from the date the first pass-through partner agreement form was received by the Department.

(D) For purposes of administering the sunset of the program, the Department may issue a Final Certificate to a facility owner who previously indicated a choice to transfer a tax credit to a pass-through partner under ORS 469B.148, if the Department has not received a completed application that includes the pass-through fee and the signed pass-through partner agreement form at least sixty days prior to the sunset date for the BETC program provided under ORS 315.357. The Final Certificate will be issued to a facility owner if the only piece causing the application for final certification to be incomplete is the pass-through partner(s) agreement form and pass-through fee.

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification.

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

(d) For efficient truck technology facilities the department may, upon the request of the applicant, issue no more than two final certificates for each preliminary certification, up to the amount of the preliminary certification.

(2) Basis for Denying Tax Credit Benefits

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469B.161(4).

(d) The Director may deny a final certificate if:

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;

(C) The applicant misrepresents or fails to construct or operate the facility;

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or

(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469B and the rules adopted thereunder.

(3) Basis for Revoking Tax Credit Benefits

(a) The Director may revoke certificates as provided in ORS 469B.169 and ORS 315.354 (5). For the purposes of this section,

“fraud or misrepresentation” means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant’s financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:

- (A) The facility has been moved;
- (B) Title to the facility has been conveyed;
- (C) The facility is subject to or part of a bankruptcy proceeding;
- (D) The facility is not operating; or
- (E) The term of a leased facility has ended.

(c) Pursuant to ORS 469B.169, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.

(d) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that facility. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469B.148, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(e) The revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469B.148, the certificate is not considered revoked as to the Pass-through partner.

(4) Sale or Disposition of the Facility after Final Certification: As provided in ORS 315.354(5), the department may issue a new tax credit final certificate after the sale, termination of the lease or contract, exchange or other disposition of the facility where the original facility owner did not transfer the tax credit to a pass-through partner.

(a) The original facility owner or representative must give notice to the department of the sale or transfer of the facility and the department will revoke the certificate covering the facility as of the date of such disposition. The original facility owner or representative must provide.

(A) The name of the new owner or new lessor who will be applying for any previously unclaimed portion of the tax credit.

(B) A signed power of attorney authorizing the Oregon Department of Revenue to disclose to the Oregon Department of Energy information regarding the portion, if any, of the tax credit already claimed.

(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new final certificate under ORS 469B.161 by submitting:

(A) Satisfactory evidence of facility ownership by the new owner or the new lessor, along with information demonstrating that the facility is currently operating and will continue to operate during the remainder of the tax credit period, unless continued operation is waived by the department.

(B) A Tax Credit Recipient Statement, on a form prescribed by the department, which includes the new owner or lessor’s name, tax identification number and address.

(c) To be eligible to receive a new final certificate, the facility must meet the requirements of ORS 469B.130 to 469B.169, and any applicable administrative rules, and the new owner or lessor may claim a tax credit under this section only if all moneys owed to the State of Oregon have been paid, the facility continues to operate, unless continued operation is waived by the department, and all conditions in the new final certification are met.

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amend-

ment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.

(6) Inspections: After an application is filed under ORS 469B.145 or ORS 469B.161 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

(7) Energy Performance Reporting Requirements: The department may require a facility owner to report on a project’s energy performance after receiving final certification. This requirement will apply to projects receiving final certification on or after January 1, 2014.

(a) The department will select projects to report energy performance when the operational data would further the energy goals of the department and the legislative policy described in ORS 469B.133. Facilities required to report energy performance may include those that use or produce renewable energy resources, sustainable building practices facilities and new technologies.

(b) If required to report, an energy performance reporting agreement will be included as a condition of the final certification.

(c) The energy performance reporting agreement will require facility owners to report on an annual basis for up to five years after receiving final certification.

(d) The energy performance reporting agreement will specify the data the facility owner must provide annually. The agreement may also specify energy performance goals.

(e) The department will not require facilities receiving one year tax credits to enter an energy performance reporting agreement.

Stat. Auth.: ORS 469.040 & 469B.161

Stats. Implemented: ORS 469B.130 – 469B.171 & 315.354 – 315.357

Hist.: DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 10-2011, f. & cert. ef. 11-30-11; DOE 8-2012, f. & cert. ef. 7-10-12; DOE 1-2013, f. & cert. ef. 5-13-13; DOE 3-2014, f. & cert. ef. 4-1-14

330-090-0135

Business Energy Tax Credit Sustainable Building Practices Facility Rules

(1) To be eligible for a tax credit, Sustainable Building Practices Facilities must achieve a minimum rating of “Silver” using the LEED-NC, LEED-CS, or LEED-CI path of the U.S. Green Building Council’s rating systems, listed in the rules, in effect as of the facility registration date. Facilities receiving a “Gold” or “Platinum” rating will be awarded proportionally larger tax credits, as calculated by the Department. Sustainable Building Practices Facilities must also comply with all applicable rules.

(2) All Sustainable Building Practices Facilities must acquire a preliminary certification from the Department in accordance with OAR 330-090-0130(3). For these facilities, the facility owner must submit a certified copy of the Facility Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify the Department in writing, and provide a statement of intent to apply for a tax credit as an energy facility, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).

(3) The Department may, at its discretion, convert a preliminary certification for an Energy Facility to a preliminary certification as a Sustainable Building Practices Facility, or accept a statement of intent to register as a Sustainable Building Practices Facility, provided that a certified copy of the U.S. Green Building Council facility registration certificate is provided to the Department within 30 days of the new preliminary certification date.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-

330-090-0140

Pass-through Option Facilities

(1) A pass-through Partner may purchase a BETC certificate from an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass through payment equivalent to the net present value of the transferable tax credit. For the purposes of these rules, the net present value of the credit for purposes of the pass through payment is calculated based on the formulas below:

(a) For original preliminary certifications issued on or after January 1, 2010:

(A) For a five year tax credit the net present value is determined by taking the total tax credit amount divided by 1.3579. Tax Credit/1.3579

(B) For a one year tax credit the net present value is determined by taking the tax credit amount divided by 1.0309. Tax Credit/1.0309

(b) For original preliminary certifications issued on or before December 31, 2009:

(A) 50 percent BETC more than \$20,000 in eligible costs — 33.5 percent pass-through rate.

(B) 50 percent BETC \$20,000 or less in eligible costs — 43.5 percent pass-through rate.

(C) 35 percent BETC more than \$20,000 in eligible costs — 25.5 percent pass-through rate.

(D) 35 percent BETC \$20,000 or less in eligible costs — 30.5 percent pass-through rate.

(E) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits — 87 percent of tax credit amount.

(c) If an applicant elects to use the pass through option, the net present value of the credit (the pass through payment) for a facility is determined by the date the department issues the initial preliminary certification for the project.

(2) An Investor-Owned Utility may choose to become a utility Pass-through Partner under the provisions of this section or participate as a Pass-through Partner under other Provisions of these rules that would apply to any other Pass-through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise the application has been denied.

(D) The application for preliminary certification of the pass-through must include a detailed work plan. The applicant and ODOE must mutually agree upon the work plan and program. The detailed work plan must include:

(i) A copy or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered,

(ii) A not to exceed estimate of the total eligible costs that will be incurred for that calendar year with an estimate of the number of rental dwellings that will be affected, and

(iii) An agreement that upon submitting the complete final certification application the applicant will provide a detailed description of each facility owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(11) of these rules.

(A) An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies, not to exceed the total eligible costs multiplied by the existing net present value of the tax credit for the pass-through payment as defined in OAR 330-090-0140(1).

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i). A sample selected by the Department of individual weatherization location audit reports will be submitted for at least 15 percent of the facility sites.

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s).

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If costs associated with an individual rental dwelling are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by these rules.

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(B) Within 60 days after a complete final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0133(5). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv);

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment must be a percentage of the cost-effective portion of the energy conservation measures as approved by the Oregon Public Utility Commission, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; including the net present value of the tax credit for the pass through payment as defined in 330-090-0170(1) for the EMCs at that specific site address the IOU may claim; or

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the net present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of

the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

(3) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3). For the purposes of transferring the tax credit, a tax credit is considered used when any portion of the tax credit reduces or offsets any portion of the applicant's tax liability.

Stat. Auth.: ORS 469.040 & 469B.148

Stats. Implemented: ORS 469B.130 – 469B.171 & 315.354 – 315.357

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 1-2010, f. & cert. ef. 1-8-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 12-2012(Temp), f. & cert. ef. 11-16-12 thru 5-14-13; DOE 1-2013, f. & cert. ef. 5-13-13

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) \$20 million in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility, not including wind facilities with an installed capacity of more than 10 megawatts;

(B) \$7 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2010.

(C) \$5 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2011.

(D) \$3 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification on or after January 1, 2012.

(E) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home BETC subject to subsection (b).

(b) A final certification for a BETC will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.

(2) Return of Review Charge for Returned Incomplete Applications: This section does not apply to applications subject to the tiered priority system under OAR 330-090-0350. If under 330-090-0130, the Department does not accept and returns an incomplete application for preliminary certification, the Department will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469B.164 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement the Department has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to the Department, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification.

(A) Applicants within tier two or three of the tiered priority system under OAR 330-090-0350 shall include with their initial application a payment to the department of \$500 for the costs of step one. Applicants who are notified that their application is approved for step two will be required to submit an additional fee as calculated under (B) prior to review.

(B) For all facilities except Sustainable Building Facilities or facilities qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost, or \$30 whichever is greater. The maximum payment amount is \$35,000.

(C) For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules.

(D) For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of up to 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification application was received by the Department. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(A) Denial of a application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) Requests for amendments or changes to a preliminary certification must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project. If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (3)(a) of this rule.

(d) Requests for extension of a preliminary certification under ORS 469B.145 must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project.

(e) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(f) The payment is a required part of a completed preliminary certification application per 330-090-0130, except for facilities that qualify under 330-090-0130(2). Preliminary certifications will only be issued if the application is complete. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of the Department determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

(4) Cost of Pass-through: Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department can issue a tax credit certificate.

(a) If the department assists the applicant in obtaining a pass-through partner or partners, the fee for that assistance is 0.25 percent of the tax credit amount, up to \$25,000 maximum, but no less than \$100 minimum.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$100 per tax credit certificate issued.

(5) Cost of Transfer: Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee, the fee for that service is \$200, plus \$100 per tax credit certificate issued. In this section, a transferee means an individual or business that pays the pass-through amount to an applicant, that previously was issued the tax credit certificate, and receives a re-issued tax credit certificate in place of the original applicant. The transfer must occur within 24 months of the issuance of the original tax credit certificate and after the applicable sunset date for the related facility in ORS 315.357. Prior to the applicable sunset date for the related facility, applicants may use the pass-through to transfer their tax credit.

Stat. Auth.: ORS 469.040, 469B.161 & 469B.164

Stats. Implemented: ORS 469B.130 – 469B.171 & 315.354 – 315.357
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12; DOE 1-2013, f. & cert. ef. 5-13-13; DOE 3-2013, f. & cert. ef. 10-2-13

330-090-0160

Sunset of the Business Energy Tax Credit Program

(1) ORS 315.357 contains the sunset of the Business Energy Tax Credit Program. Applicants must meet the deadlines that apply to their project:

(a) Applicants with a preliminary certification that are unable to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before January 1, 2013. The Director does not guarantee that a complete final certification application received on or after November 1, 2012 will be processed before January 1, 2013.

(b) Applicants with a preliminary certification that are able to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before July 1, 2014. The Director does not guarantee that a complete final certification application received on or after May 1, 2014 will be processed before July 1, 2014.

(c) Applicants with a preliminary certification that expires before the July 1, 2014, sunset must request an extension for the preliminary certification pursuant to OAR 330-090-0130(9) or submit the final certification application before the expiration date of the preliminary certificate. There is no automatic extension or waiver for preliminary certifications that expire before the sunset date.

(2) Applicants with a preliminary certification may apply to the department to demonstrate that construction of the facility began before April 15, 2011.

(A) An application must include at least these items:

(A) A brief update on the progress of the facility.

(B) A construction schedule showing the anticipated completion date.

(C) A statement that the facility will be completed as approved in the preliminary certification.

(D) Evidence of beginning construction, including but not limited to:

(i) A copy of an approved building, grading or other permit issued for the facility, dated prior to April 15, 2011.

(ii) Evidence of site-specific construction activity, for the period on or after the later of preliminary certification or building permit approval and before April 15, 2011.

(iii) Evidence of facility-specific construction activity, for the period on or after preliminary certification and before April 15, 2011.

(b) Evidence of site-specific construction activity may include, but is not limited to:

(A) Paid invoices for completed construction activity.

(B) Timesheets for construction activities linked to the facility site.

(C) Paid rental documentation for construction equipment.

(D) A written report from the project engineer or installer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(c) Evidence of facility-specific construction activity may include, but is not limited to:

(A) Paid invoices for facility-specific assembly or manufacturing activity.

(B) Timesheets for assembly or manufacturing activities linked to the facility.

(C) A written report from the project engineer or manufacturer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(d) Applications must be received by the department before October 1, 2012.

(e) The Department will review the provided information and respond to the application within 60 days. As part of its determination, the department may request additional information from the applicant and may perform inspections.

(A) The department will issue a written acceptance letter to applicants who are able to demonstrate evidence of beginning construction. The acceptance letter will state the date by which the applicant must receive final certification to be allowed a credit under ORS 315.354.

(B) The department will issue a letter to applicants who have not provided sufficient evidence of beginning of construction providing reasons for the denial.

(3) Transfer of tax credits issued to an applicant. In this section, a transferee means an individual or business that pays the pass-through amount to an applicant that has been issued the tax credit certificate, and receives a re-issued tax credit certificate in place of the original applicant.

(a) An applicant who has been issued a tax credit certificate may transfer the tax credit to an eligible transferee through the department process provided by these rules, provided the transfer occurs within 24 months of the issuance of the original tax credit certificate and after the applicable sunset date for the related facility in ORS 315.357. Prior to the applicable sunset date for the related facility, applicants may use the pass-through to transfer their tax credit.

(b) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3). For the purposes of transferring the tax credit, a tax credit is considered used when any portion of the tax credit reduces or offsets any portion of the applicant's tax liability.

(c) The department will provide assistance in locating a transferee, however the department does not guarantee that a transferee will be located or obtained.

(d) A tax credit certificate may only be re-issued once, upon a transfer from the applicant to the transferee.

(e) A tax credit certificate may be re-issued in the name of the individual or entity transferee only.

(f) The transferee may not claim the credit for a tax year prior to the year in which the transferee pays for the credit.

(g) The applicant holding the tax credit certificate must submit a complete tax credit transfer application and the required fee to the department. The tax credit transfer application must:

(A) Include an affidavit from the applicant holding the tax credit certificate affirming that no portion of the tax credit has been claimed and that the applicant has received a cash payment equal to the present value of the credit from the transferee, as calculated under these rules.

(B) Provide power of attorney to authorize the department to confirm with the Oregon Department of Revenue that no portion of the tax credit has been claimed.

(C) Include the original tax credit certificate issued to the applicant or affidavit from the applicant on the application form.

(h) Upon compliance with this rule and any other applicable requirements, the department will re-issue the tax credit certificate to the transferee.

Stat. Auth.: ORS 469.040 & 469B.161

Stats. Implemented: ORS 469B.130 - 469B.171 & 315.354 - 315.357

Hist.: DOE 10-2011, f. & cert. ef. 11-30-11; DOE 8-2012, f. & cert. ef. 7-10-12; DOE 12-2012(Temp), f. & cert. ef. 11-16-12 thru 5-14-13; DOE 1-2013, f. & cert. ef. 5-13-13; DOE 1-2015(Temp), f. & cert. ef. 3-23-15 thru 9-18-15; Administrative correction, 10-22-15

330-090-0350

Tiered Prioritization System for Renewable Facilities

(1) Applicability: The tiered priority system applies to applications for facilities that use or produce renewable energy resources,

or are listed as renewable energy resources, as defined under ORS 469B.130.

(2) Process: The department will issue a BETC Opportunity Announcement (OA) detailing the availability of potential tax credits for renewable facilities, the criteria to be applied in selecting facilities for allocation of available potential credits, and soliciting applications within a set time period. Applications will be reviewed within tiers, differentiated by facility cost. The process and level of review differ between tiers as specified in these rules and the OA. The requirements for issuance of preliminary and final certifications within these rules will apply to all applications allocated potential tax credits through the tiered priority system.

(a) Tier one application acceptance and review will be completed on an ongoing basis subject to the tax credit limitations published by the department. Complete applications will be processed in the order they were received and may be rejected once the department has received applications totaling all available credits for this tier.

(b) Tier two application review will consist of an OA and three review steps:

(A) OA: The department will issue an OA and collect applications.

(B) Step one: Applications will be reviewed against initial standards, which will include criteria that will ensure those that advance are complete and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.

(C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional non-refundable fee.

(D) Step three: Technical review of proposed facilities will be completed, allocations of potential tax credits confirmed and announced, and preliminary certifications issued.

(c) Tier three application review will consist of an OA and three review steps:

(A) OA: The department will issue an OA and collect applications.

(B) Step one: Applications will be reviewed against initial standards specified within the OA to include ensuring those that advance are complete, and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.

(C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional fee.

(D) Step three: Technical review of proposed facilities will be completed and allocations of potential tax credits confirmed prior to the issuance of a preliminary certification. If the department determines that it does not have the appropriate resources available to conduct the review, the department may notify the applicant that the department intends to use a third party to conduct the technical review. If a third party is used, the applicant will be required to submit payment to the department approved third party for the review.

(3) Tier Boundaries:

(a) Tier one shall consist of applications with projected facility cost less than \$500,000.

(b) Tier two shall consist of applications with projected facility cost equal to or greater than \$500,000 but less than \$6,000,000.

(c) Tier three shall consist of applications with projected facility cost equal to or greater than \$6,000,000.

(d) For the purposes of determining tier assignment, facility cost shall not be limited as defined in ORS 469B.142.

(e) Applicants may apply for less than the maximum eligible potential tax credit for their project, this shall not change the tier within which the application is reviewed.

(4) Allocation of tax credits between tiers and application periods

(a) The department shall announce the allocation of potential tax credits. The OA will specify the distribution of funding for the appropriate tiers and the amount allocated to the current application period. The department will continually monitor the rate of allocation of potential tax credits to ensure the total amount of potential tax credits does not exceed the limits provided in Oregon Laws, 2010, Chapter 76, Section 2.

(b) If no applications are received within an application period for any tier, the allocated potential tax credits for that period and tier will be reallocated by the department. If the total request from all complete applications received for a period and tier is less than the allocated potential tax credits, the department will review all applications to determine that they meet any applicable standards prior to allocating potential tax credits, and reallocating remaining potential tax credits. If allocated potential tax credits remain but are insufficient to satisfy the request of the next applicant, the Director may offer a reduced tax credit amount or reallocate the remaining potential tax credits.

(c) Potential tax credit amounts that are not allocated to a facility at the end of a limitation period specified in Oregon Laws, 2010, Chapter 76, Section 5 will expire.

(5) Application acceptance periods

(a) Tier one applications will be accepted at any time prior to the sunset, while allocated funds are available.

(b) Tier two and three applications will only be accepted during an application acceptance period specified in an OA. Applications for tier two and three received outside of an application acceptance period will not be accepted.

(6) Criteria. The department will announce specific standards and criteria that will be considered in determining eligibility in the OA. In addition to the criteria listed in Oregon Laws, 2010, Chapter 76, Section 6, criteria for tiered two and three potential tax credits may include:

(a) The completeness of the application and whether it was received within the time period specified in the OA;

(b) The appropriate application payment;

(c) The time frame in which actual construction will be started and completed and the ability to meet all regulatory requirements including program deadlines;

(d) Criteria established in statute or rules that apply to the BETC program;

(e) The simple payback period;

(f) The number of jobs created;

(g) Whether the renewable activities were aligned with conservation activities;

(h) The financing structure of the facility;

(i) The reliability of power created;

(j) Whether the facility is combined heat and power or co-gen system;

(k) If the applicant is a public body, whether a competitive bidding process was utilized;

(l) Nationally recognized standards or practices for the specified technology; and

(m) Any other factors listed in the OA.

(7) Incomplete applications

(a) The department will determine if an application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 149B.169 and any applicable rules, standards and criteria in the OA, rules or otherwise adopted by the Director.

(b) For tier one the department will provide a written notice to applicants that the application is incomplete, specifying the information needed to make the application complete. Applicants will be allowed 30 days from the time of notification by the department

to provide specified information. The application expires if the applicant does not supply the information within 30 days.

(c) Incomplete applications for tier two or three will not be accepted for the current OA. Applicants may reapply and resubmit their application during the next OA.

(8) Prioritization within tiers

(a) Applications within tier one are not be subject to prioritization, but will be required to meet listed standards and other requirements of the BETC program. If the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the allocation for tier one, the Director will allocate potential tax credits in the order in which complete applications are received.

(b) Applications within tiers two and three will be ranked within each tier against required criteria specified within the OA in effect at the time of application acceptance, and must meet the requirements of the OA and the BETC program.

(9) Allocation of potential tax credits within tiers:

(a) Potential tax credits available within an application period will be allocated to applications in order of the priority established under section (8) and as determined by the procedure in the OA. Applicants may be offered less potential tax credit than requested in their application.

(b) For tiers two and three, applicants will have 10 business days to respond in writing to the department's written notification of the offer of preliminary certification. Applicants who do not respond during this period will be considered to have rejected the offer of the preliminary certification. If an applicant does not accept an allocation, the potential tax credits may be issued to other applications within the period or to future periods or tiers. Upon written acceptance from the applicant, the department will issue a preliminary certification under ORS 469B.145.

(10) Applications allocated potential tax credits: Applicants who are issued a preliminary certification under this section must follow all department procedures and obtain final certification prior to issuance of tax credits. Allocation of potential tax credits through the issuance of a preliminary certification does not guarantee issuance of final certification.

(11) Applications not issued preliminary certification: Applications reviewed under this section and not allocated potential tax credits will be notified by the department. Applicants may make application for the same facility within a future application period but will not be eligible to carry-forward applications or fees.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.

Hist.: DOE 14-2010, f. & cert. ef. 11-23-10; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0450

Prioritization System for Renewable Resource Equipment Manufacturing Facilities

Applications in excess of Biennial limits: In the event that the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitations in Oregon Laws, 2010, Chapter 76, the Director shall allocate the potential tax credits according to the order in which the applications are received.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.

Hist.: DOE 14-2010, f. & cert. ef. 11-23-10

DIVISION 91

BUSINESS ENERGY TAX CREDITS (BETC) FOR RENEWABLE ENERGY RESOURCE EQUIPMENT MANUFACTURING

330-091-0100

Transfer of program to Oregon Business Development Department

House Bill 2523 (2011) transfers the duties of the Business Energy Tax Credit for renewable energy resource equipment manufacturing program from the Oregon Department of Energy to the

Oregon Business Development Department on January 1, 2012. These rules remain in effect until replaced by rules adopted by the Oregon Business Development Department, any references to statute deleted by HB 2523(2011) become references to the replacement portion of statute adopted under the bill.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0105

What a Business Energy Tax Credit for Renewable Resource Equipment Manufacturing (Manufacturing BETC) Is

(1) A Business Energy Tax Credit for up to 50 percent of the eligible cost of qualifying renewable energy resource equipment manufacturing facilities may be offset against owed Oregon income and corporation excise taxes. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the pass-through option in return for a cash payment.

(2) The Oregon Department of Energy (Department) must issue a final certificate pursuant to ORS 469.215 before the tax credit can be claimed. These rules apply to Business Energy Tax Credit applications for renewable energy resource equipment manufacturing facilities. These rules apply to all applications pending as of the effective date of these rules.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0110

Definitions

The following definitions apply unless the context requires otherwise:

(1) "Applicant": An applicant means:

(e) A person who applies for a preliminary certification of a Manufacturing BETC under this section includes:

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification. These entities must follow all procurement processes, including competitive bid, where applicable.

(f) A person who applies for a final certification of a Manufacturing BETC under this section must be the facility owner listed on the preliminary certification.

(g) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.

(h) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(2) "Certified cost": The cost certified in the final certification issued pursuant to ORS 469.215.

(3) "Completed Application": Contains all of the information required in these rules and payments under OAR 330-091-0150. All questions on the application must be answered. A completed application for final certification must also include a completed, signed pass-through partner(s) agreement form, where the facility owner chooses to transfer the tax credit. No application for a final certification in which the facility owner has indicated a choice to transfer the tax credit under ORS 469.206 is considered complete until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to the pass-through partner.

(4) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and

that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director determines the applicant has made all reasonable efforts to operate, including making changes required by the Department.

(5) “Component Parts of Electric Vehicles”: means component parts for use solely in Electric Vehicles and not in conventional vehicles. Component parts shall be distinguished by their absence from conventional vehicles and shall not include components that can be used interchangeably in both electric and conventional vehicles. For the purpose of this definition, “conventional vehicle” is a production vehicle that is powered with an internal combustion engine, excluding hybrids.

(6) “Cost”: The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a Manufacturing BETC. Costs financed with federal funds, subject to specific restrictions, terms and conditions may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-091-0150, and shipping;

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and

(iv) Costs for employee’s or contractor’s work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible; and

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;

(F) Routine operational or maintenance costs associated with the facility, including services, supplies and labor;

(G) Expenses related to training, education or other related expenses;

(H) Expenses that are directly or indirectly offset with federal fee waivers; or

(I) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee’s cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed-through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) The Department may conduct inspections to verify eligible costs.

(e) Eligible facility costs are limited by costs for a facility, or portion thereof, that has previously received a Business Energy Tax Credit.

(f) The sum of any payments from federal grants or credits and the Manufacturing BETC may not exceed total costs.

(7) “Director”: The Director of the Oregon Department of Energy or designees.

(8) “The Department”: The Department of Energy.

(9) “Facility Operator”: The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant’s agent for all reasons related to the facility once its development begins.

(10) “Facility Owner”: An applicant who purchases and owns a qualified facility.

(11) “Facility Start” prior to erection, construction, installation or acquisition: The earliest date on or after the date of the application that meets one of the following criteria:

(a) A non-refundable deposit will be placed on the facility equipment;

(b) A purchase order will be placed for the equipment;

(c) A contract for the design of the facility will be executed;

(d) A document that obligates the applicant to proceed with a facility will be executed; or

(e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility

(12) “Federal Grant”: Any grant received from the federal government in connection with a facility.

(13) “Final Certification”: Final certificate issued after completion of an approved BETC facility.

(14) “Lease Contract”: A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the Manufacturing BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the Manufacturing BETC.

(15) “Net Present Value”: A cash payment equivalent to the net present value of the Manufacturing BETC as determined under OAR 330-091-0140. This is also referred to as the “pass-through rate.”

(16) “Pass-through Option”: An option that allows a facility owner to transfer all or a portion of the facility’s tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.

(17) “Pass-through Partner”: A personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment equivalent to the net present value of all or a portion of the Manufacturing BETC.

(18) “Preliminary Certification”: Preliminary certificate issued upon successful completion of the first stage in obtaining a Manufacturing BETC.

(19) “Renewable Energy Resource Equipment Manufacturing Facility”: means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Department in these rules.

(20) “Research, Development, and Demonstration Facility (RD&D)”: A facility that complies with (a) through (f):

(a) A facility that is not standard practice and that is likely to produce or produces qualified renewable energy resource equipment products or technologies that are likely to be manufactured in Oregon when commercialized. RD&D Manufacturing BETC applicants’ total lifetime project costs will be determined for a defined period established at the time of the initial application and will be

capped at \$20,000,000. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce new manufacturing or production capacity in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

(C) Demonstration facilities that are likely to resolve questions on how to apply new or improve technology through pilot or production scale applications of technology;

(D) Facilities in the Director's determination are likely to achieve Department goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource equipment manufacturing will be eligible for a 50 percent tax credit.

(d) Eligible costs for a Research, Development or Demonstration facility may include:

(A) Engineering, design and administrative costs

(B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:

(i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.

(ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(C) The following costs related to demonstration model(s) may be considered eligible:

(i) Materials for the demonstration model(s).

(ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).

(iii) Testing and monitoring the demonstration model(s).

(E) Other eligible costs defined by Oregon Administrative Rule.

(e) Ineligible costs for a Research, Development or Demonstration facility may include:

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.

(B) Other ineligible costs defined by Oregon Administrative Rule.

(f) A Research, Development or Demonstration facility is not eligible to receive a tax credit when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.

(21) "Total Cost": The eligible cost of a facility not limited by ORS 469.200.

(22) "Year": Calendar year.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0120

Preliminary Certificate Application Requirements

(1) Eligible facilities

(a) The Department may issue only one Manufacturing BETC for each separate and distinct facility under these rules.

(b) A proposed facility must meet applicable codes and standards.

(2) Required information

(a) Persons requesting a Manufacturing BETC shall apply on the Department-approved form for a preliminary certificate. In

addition to the information required in ORS 469.205, the applicant shall provide the following information:

(A) The name, address, and phone number of the applicant, owners of the facility, and the developers of the project.

(B) The applicant's federal tax identification number or social security number which may be shared with the Department of Revenue to facilitate the administration of the state tax law.

(C) Proposed facility start date and date estimated for the commencement of operation. A facility's start date is the date that the project applicant financially commits to the project. Financial commitment includes, but is not limited to: making a downpayment or deposit, signing a contract with a vendor, ordering material or equipment, beginning construction or installation.

(D) The proposed facility location within the geographical confines of Oregon.

(E) Information demonstrating that the proposed facility will comply with or have a variance from the land use laws of the city or county where the facility will be located.

(F) Information demonstrating that the proposed facility will comply with all other local, federal, and state laws.

(G) A list of appropriate authorizations for all work performed including but not limited to appropriate licenses, permits, or other authorizations that are required by state or local jurisdiction for the facility.

(H) Information demonstrating the intended operation, maintenance and use of the facility, including but not limited to: the amount and type of jobs potentially created in the construction, installation and operation of the facility in Oregon, the benefits of the facility with regard to overall economic activity in this state and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is operational. If an applicant expects that a facility will operate less than five years, the applicant may submit a request for approval of the shorter operating period as part of their application for preliminary certification. This request shall include information describing the proposed facility and supporting the proposed operating period. The Director will determine whether to approve the shorter operating period and may include conditions, reductions or other limits on any potential tax credits.

(I) A declaration from the applicant that all property taxes for the facility have been paid and there are no delinquent property taxes associated with the facility.

(J) Information that demonstrates that the facility will be used solely to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. An applicant shall provide sufficient information relating to the specific characteristics of the equipment, machinery or other products that demonstrate how such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes. In the case of a facility manufacturing Electric Vehicles under the all-terrain-vehicles standards, an applicant shall provide information that demonstrates that the vehicles will be used for agricultural, commercial, industrial or governmental purposes.

(b) The Department may request additional information from the applicant in order to determine whether multiple applications have been made for the same facility. The department will make its determination based on the following:

(A) All applications under consideration will be reviewed against other current applications, facilities that have received preliminary certification and facilities that have received final certification within the past 12 months. Further review shall be given to applications which when combined exceed the annual limit for a tax credit found in ORS 469.200.

(B) Applications will be considered a single facility unless each phase of development or each expansion of or addition to existing facilities or production lines can be demonstrated to meet, through increased production and number of jobs created, the requirements of ORS 469.197 (4) and these rules.

(c) Anticipated capital expenditures and other costs as defined in these rules for the erection, construction, installation or

acquisition of the proposed facility and its expected operational life.

(d) The payment required by OAR 330-091-0150(3).

(e) For a proposed renewable energy resource equipment manufacturing facility:

(A) The applicant shall demonstrate that they can meet ORS 469.197(4)(c) through (f) by:

(i) Describing the minimum level of direct employment that will be provided by the facility during each of the tax years in which the tax credit will be claimed and by describing the anticipated average annual direct employment during each of those years, including the number of average hourly and annual wages of employees by employment classifications by geographic location. The applicant must also describe actions it will take to achieve cultural diversity in its work force.

(ii) Demonstrating its financial ability to construct and operate the proposed facility through documentation such as independent credit ratings; credit references, including letters from banks or other financial institutions attesting to the applicant's credit worthiness; and other documentation demonstrating the applicant's financial viability.

(iii) Demonstrating that the facility will achieve long-term operation and success by documenting the qualifications, capabilities and experience of the applicant in the construction and operation of such facilities, the long-term commercial and technical viability of the renewable energy resources manufacturing equipment and the renewable energy resource facilities for which the equipment is produced.

(iv) Certifying that allowance of the tax credit is integral to the decision to expand or locate the facility in Oregon.

(v) Before the Director will approve a final certification, the Department may require the applicant to enter into a performance agreement or other similar agreement for the facility. Failure to comply with the terms of the performance agreement or other similar agreement may be the basis for denial or revocation of the final certification pursuant to OAR 330-091-0133.

(B) Any other information necessary to find that a proposed facility complies with ORS 469.185 to 469.225 and these rules.

(C) In considering such applications, the Director may consult with other state agencies.

(D) The Director must find that:

(i) The applicant has demonstrated that it has a reasonable likelihood of achieving the minimum level of employment proposed and that such employment will contribute to public benefit, based on the number of average hourly and annual wages of employees including benefits by employment classifications by geographic location, and actions to achieve cultural diversity in its workforce.

(ii) The applicant has a reasonable likelihood of being financially viable based on its credit ratings and references from banks and financial institutions attesting to its credit worthiness.

(iii) The applicant has the organizational expertise as demonstrated by qualifications and experience to construct and operate the proposed facility.

(iv) The renewable energy resource equipment and the renewable energy resource facilities for which the equipment is produced have the commercial and technical viability to have a reasonable likelihood to achieve long-term success.

(v) The facility will contribute to a diversified portfolio of renewable energy resource equipment manufacturing facilities.

(vi) The applicant has certified that allowance of the tax credit is integral to the decision to expand or locate in Oregon.

(3) Standards When Reconstructing a Facility: If a facility is reconstructed and an application for preliminary certification is filed seeking a tax credit on the reconstructed facility, any tax credit certified for the reconstructed facility will be reduced by the amount of the original tax credit remaining for the original facility.

(4) Eligible Costs:

(a) A Manufacturing BETC may be granted based on the eligible costs of a facility that is used to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.

(b) Subject to the facility cost limitations of OAR 330-091-0150(1)(a) and the provisions of 330-091-0120(4), eligible costs include any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices, necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used to manufacture the equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.

(A) Eligible costs do not include any costs of any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-091-0150(1)(a) if such costs would exceed that cost limitation.

(B) Eligible costs do not include costs of a facility that is used to manufacture equipment, machinery or other products not used exclusively for renewable energy resource facilities.

(C) An application must demonstrate compliance with these provisions to be accepted, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes and therefore why the costs of such of such equipment, machinery or other products are eligible costs.

(5) If the Department determines that the applicant qualifies for a Manufacturing BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the Manufacturing BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter into a performance agreement or other similar agreement as a condition of approval.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0130

How the Department Processes Application for a Manufacturing BETC

(1) General:

(a) The Director reviews an application for a Business Energy Tax Credit for Renewable Energy Resource Equipment Manufacturing in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the final certificate.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department.

(c) A facility owner planning to use a pass-through partner will select the pass-through option on the Application for Preliminary Certification.

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director.

(e) If the Department determines that the applicant qualifies for a Manufacturing BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter into a performance agreement or other similar agreement as a condition of approval.

(2) Preliminary Certification Review Process: Except as provided in OAR 330-091-0130(1) and (2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.

(b) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a Manufacturing BETC up to the maximum amount of certifiable costs under ORS 496.200. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-091-0133(4).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a preliminary certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(3) Certifying Less than Total Eligible Costs: If under the provisions of ORS 469.200(2), the Director intends to certify less than the total or no amount of eligible costs of a renewable energy resource equipment manufacturing facility, the Director will notify the applicant in writing of that intent before approving the preliminary certification. The applicant will have 30 calendar days from the date notification was issued to inform the Director in writing whether it wishes to withdraw the application or suspend further consideration of the application until a future date specified or submit additional information in support of the application. If the Director has not received notification or additional information in support of the application within that period of time, the Director may certify less than the total or no amount of eligible costs of the renewable energy resource equipment manufacturing facility. Once eligible costs are certified and a preliminary certification is issued under this section, the certified eligible costs may be revised if conditions under ORS 469.200(2) change or upon notification from the applicant or other information indicating that the scope of the project or the facility has changed in such a way to impact the preliminary certificate.

(4) Preliminary Certification After Start of a Facility:

(c) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with these rules.

(d) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with these rules;

(B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circum-

stances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

(5) How Preliminary Certification Can be Revoked: The Director may alter, condition, suspend, deny or revoke a preliminary certification for a reason listed in this section

(a) A facility is not completed and a complete final certification application received before 1,825 days (5 years) after the preliminary certification was issued.

(b) Permits, waivers, and licenses required by these rules are not filed with the Department before facility development starts.

(c) The facility undergoes changes without the changes being approved under these rules.

(d) Any other reason allowed by the amendments to ORS 469.210 (3) in Oregon Laws, 2010, Chapter 76, Section 11.

(6) Amendments to Preliminary Certifications: To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.

(a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, the location, or other matters that demonstrate substantial change in the project's scope. The request must be accompanied by the appropriate fee.

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director, the department will provide the applicant a written notice relating to the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no changes will be made to the preliminary certification.

(c) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.

(7) If the facility does not proceed: The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a pass-through partner must complete and file the Pass-through Option Application form supplied by the Department.

(b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner provides evidence to the Department that the owner has received the pass-through payment in full.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the facility is completed as defined in these rules. An application for final certification must include:

(a) Evidence to demonstrate that:

(A) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469 and the rules adopted thereunder;

(B) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval; and

(C) The facility will be maintained and operated for at least five years after the facility is placed into operation, or a lesser period if approved and specified on the preliminary certification.

(b) An account of the facility costs, including prorated costs.

(A) A certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules. If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default.

(B) The application must include information regarding any federal grants applied for or received in connection with the facility including, without limitation, the grant(s) applied for, the date of each application, the amount of the requested grant(s), when applicant expects to receive notice of grant approval or denial and any other information that may be required by the director.

(c) Proof the facility is completed and operating.

(d) If the facility is leased or rented, a copy of the lease or rental agreement.

(e) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and

(f) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate

(g) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0133

Final Certification

(I) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.

(a) Applications shall be considered received for the purposes of ORS 469.220 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the department on the complete application containing all of the required information shall be considered the received date.

(A) When a facility owner chooses to transfer the tax credit under ORS 469.206, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department.

(B) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18

months from the date the first pass-through partner agreement form was received by the Department.

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification. The Director will process a complete final certification application received prior to the date of the expiry of the preliminary certificate provided under ORS 469.205. Applications received after the expiry of the preliminary certificate are not eligible.

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs, reduced as applicable by any federal grants received, and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

(2) Basis for Denying Tax Credit Benefits

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469.215(4).

(d) The Director may deny a final certificate if:

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;

(C) The applicant misrepresents or fails to construct or operate the facility;

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or

(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469 and these rules.

(3) Basis for Revoking Tax Credit Benefits

(a) The Director may revoke certificates as provided in ORS 469.225 and 315.354(5). For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:

(A) The facility has been moved;

(B) Title to the facility has been conveyed;

(C) The facility is subject to or part of a bankruptcy proceeding;

(D) The facility is not operating; or

(E) The term of a leased facility has ended.

(c) Pursuant to ORS 469.225, upon receiving information that a Manufacturing BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.

(e) Revocation of the certificate due to misrepresentation, fraud or failure to construct or operate the facility in compliance with the certificate results in the loss of all prior and future tax credits. If all or a part of the tax credit certificate has been transferred to a pass-through partner under ORS 469.206, the certificate is not considered revoked as to the pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(4) Sale or Disposition of the Facility after Final Certification:

(a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as of the date of the disposition of the facility, unless the Manufacturing BETC for the facility has already been transferred under 469.206.

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-091-0130(10) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354(5).

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amendment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.

(6) Inspections: After an application is filed under ORS 469.205 or ORS 469.215 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0140

Pass-through Option Facilities

A pass-through partner may purchase a Manufacturing BETC certificate from an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass-through payment equivalent to the net present value of the transferable tax credit. For the purposes of these rules, the net present value of the credit for purposes of the pass-through payment is calculated based on the formulas below:

(1) For original preliminary certifications issued on or after January 1, 2010: For a five year tax credit the net present value is determined by taking the total tax credit amount divided by 1.3579.Tax Credit/1.3579

(2) For original preliminary certifications issued on or before December 31, 2009: 50 percent BETC more than \$20,000 in eligible costs — 33.5 percent pass-through rate.

(3) If an applicant elects to use the pass-through option, the net present value of the credit (the pass-through payment) for a facility is determined by the date the department issues the initial preliminary certification for the project.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0150

Budget Limits and Payments

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a Manufacturing BETC preliminary certification will not be issued for more than:

(A) \$40 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility, not including those used to manufacture electric vehicles;

(B) \$2.5 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility used to manufacture electric vehicles;

(2) Return of Review Charge for Returned Incomplete Applications: If the Department does not accept and returns an incomplete application for preliminary certification, the Department will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement the Department has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to the Department. The payment will be 0.0060 multiplied by the facility eligible cost not to exceed a payment amount of \$75,000.

(b) A refund of up to 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification application was received by the Department. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(D) Denial of a application for preliminary certification; or

(E) Denial of a portion of costs requested in an application for preliminary certification; or,

(F) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) Requests for amendments or changes to a preliminary certification must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project. If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (3)(a) of this rule.

(d) No facilities will be exempt from these requirements including applications for Manufacturing BETC pass-through under OAR 330-091-0140.

(e) The payment is a required part of a completed preliminary certification application. Preliminary certifications will only be issued if the application is complete. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of the Department determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

330-091-0450

Prioritization System for Renewable Resource Equipment Manufacturing Facilities

Applications in excess of Biennial limits: In the event that the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitations in Oregon Laws, 2010, Chapter 76, the Director shall allocate the potential tax credits according to the order in which the applications are received.

Stat. Auth.: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Stats. Implemented: OL 2011, Ch. 474 HB2523

Hist.: DOE 7-2011, f. & cert. ef. 10-25-11

DIVISION 92

MINIMUM ENERGY EFFICIENCY STANDARDS FOR
STATE-REGULATED APPLIANCES AND EQUIPMENT

330-092-0005

Purpose

The purpose of these rules is to establish procedures to govern the enforcement and amendment of standards found in ORS 469.229 through 469.261, which establish minimum energy efficiency standards for equipment and appliances for sale or use in Oregon that are not federally regulated.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0010

Definitions

As used in OAR 330-092-0010 through 330-092-0046:

(1) “Director” means the Director of the Oregon Department of Energy.

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

(3) “Equipment” means a category of equipment or appliances regulated by ORS 469.229 to 469.261 and described in OAR 330-092-0015, below.

(4) “Multi-State Compliance System” or M-SCS means the multi-state database program located at www.appliancestandards.org to register and list compliant equipment.

(5) “Product” means a particular model number or series available from a particular manufacturer, as distinct from a category of equipment.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0015

Effective Dates for Regulated Equipment

(1) The following list specifies the effective dates for equipment for which Oregon minimum energy efficiency standards have been adopted:

(a) Battery charger systems, as defined in ORS 469.229(7): The standards in ORS 469.233(19) are effective January 1, 2014, for sale of equipment and installation.

(b) Bottle-type water dispensers, as defined in ORS 469.229(9): The standards in ORS 469.233(12) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(c) Commercial hot food holding cabinets, as defined in ORS 469.229(13): The standards in ORS 469.233(13) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(d) Commercial refrigerators and freezers, as defined in ORS 469.229(15): The standards in ORS 469.233(4) are effective January 1, 2008 for sale of equipment and January 1, 2009 for installation.

(e) Compact audio products, as defined in ORS 469.229(16): The standards in ORS 469.233(14) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(f) Digital versatile disc players and digital versatile disc recorders, as defined in ORS 469.229(21): The standards in ORS 469.233(15) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(g) High light output double-ended quartz halogen lamps, as defined in Oregon Laws 2013, Chapter 418, Section 2: The standards in Oregon Laws 2013, Chapter 418, Section 4, are effective January 1, 2016, for sale of equipment and installation.

(h) Portable electric spas, as defined in ORS 469.229(32): The standards in ORS 469.233(16) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(i) Televisions, as defined in ORS 469.229(42): The standards

in ORS 469.233(18) are effective January 1, 2014, for sale of equipment and installation.

(2) The following equipment is currently federally regulated

and not subject to further regulation under ORS 469.229 through 469.261 or these rules:

(a) Automatic commercial ice cube machines as defined in

ORS 469.229(2).

(b) Commercial clothes washers, as defined in ORS

469.229(12).

(c) Commercial pre-rinse spray valves, as defined in ORS

469.229(14).

(d) Illuminated exit signs, as defined in ORS 469.229(24).

(e) Incandescent reflector lamps, as defined in ORS

469.229(41).

(g) Metal halide lamp fixtures, as defined by ORS 469.229(28).

(i) Single-voltage external AC to DC power supplies, as

defined in ORS 469.229(39).

(h) Torchieres, as defined in ORS 469.229(45).

(i) Traffic signal modules, as defined in ORS 469.229(46).

(j) Unit heaters, as defined in ORS 469.229(47).

(k) Walk-in refrigerators and walk-in freezers, as defined in

ORS 469.229(49).

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert.

ef. 1-1-14

330-092-0020

Minimum Energy Efficiency Standards and Test Methods

(1) Beginning on the effective date shown in OAR 330-092-0015(1)(i), televisions must meet the energy efficiency standards in ORS 469.233(18) as measured in accordance with the federal test procedure described in 10 CFR Section 430.23(h) (Appendix H to Subpart B of Part 430) (2013). Alternatively, until April 23, 2014, television efficiency may be measured in accordance with:

(a) For standby passive mode, the test methods contained in International Electrotechnical Commission (IEC) 62301:2005, Edition 1.0 “Household Electrical Appliances – Measurement of Standby Power”; and

(b) For on mode and power factor test, the test methods contained in IEC 62087:20008(E), Edition 2.0 — “Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment”, Section 11.6.1 — “On mode (average testing with dynamic broadcast-content video signal)” and the specifications contained in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1604(v)(3), effective January 1, 2011.

(2) Beginning on the effective date shown in OAR 330-092-0015(1)(a), battery charger systems must meet the energy efficiency standards in ORS 469.233(19) as measured in accordance with:

(a) For small battery chargers, the test methods contained in 10 CFR Section 430.23(aa) (Appendix Y to Subpart B of Part 430) (2011) and the specifications contained in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1604(w)(1), effective January 1, 2013; and

(b) For large battery chargers, the test methods contained in Energy Efficiency Battery Charger System Test Procedure Version 2.2 dated November 12, 2008, and published by ECOS and EPRI Solutions, with the modifications specified in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1604(w)(2).

(3) Beginning on the effective date shown in OAR 330-092-0015(1)(g), high light output double-ended quartz halogen lamps must meet the energy efficiency standards in Oregon Laws 2013, Chapter 418, Section 4, as measured in accordance with the IESNA LM-45: Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps published by the Illuminating Engineering Society of North America.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0025

Reporting Product Compliance Through the Multi-State Compliance System

(1) Manufacturers of Oregon-regulated equipment shall report compliance by registering a product on the Multi-State Compliance System website (www.appliance-standards.org) or by registering products with the California Energy Commission appliance efficiency database (www.energy.ca.gov/appliances). Products registered on the California Energy Commission appliance efficiency database will be automatically entered on the M-SCS database.

(2) Questions concerning product registration should be directed to the Oregon Department of Energy’s Appliance Efficiency Standards Program Manager, energyweb.incoming@state.or.us, 503-378-4040, 625 Marion St. N.E., Salem OR 97301.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0030

Effect of Registration

To be sold or installed in Oregon after the effective dates described in OAR 330-092-0016, Oregon-regulated products must be listed as “Compliant” in the M-SCS database. Products that are not listed in the database or are listed as “Needing Attestation” or “Non-Compliant” may not be sold or installed in Oregon after the applicable effective date.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0035

Manufacturer Certification of Information Entered in the Multi-State Compliance System

(1) Manufacturers of Oregon-regulated equipment not listed in the M-SCS database as compliant with the California standards must certify to the Oregon Department of Energy with a letter signed by a responsible officer in the organization, such as the Chief Financial Officer, Government Relations Officer, Chief Engineer or Technical Officer, that:

(a) The information related to the products listed by the manufacturer is true and accurate; and

(b) The products have been tested in accordance with test methods specified in ORS 469.233 or in these rules, as appropriate.

(2) A single letter may certify compliance for multiple products, but the letter must list each product to which it applies separately. Additional certifications are required when new products are listed.

(3) The letter may be sent by mail, fax, e-mail of a scanned copy, or e-mail with electronic signature, to the Oregon Department of Energy’s Appliance Efficiency Standards Program Manager, 625 Marion St. N.E., Salem OR 97301, fax 503-373-7806, energyweb.incoming@state.or.us.

(4) The Department will update the M-SCS database as needed to reflect that compliance letters have been received.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0040

Determination of Compliance

(1) Products for which the Oregon minimum energy efficiency standards are identical to or lower than standards adopted in California, and that have been approved by the California Energy Commission, will automatically be certified as compliant for sale and installation in Oregon.

(2) Products for which Oregon minimum energy efficiency standards are not identical to standards adopted in California, or that have not been approved by the California Energy Commission, must be approved by the Oregon Department of Energy and will be designated in the M-SCS database as “Needing Attestation” until they are approved.

(3) Products which do not comply with the appliance efficiency standards set forth in ORS 469.233 will be designated in the M-SCS database as “Non-Compliant.”

(4) A manufacturer may request the Department to change the status of a product in the M-SCS database from “Needing Attestation” or “Non-Compliant” to “Compliant” if it believes the product is incorrectly listed. The Department may require the manufacturer to submit or resubmit certification pursuant to OAR 330-092-0035 and any other documentation demonstrating that the product meets the applicable minimum energy efficiency standard.

(5) The Department may require the manufacturer to provide test results or other documentation verifying that a product meets Oregon’s minimum energy efficiency standards for that category of equipment.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0045

Labeling

(1) Except as provided in subsections (2) through (4) of this section, a product which is listed as “Compliant” in the M-SCS database will be deemed to meet Oregon’s labeling requirements if t h a t product is permanently, legibly and conspicuously marked, labeled

or tagged on an accessible place on each unit with the following information:

(a) Manufacturer's name or brand name or trademark, which shall be either the name, brand or trademark of the listed manufacturer reporting compliance pursuant to OAR 330-092-0035;

(b) Model number; and

(c) Date of manufacture, indicating at least the year and month. If the date is in a code that is not readily accessible to the lay person, the manufacturer shall immediately, upon request, provide the code to the Department.

(2) For lamps, the information required by subsection (1) of this section shall be permanently, legibly, and conspicuously displayed on an accessible place on each unit, on the unit's packaging, or, where the unit is contained in a group of several units in a single package, on the packaging of the group.

(3) The Department may waive marking, labeling or tagging requirements for products marked, labeled or tagged in compliance with federal requirements.

(4) The Department may grant a waiver from these labeling requirements on a case-by-case basis for a category of equipment if it determines:

(a) Oregon's labeling requirements would be different and more burdensome than requirements in other states with similar standards.

(b) Current labeling materially complies with the intent of Oregon's labeling requirements.

(c) Compliance with subsection (1) would be impractical.

(d) Labeling is unnecessary.

(e) No waiver will be made for an individual manufacturer or individual product.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229-469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0050

Determination of Non-Compliance

(1) If a manufacturer has not submitted certification to the Department pursuant to OAR 330-092-0035 for a product, the Department may change the Oregon status in the M-SCS to "Needing Attestation" and require the manufacturer to provide such certification within 30 days. If certification is not received within 30 days, the Department may change the status to "Non-Compliant" until such time as the certification is provided.

(2) The Department may review any product if it has cause to believe the product may not comply with Oregon's appliance efficiency standards.

(a) Upon completing its review, the Department will notify a manufacturer in writing of its determination whether the product is in compliance with the appropriate appliance energy efficiency standard. The notification will include:

(A) Identification of the product.

(B) An explanation of any deficiencies in compliance with the applicable standards, testing requirements, or labeling requirements.

(C) The action the Department proposes to take if it determines the product is non-compliant or the information supplied to the Department through the M-SCS database or other means is in error.

(b) The manufacturer must respond to the notice of deficiency within thirty days of mailing.

(c) The Department will make its final determination within fifteen days of receiving the manufacturer's response.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229-469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0055

Appeals

(1) A manufacturer may request reconsideration of the Department's order in writing. The Department will respond within fifteen days of receipt of a request for reconsideration.

(2) A manufacturer may appeal an action taken by Department staff to the Director. An appeal shall state as clearly as possible the

original request, the action taken by staff, and any relevant information demonstrating why the manufacturer believes the Department action is in error.

(3) The Director will respond to an appeal within fifteen days.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229-469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0070

Mailing List

Pursuant to ORS 183.355(8), the Department will establish a mailing list of manufacturers for each category of regulated equipment and other interested parties to give notice of program information including proposed rulemaking.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)

Stats. Implemented: ORS 469.229-469.261, OL 2013, Ch. 418

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

DIVISION 100

SMALL SCALE LOCAL ENERGY PROJECT PROCEDURAL RULES

330-100-0000

Notification of Rulemaking Activities

Prior to the adoption, amendment or repeal of any rule, the Small Scale Local Energy Project Loan Program will give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of action;

(2) By mailing a copy of the notice to persons on the Small Scale Local Energy Program's mailing list established pursuant to ORS 183.335(7);

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 28 days before the effective date of the rule; and

(4) By mailing a copy of the notice to the Associated Press, the Oregonian and the Capitol Press Room.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 470.140

Hist.: DOE 10-1980, f. & ef. 9-5-80; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-100-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Small Scale Local Energy Loan Program adopts the Attorney General's Uniform and Model Rules of Procedure Division I and II under the Administrative Procedures Act as amended and effective January 15, 2004.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Department of Energy.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 470.140

Hist.: DOE 10-1980, f. & ef. 9-5-80; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

DIVISION 105

REVIEW OF LOAN REQUESTS BY THE SMALL SCALE LOCAL ENERGY PROJECT ADVISORY COMMITTEE

330-105-0005

Definitions

Where context permits, these definitions apply to ORS Chapter 470 and these rules:

(1) "Application" or "Request" means an application submitted on a Department-approved form and its supporting papers.

(2) "Adverse Decision" means a decision to deny a loan application or to make a loan in an amount contrary to advice of the Committee.

(3) "Committee" means the Small Scale Local Energy Project Advisory Committee created under ORS 470.070.

(4) “Secretary” means the Secretary to the Committee. He or she will be an employee chosen by the Director.

(5) The definitions contained in OAR 330-110 and ORS 470.050, as amended, apply to these rules.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0007

Committee Officers and Their Powers

The Committee will elect a Chair and Vice-Chair every two years. The Chair or Vice-Chair may serve until his or her successor is elected. The Chair or Vice-Chair may be removed by a unanimous vote of the other members. A vacant office will be filled by vote at the next Committee meeting.

(1) The Chair will preside over all Committee meetings. Except as provided in (3) below, the Chair will sign all documents on behalf of the Committee. The Vice-Chair will fill the role of the Chair when the Chair is absent.

(2) The Chair may create, and appoint members to, sub-committees. Sub-committee members are not required to vote or concur on their findings. Each may report alone to the Committee or Chair.

(3) Only the Chair may sign letters in the name of the Committee unless the Committee by vote authorizes a member or the Secretary to do so. All letters of the Committee will be prepared and filed by the Secretary. The Committee must approve in advance any letters.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.070

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0008

Committee Meetings

(1) The Committee will meet at the call of the Chair. Four or more members may also call a meeting. The Chair may run meetings informally. The Chair may require that Robert’s Rules of Order be used to run all or part of any meeting.

(2) The agenda for each meeting will be prepared by the Secretary and the Chair. The agenda will set out all matters set to come before the Committee at the meeting. The Secretary will send the agenda and related material to members at least one week prior to a meeting. If the Chair or a majority of the members concur:

(a) New matters may be added to the agenda;

(b) Debate may be limited on any matter; or

(c) The agenda may be revised.

(3) OAR 330-105-0007 through 330-105-0045 provide for the orderly conduct of Committee meetings. Failure to strictly comply with the requirements of OAR 330-105-0007 through 330-105-0045 will not invalidate any action taken by the Committee or keep it from taking action on a matter.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.070 - 470.080

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

Procedure for Review

330-105-0015

Committee Review

(1) The Department will process each loan request and recommend approval or denial of the loan request and specify the amount, terms and conditions of the loan.

(2) The Department will send to the Committee members for review notice of its recommendations, together with a copy of the loan request and the staff review and findings, on the following:

(a) Any loan requests, other than state agency loan requests, of more than \$100,000;

(b) State agency loan requests of more than \$500,000;

(c) Loan assumption requests of more than \$100,000 by non-government borrowers; and

(d) Loan increase requests of more than \$25,000 and more than 10 percent of the original approved loan amount where the total loan amount exceeds the limits set above for Committee review.

(3) Failure of the Committee to respond to the Department within 14 days from the date of mailing of the Department’s notice of its recommendations means concurrence with the Department’s recommendations. Should a majority of Committee members, including the Chair, contact the Department and decline to hear the loan request before the 14 days have passed, the Department may proceed with its recommendation.

(4) The Secretary will inform the Committee members, in writing, of each loan amount or loan denial recommended to the Director.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0020

Oral Comments

(1) The Committee may choose whether to hear comment on any matter before it.

(2) The Department will inform applicants, in writing, of the date, time, and place of any Committee meeting set to hear their requests.

(3) The Committee may set time limits on comments.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0025

Committee’s Advice to the Director

After its review, the Committee will inform the Director in writing:

(1) Whether the project complies with OAR 330-110; and

(2) The recommended amount and terms or conditions for the loan.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0030

Procedure for Appeal Introduction

The Director will decide the amount of any loan. If the decision is adverse, the Committee may appeal to the Governor.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 - 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0035

Notice of Adverse Decision

The Secretary will give prompt notice of any adverse decision and the reasons for such decision. Notice will be sent to the applicant and Committee members.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.090

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 7-26-88; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0040

Appeal to the Committee

An applicant may ask the Committee to review an adverse decision. The request must be made in writing to the Secretary within 10 working days after the date of the notice of the Director’s

decision. It must give the grounds for review in detail. The Secretary will send the request promptly to the Committee.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0045

Appeal to the Governor

(1) The Committee may decide by majority vote to appeal an adverse decision to the Governor. The appeal must be made within the time allowed by law. The appeal may include a copy of the application, the staff findings and recommendations, the notice of the Director's decision, and a statement of the reasons for the appeal. It may also include transcripts or recordings of comments made to the Committee during its review.

(2) The decision of the Governor is final. If the Governor fails to act within 30 days after receiving the appeal, the appeal is denied.

(3) The Secretary will inform the applicant and the Committee in writing of the Governor's decision.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

DIVISION 110

THE SMALL SCALE LOCAL ENERGY LOAN PROGRAM

330-110-0005

Purpose, Statutory Authorization, Policy

(1) The purpose of these rules is to provide procedures for the Small Scale Local Energy Loan Program and standards and criteria for projects to be met by applicants. These rules are authorized by ORS 469.040, 470.080 and 470.140.

(2) It is the goal and policy of the Oregon Department of Energy and the Small Scale Local Energy Project Advisory Committee that these rules and the loan program:

(a) Encourage diversity in projects;

(b) Develop and maintain a loan portfolio that is reasonably balanced across market sectors and project and borrower types; and

(c) Fund energy projects that support the Department's goal for energy efficiency, generation and security without regard to energy source.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0010

Definitions

As used in ORS Chapter 470 and in these rules, the following definitions apply:

(1) "Adequate security" means the pledge of real or personal property given to secure a loan against loss or credit enhancement, guaranty or other security of value authorized by ORS 470.170, given as assurance that the loan will be paid.

(2) "Alternative fuel project" means sub-sections (a) and (b):

(a) The purchase of a fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, gasohol with at least twenty percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane, biodiesel or any other fuel approved by the Director; and

(B) Produce lower exhaust emissions or are more energy efficient than those fueled by gasoline.

(b) A facility, including a fueling station, necessary to operate alternative fuel vehicles.

(3) "Alternative Fuel Vehicle Revolving Fund Program" means the loan program established by Oregon Laws 2013, chapter

774, sections 1 through 7 for public bodies defined in ORS 174.109 and federally recognized Indian tribes in Oregon.

(4) "Applicant" means a loan program applicant.

(5) "Application" means a completed loan application on a Department-approved form that contains all required information, is dated and signed by an authorized representative of the applicant, and is accompanied by the required documentation and the application and underwriting fees. The term "application" includes all documentation submitted in conjunction with a loan application, whether at the time of original submission of the loan application or later and all modifications of the application that was originally submitted.

(6) "Biomass" means plant and animal matter, but not fossil fuels.

(7) "Cogeneration" means the sequential production of electrical or mechanical energy and useful thermal energy from a primary source including but not limited to oil, natural gas or biomass. Cogeneration must qualify under the Small Scale Local Energy Loan Program Technical Requirements.

(8) "Committee" means the Small Scale Local Energy Project Advisory Committee.

(9) "Conservation measure" means a system, component of a system, mechanism or series of mechanisms, support service or combination thereof that:

(a) Reduces the use of energy at the project site;

(b) Directly avoids the loss of energy in the transmission of energy;

(c) Conserves energy used in transportation with the energy savings being substantially in Oregon;

(d) Is a cogeneration project; or

(e) Increases the production or efficiency of or extends operating life of a system or project otherwise described in OAR 330-110-0010, including but not limited to restarting a dormant project.

(10) "Conventional fuels" means purchased electricity or fossil fuels.

(11) "Creditworthy" means, in regard to an applicant, able to repay its debts as they become due, as evidenced by a satisfactory credit history, sufficient financial resources or other indication of financial strength as approved by the Department.

(12) "Delinquent account" means a loan that has not been paid in accordance with the terms of the underlying loan documents.

(13) "Demonstration project" means a project that showcases new or improved technologies or designs that promise cost-effective production or conservation of energy if adopted by the marketplace.

(14) "Department" means Oregon Department of Energy.

(15) "Director" means the Director of the Department or designee.

(16) "Energy need" means any of the energy demands forecasted by the Department under ORS 469.070 and the need to save energy to cut costs.

(17) "Financial feasibility" means that:

(a) The primary repayment source for the loan has been identified, the applicant is creditworthy and the project is financially viable; and

(b) Adequate security is offered to provide a secondary source of repayment.

(18) "Financial statement" means a report of a person's financial operations or condition including but not limited to balance sheets, statements of financial condition, statements of financial position, income statements, statement of earnings, statements of revenues and expenses, statements of profit and loss, statements of operations, statements of retained income, statements of cash flows, statements of changes in financial position, pro forma statements, aging reports and any accounting reports, reviews, audits, tax returns or other financial information submitted as, or as a part of, a representation of financial condition in a Department approved format using Generally Accepted Accounting Principles (GAAP).

(19) "Fleet" means two or more vehicles used for commercial or governmental purposes primarily operated in Oregon.

(20) "Interim loan" means a disbursement of a program loan for the purpose of paying for pre-construction and other approved project costs prior to permanent funding.

(21) "Loan contract" means, in addition to the meaning set forth in ORS 470.050, the loan agreement and all other documentation required by the Director to make a loan or change its terms and conditions.

(22) "Local community or region" means one or more energy users in Oregon.

(23) "Municipal corporation" has the meaning assigned to that term by ORS 470.050.

(24) "Person" means a natural person or a validly existing entity that is duly organized under the laws of a state, including but not limited to a partnership.

(25) "Preference" means, in any choice between financially feasible projects or applicants, preference under ORS 470.080 and these rules.

(26) "Primary repayment source" means the business revenues produced by the borrower of a loan that is or will be used to pay the debt service on a loan.

(27) "Program" means the Small Scale Local Energy Loan Program.

(28) "Project" has the meaning given to "small scale local energy project" in ORS 470.050; including systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in Oregon or are recycling or alternative fuel projects. The project may produce heat, electricity, mechanical action or alternative fuels. A project may also be an improvement that increases the production or efficiency of or extends the operating life of a system or device or project otherwise described in these rules, including but not limited to restarting a dormant project. A project also:

(a) Must be primarily in Oregon but can have a minor contiguous component in a neighboring state, or in the case of energy conservation the project can provide substantial benefits to Oregon. The components located in Oregon should exceed 70 percent of the portion of the project cost financed by the program;

(b) Can directly or indirectly conserve energy or enable the conservation of energy or use or enable the use of a renewable resource, by the applicant or another person, to produce energy, as, for example, power transmission or conditioning, energy storage or smart metering; and

(c) Can directly or indirectly reduce the amount of energy needed in the construction and operation of a facility, including the manufacture and transportation of construction materials, but the project or components must meet acceptable sustainability practices established in the Small Scale Local Energy Loan Program Technical Requirements.

(29) "Qualified" means, in regard to an applicant, able and eligible under the law to apply for a loan and enter into a loan contract.

(30) "Recycling project" means a facility or equipment that conserves energy by converting solid waste, as defined in ORS 459.005, into a new and usable product.

(31) "Renewable resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(32) "Security value" means the value assigned by the Department, based upon an internal review or an appraisal by a qualified third party acceptable to the Department, to the project or security being offered as collateral for a loan.

(33) "Small business" has the meaning given in ORS 470.050.

(34) "Small Scale Local Energy Loan Program Technical Requirements" means the specific technical requirements of the Department for certain projects. An application will be subject to the Technical Requirements in effect on the date the Department receives a complete application.

(35) "Usable life" of a project means the number of years that a project can likely function without major repair or replacement.

(36) "Waste heat" means produced but unused heat that can be applied to an energy need.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 2-1981(Temp), f. & ef. 6-3-81; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1991(Temp), f. & cert. ef. 6-10-91; DOE 3-1991, f. & cert. ef. 12-3-91; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12; DOE 4-2013, f. & cert. ef. 12-12-13

330-110-0012

Small Scale Local Energy Project Advisory Committee Appointments, Term and Term Limit, Renewal, Member Removal

(1) Committee Appointment Process. As committee vacancies arise, the department will issue a committee member opening announcement.

(a) Applicants must complete an Oregon executive appointments interest form.

(b) The department may conduct in-person interviews, perform a background check and consult with current committee members.

(c) An applicant may be invited to attend a committee meeting.

(d) Department staff will submit a written recommendation to the director.

(e) The director will consider the recommendation and make the final determination, in accordance with ORS 470.070(2).

(f) If selected, the director will issue a signed letter of appointment and the applicant must accept within ten days.

(2) Committee Member Term; Term Limit.

(a) A committee member serves for a four-year term.

(b) A member's term starts on the date of appointment and until a successor is appointed and qualified.

(c) No committee member may serve more than two terms.

(3) Committee Renewal Process. Upon the recommendation of the committee, the director will review and may reappoint committee members for a second term.

(4) Committee Member Removal. The director may remove a committee member for any of the following:

(a) For any cause that is counter to the interests of the citizens of this state or the goals and mission of the committee, loan program or department.

(b) Upon missing three scheduled committee meetings in a 12-month period, the director may remove a committee member. The department schedules six committee meetings a year.

Stat. Auth.: ORS 469.040 & 470.140

Stats. Implemented: ORS 470.050 - 470.815

Hist.: DOE 2-2014, f. & cert. ef. 3-7-14; DOE 6-2014, f. & cert. ef. 9-30-14

330-110-0015

Eligible Costs

Subject to these rules, a loan may be approved to pay for:

- (1) The cost of buying, building and installing a project;
- (2) Audit, study, commissioning and design costs; and
- (3) Reserves, interest, staff training and site preparation costs.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0016

Ineligible Costs

(1) Loans funded from proceeds of tax-exempt bonds may not pay capital costs incurred prior to bond issuance unless the Department has adopted a reimbursement resolution declaring an intent to reimburse capital costs that are paid after or no more than 60 days prior to such resolution.

(2) Except as allowed in ORS 470.050, the proceeds of a loan may not be used to pay for parts of a project that are not consistent with energy production using renewable resources or energy conservation or that do not qualify as an alternative fuel project or recycling project, or do not meet a sustainability standard set out in the Small Scale Local Energy Loan Program Technical Require-

ments, unless the project is found by the Director to be a demonstration project.

(3) The proceeds of a loan may only be used to pay for projects or components of a project that have longer than a 12 month simple payback. For the purposes of this subsection, "component" means a part of a project that ordinarily saves or produces energy by itself and that costs more than ten percent of total, estimated project costs.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0025

Application

(1) The Department may provide an initial review and advise whether a project appears to qualify for loan financing by the program. The Department's advice, however, does not constitute a loan approval or any other binding commitment. The Department requires that an application be submitted and the required fees be paid if a potential applicant wishes to apply for a loan after an initial review.

(2) An application must be made on Department approved forms and in a manner set by the Department.

(3) The Department may request an applicant's social security number in accordance with provisions of the Privacy Act of 1974.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.060 & 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0030

Application Review Process

(1) In reviewing an application for financing by the program, the Department may require an applicant to submit further documentation to determine whether a loan should be made. If the Department fails to receive any items requested of the applicant within fourteen days after making its request in writing, the loan request may be denied. If the loan request is denied and the applicant still desires to make a loan application, the applicant must submit a new application and pay again any fees and charges applicable to loan applications that are described in OAR 330-110-0055.

(2) Application review and appeal must conform to ORS 470.080 to 470.100 and OAR 330-105.

(3) Loan approval or denial is communicated to an applicant in writing. A Department issued approval expires on the expiration date stated in the approval, or if no date is given, 60 days after the date of the approval. If the loan is not closed prior to the date the approval expires, an applicant must submit a new application and pay the fees and charges applicable to a new loan application. Any substantial change, including but not limited to, a change in financial position, project scope or the ownership of applicant, prior to the expiration of the approval, may result in the voiding of the loan approval and require submission of a new loan application.

(4) The Department may require a third party project and financial feasibility study in form and substance acceptable to the Department as a condition of approval on a loan. Applicant must pay the cost of a third party study.

(5) Findings under ORS 470.090 are for the benefit of the Department for lending purposes only. They do not endorse the project, its design or its parts. They offer no assurance of any kind to any person or entity, including the applicant, for any purpose.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 - 470.100

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0035

Findings by the Director

(1) To approve an application for a loan, the Director must make the following findings:

(a) The project is consistent with preservation and enhancement of the environment. Factors may include whether the project saves conventional fuel, makes efficient use of a renewable resource, reduces greenhouse gas emissions or promotes sustainability.

(b) The plan for the project assures its timely completion, quality and adequate funding. Funding includes adequate working capital and reserves.

(c) The project meets the goals of the Department.

(d) The applicant has certified as part of the application that the applicant is in compliance with applicable state and local regulations. If requested, the applicant must provide compliance documentation. Failure to disclose any issues regarding compliance or any issues of non-compliance may result in denial of an application by the Department.

(e) Any other findings required by ORS 470.090.

(2) The Director 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.

(3) The Director may deny a loan because other sources of funding are inadequate.

(4) The Director may limit the size or number of loans made by the program.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0036

Public Health, Safety, and Environmental Issues

(1) The policy of the Department is:

(a) To accept the findings of local, state and federal agencies that license or permit projects to be built or run; and

(b) To avoid influencing any of those agencies to approve or deny a license or a permit.

(2) Each applicant must provide information demonstrating that the proposed project will:

(a) Obtain each local, state and federal permit and license that applies to a project;

(b) Comply with the express terms and conditions of each permit and license;

(c) Comply with all state, federal and local laws and regulations that apply to the project; and

(d) Obtain a favorable land use decision from the city or county where the project will be built.

(3) The Department may issue a loan approval based on the applicant's representation or promise that each license and permit has been or will be obtained in a timely manner. If the applicant fails to obtain any required license or permit in a timely manner, the Department will revoke the loan or approval.

(4) The licensing or permitting agency must confirm in writing if any license or permit named in these rules is not required. Such confirmation is not needed for conservation measures for which the Department has already confirmed that such a license or permit is not required.

(5) Waterpower developers must comply with the following:

(a) A project on a navigable stream or connecting to a utility must obtain a license or exemption from the Federal Energy Regulatory Commission;

(b) A license or permit to use water for power must be obtained from the Water Resources Commission; and

(c) The requirements of the Northwest Power and Conservation Council's Columbia Basin Fish and Wildlife Program.

(6) Geothermal developers must obtain a geothermal well permit from the Department of Geology and Mineral Industries or a permit to use ground water from the Water Resources Commission.

(7) Biomass cogeneration developers must obtain an air contaminant discharge permit, a waste discharge permit and a solid waste disposal permit from the Department of Environmental Quality.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 & 470.150

Hist.: DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0040

Loan Limits, Security, and Conditions

(1) The Director may limit the term and amount of any loan or loan approval. The Director may deny any application or set such terms and conditions in regard to any loan or loan approval as needed to assure a sound loan or to protect the fiscal integrity of the program.

(2) A loan secured by real property must be secured by a first lien on such real property in favor of the State of Oregon and must not exceed eighty percent of the security value of such real property. The real property that is collateral for the loan must have been appraised by a licensed appraiser, county assessor or Department appraiser, at the discretion of the director, no longer than six months prior to the date of the loan approval. The Department will consider junior liens only on a case-by-case basis.

(3) If a loan to a municipal corporation will be repaid from project income, the security package for the loan may include the project income.

(4) A loan to a state agency, an eligible federal agency or a public corporation may be secured by project income, in addition to the facility or equipment that make up the project, by a lease purchase contract or by other income or security in accordance with ORS 470.170. State agencies, eligible federal agencies or public corporation borrowers must provide resolutions or other official action of borrower's governing body approving the loan and the other matters contemplated by the loan documents, and of all other documents evidencing any other necessary action by Applicant's governing body.

(5) The Department generally requires an unconditional and absolute guaranty of the owners or the principal shareholder of the borrower or that of a person having sufficient resources to satisfy the borrower's repayment obligation for the loan should the borrower default.

(6) The Director may consider savings in operation and maintenance costs in estimating the annual project cost savings. The Director may also, when calculating the estimated savings in fuel costs, consider reasonably expected increases in the cost of fuel.

(7) A project that primarily produces energy for sale must have:

(a) Secure sources of supply and contracts for the sale of output;

(b) Projected income, net of operating expenses and maintenance costs, of at least 125 percent of annual debt service for each year of the loan; and

(c) An identified secondary source of repayment apart from the project income.

(8) Unless the Director finds that mitigating financial factors warrant otherwise, a loan to a business for a project that saves or produces energy for use on site, is an alternative fuel project or is an energy-saving recycling project may be made only:

(a) Upon an identifiable and reasonable primary repayment source and the pledge of adequate security;

(b) For less than 80 percent of the security value of real property on which the Department has a first lien, the Department will consider junior liens on a case-by-case basis;

(c) To a business that has made a profit after taxes for at least the two years immediately preceding the loan application; and

(d) To a business that has a ratio of current assets to current liabilities of at least 1.75 to 1 and a ratio of total debt to owner's equity of no more than 2 to 1. The Director may exempt a business from the requirements of OAR 330-110-0040 if it demonstrates to

the satisfaction of the Director that sound businesses of similar type and size do not normally meet these standards.

(9) Loan proceeds must be used for the costs of a small scale local energy project, with the following limitations:

(a) Cost of acquisition of the project site must not exceed ten percent of the loan amount.

(b) Start-up costs must not exceed three percent of the loan amount.

(c) Reserves must not exceed fifteen percent of the loan amount.

(10) The loan proceeds of an alternative fuel project may only be used for the following purposes:

(a) Incremental costs of the project that are beyond the reasonable estimated minimum costs to construct or install a similar project without alternative fuel features. Incremental costs do not include the cost of equipment or devices that, in standard industry practice, are used to dispense gasoline or, in the case of vehicles, equipment or devices that use gasoline and that also allow use of an alternative fuel without modification. Alternative fueling stations with underground fuel tanks do not qualify for funding as alternative fuel projects.

(b) In the case of vehicles, products and installation of such products approved by and meeting or exceeding the emission standards of the Department of Environmental Quality.

(11) No more than fifty percent of loan proceeds may be used to refinance existing debt authorized by ORS 470.050(27)(g) unless such debt is with the Department. The refinancing must result in a significant increase in the security value of the loan security.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080, 470.120, 470.150 - 470.155, 470.170 & 470.210

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12; DOE 2-2013(Temp), f. & cert. ef. 6-17-13 thru 12-13-13; DOE 4-2013, f. & cert. ef. 12-12-13

330-110-0042

Bond Refunding

(1) The Department must pursue opportunities to refund bonds to reduce interest sums paid by the Department.

(a) When the Department refunds a bond with tax-exempt bonds, the Department must share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300(1). Affected borrowers are those whose loans were made with the proceeds of the refunded bonds.

(b) For the purposes of OAR 330-110-0042(1), savings from a refunding are shared on an equitable basis if the Department receives half the savings, and the affected borrowers receive or split half the savings, net of costs, from a bond refunding. When the Internal Revenue Code or other law limits the amount of refunding savings the Department may retain or provide to the affected borrowers, the Department may receive less or more than half the savings, and the affected borrowers will receive the remainder. If multiple loans were funded from the proceeds of the refunded bonds, the affected borrowers will share the savings in proportion with their respective shares of the proceeds of the refunded bonds that were used to make their loans, adjusted for the remaining term to maturity of their loans.

(2) Savings from a bond refunding accrue over the remaining term of the refunded bonds. The Department will share these savings with affected borrowers by reducing the amount of their loan payments over the remaining term of the loans. If the accumulated savings over the remaining term of a loan is less than \$15,000 or if the Director finds that it is in the interest of both the Department and the borrowers, the Department may reduce the principal amount of the loan by the net present value of the savings,

calculated using a discount rate of the maximum arbitrage yield of the refunding bonds as defined in Section 148 of the Internal Revenue Code.

(3) The Department must not refund tax-exempt bonds with taxable bonds, unless the Department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds.

(4) At least 120 days before the date on which the Department intends to issue refunding bonds, the Department must notify each borrower whose loan was made from the proceeds of the bonds being refunded and must offer the borrower the opportunity to prepay the borrower's loan. The Department will request that the borrower notify the Department of its intent to prepay their loan within 60 days of the date of the notification or risk losing the opportunity to prepay.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.270

Hist.: DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0045

Waiver, Authority of Administrator

The Director:

(1) May, in writing, waive any of these rules. The waiver must serve the aims of the program, not cause financial damage to the program, and not conflict with ORS Chapter 470.

(2) May contract with regulated financial institutions, state or federal agencies or others to provide services, subsidies or grants to the program.

(3) May take such steps as are needed to recover loan funds and prevent their misuse, or to prevent a project from being diverted from its purposes.

(4) May delegate, in writing, authority to approve, deny or amend loans and to execute bond and loan documents. A partial release of lien may be granted by the Director upon the written request of a borrower if the security value of the remaining security is adequate to secure the loan and meet the security requirements of OAR 330-110-0040. The Director will consider the creditworthiness and repayment history of the borrower in considering such a request.

(5) May contract with a person to operate a project in the event of any default that results in the Department taking and running the project.

(6) May settle, modify or release any person from liability for a loan so long as such action does not damage the program.

(7) May take any action allowed by law to comply with federal codes and rules on bonding or to assure the payment of program bonds.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 & 470.150

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0046

Loan Amendments

The Department may amend the terms of a loan in accordance with OAR 330-110-0046.

(1) Amendments may include but are not limited to amending the interest rate or payment amount in accordance with a bond refunding, changing payment dates or extending maturity dates.

(2) A borrower must request a loan amendment in writing. The request must include a detailed explanation of the amendment requested with information and documentation by the borrower that demonstrates the need for the amendment.

(3) When considering a request for a loan amendment, the Department may require the borrower to submit information it deems necessary to evaluate the request, such as financial statements, collateral information and valuation.

(4) The Department will only approve a loan amendment request if the amendment results in a significant increase in the

security value to the loan security or significantly improves the borrower's ability to meet its obligations in regard to the loan.

(5) The borrower will be notified in writing whether or not the Department will agree to the requested loan amendment.

(6) Approved loan amendments are subject to a fee of \$300 plus additional charges for items listed in OAR 330-110-0055. Such charges will be estimated or itemized for the borrower.

Stat. Auth.: ORS 469.040 & 470.080, 470.140

Stats. Implemented: ORS 470.050 & 470.815

Hist.: DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0047

Loan Forbearance

The Department may consider forbearance on a loan, but will only consider forbearance if the borrower is current on its loan payments and is in compliance with the terms of its loan documents.

(1) If a borrower is requesting forbearance for its loan, this loan must be current and in good standing, and have no late charges outstanding, up to and including the date the forbearance documents are signed.

(2) A borrower must request forbearance in writing. The request must include a detailed explanation of the reason for the forbearance request including information and documentation that demonstrates the need for the forbearance.

(3) When considering a request for forbearance, the Department may require that the borrower submit information it deems necessary to evaluate the request, such as financial statements, collateral information and valuation.

(4) The borrower will, within thirty days of its request, be notified in writing whether or not the Department agrees to the loan forbearance request.

(5) The Department will only approve a forbearance request from a borrower who has submitted a written plan demonstrating that the temporary suspension or reduction of loan payments will significantly increase the likelihood of full loan repayment.

(6) The Department may extend a forbearance agreement beyond the initial forbearance period, if the circumstances, in the Department's sole discretion, justify such an extension.

(7) A borrower requesting forbearance must pay the Department a loan servicing fee that is calculated on the basis of the borrower's payment amount and loan balance. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the borrower before they are incurred.

(8) Approval of a forbearance request will not reduce the borrower's liability to the Department for the loan.

Stat. Auth.: ORS 469.040 & 470.080, 470.140

Stats. Implemented: ORS 470.050 & 470.815

Hist.: DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0048

Delinquent Accounts

Delinquent loans will be managed in accordance with ORS 470.170 and subject to the Department's collection procedures, including but not limited to: (a) written demand, (b) collection of late fees, (c) acceleration of the amount due, (d) action against a guarantor or (e) any other legal remedy available to the Department.

Stat. Auth.: ORS 469.040 & 470.080, 470.140

Stats. Implemented: ORS 470.050 & 470.815

Hist.: DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0055

Fees and Charges

Pursuant to ORS 470.060, an applicant will pay the Department for costs to review, process and service a request for a loan. Applicants will pay the following fees and charges:

(1) A non-refundable application fee as fixed by ORS 470.060. "Application," as used here, includes a request to assume or transfer or increase an existing loan but does not include a request for an interim loan made in an application for a permanent loan for a project. If the Department consults with an applicant on a loan before an application is submitted the applicant must pay an application fee after the first hour of consultation. The fee will be

applied to the application fee for an application that is submitted within thirty days of the consultation. If an application is submitted more than thirty days after the consultation, the applicant must pay a new application fee.

(2) A non-refundable underwriting fee of \$500 or one-half of one percent of the loan request amount, whichever is greater, but not to exceed \$5,000.

(3) A loan fee of between one and four percent of the loan amount based upon the Director's assessment of the risk profile of the project, payable at loan closing.

(4) Charges for items including, but not limited to credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals, unless charges incurred also benefit another application, in which case the charges will be divided equitably. Such charges will be estimated or itemized for the applicant before they are incurred.

(5) A fee of \$500 for each request to release or modify security. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the applicant before they are incurred.

(6) The interest rate set in a binding loan commitment may not be increased without the applicant's consent except as provided in the loan commitment or the loan documents. The interest rate for any project proposed by an eligible federal agency must be set in accordance with ORS 470.150(2). Loan contracts may provide for rates to be adjusted upon issuance of the bonds whose proceeds fund the loans.

(7) The Department may offer a fee that combines the fees and charges in OAR 330-110-0055(1) through (3) and that is equal to or less than the sum of the fees and charges in 330-110-0055(1) through (3). If offered, a combined fee will apply to any applicant receiving similar loan terms.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.060 & 470.150

Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0060

Alternative Fuel Vehicle Revolving Fund Program; Loan Terms

(1) The department will use the moneys from the Alternative Fuel Vehicle Revolving Fund to provide loans to private entities as defined in ORS 469.960, public bodies defined in 174.109 and federally recognized Indian tribes in Oregon and may use the moneys to pay for the department's expenses in administering the Alternative Fuel Vehicle Revolving Fund, Alternative Fuel Vehicle Revolving Fund Program and related costs.

(2) As defined in ORS 469.960 to be eligible for this loan program, private entities must operate a fleet of motor vehicles that are based in an area described in 468A.390 or 815.300 and must not hire fleet drivers who qualify as independent contractors, as defined in 670.600.

(a) The department may use the address on the vehicle titles, the area the vehicles are operated the majority of time and other evidence of primary usage location to determine the fleet's base. Section (2) does not apply to public bodies or tribes.

(b) Eligible private entities must certify, on the application form, stating they do not hire fleet drivers who qualify as independent contractors.

(3) The loans may not be used for the full purchase or any expense not related to the alternative fuel vehicle project. Loans must be used to:

(a) Assist in the purchase of new alternative fuel vehicles by providing funding for the incremental cost of purchasing alternative fuel vehicles that exceeds the cost of purchasing vehicles that are not alternative fuel vehicles; or

(b) Convert or modify existing vehicles that use gasoline or diesel to alternative fuel vehicles. A conversion or modification of a motor vehicle must include at least one eligible alternative fuel as described in OAR 330-110-0060(4).

(4) Alternative fuel vehicle means:

(a) A motor vehicle, as defined in ORS 801.360;

(b) That is manufactured or modified to use an alternative fuel, including but not limited to electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other fuel approved by the department;

(c) That produces lower exhaust emissions or is more energy efficient than equivalent equipment fueled by gasoline or diesel;

(d) Registered in Oregon in accordance with ORS 803; and

(e) If a conversion or modification, new equipment is installed by a qualified technician that is compliant with Environmental Protection Agency or California Air Resources Board standards.

(5) The terms and interest rate for these loans will be established by the department to recover the administrative cost of this loan program and to maintain a perpetual source of funding for the Alternative Fuel Vehicle Revolving Fund Program. A loan must be fully amortized not later than six years after the purchase of the new alternative fuel vehicle being financed by the loan or the conversion of a vehicle that uses gasoline or diesel to an alternative fuel vehicle.

(6) The department will convene a review committee to review and prioritize loans, as needed.

(7) The department may list the evaluation criteria for prioritizing loan applications. The department will give priority to loans for conversions or modifications. The additional criteria the department may consider for each vehicle covered by the application include, but are not limited to:

(a) Fuel displacement capacity,

(b) Geographical area or local economic conditions of the home base,

(c) Accelerated repayment schedule,

(d) Age of the vehicle,

(e) Estimated annual mileage,

(f) Gross weight of the vehicle, and

(g) Emissions.

(8) A loan application must be made on department approved forms and in a manner set by the department. An applicant must designate the Alternative Fuel Vehicle Revolving Fund Program in the purpose section of the application and include the required fees. For each vehicle covered by the application, the application must include information needed for prioritization in OAR 330-110-0060(6) plus the following information:

(a) Vehicle Identification Number;

(b) Vehicle make, model, year and description;

(c) Current odometer reading;

(d) Name of titled owner;

(e) Gross vehicle weight;

(f) Fuel economy;

(g) Estimated annual mileage;

(h) Borrowing authority;

(i) Loan repayment information, identifying the dedicated source of revenue for repayment purposes; and

(j) Any other information requested by the department.

(9) Submitting a loan application does not guarantee the department will provide a loan to the applicant.

(10) The proceeds of loans made from the Alternative Fuel Vehicle Revolving Fund may be used for purchases or conversions as described in OAR 330-110-0060(2) no more than 60 days prior to the department receiving the loan application.

(11) No one borrower may obtain a loan for greater than 30 percent of the total available, uncommitted funds in the Alternative Fuel Vehicle Revolving Fund. The department may adjust the allowed percentage for a borrower based on program usage. The department may also set a maximum aggregate amount of all loans outstanding that a single public entity or tribe may have under the Alternative Fuel Vehicle Revolving Fund.

(12) Loans made from the Alternative Fuel Vehicle Revolving Fund will be subject to the department's underwriting standards and the requirements in OAR Chapter 330, division 110. Loans require final approval by the Director.

(13) Pursuant to ORS 469.964 as amended by Oregon Laws 2014, chapter 38, section 4, the department may charge fees for Alternative Fuel Vehicle Revolving Fund loan applications. Applicants will pay the following fees and charges:

(a) For loan amounts of \$100,000 or more:

(A) A non-refundable application fee of 0.1 percent of the amount of the loan applied for up to \$2,500.

(B) A non-refundable underwriting fee of \$500 or 1.5 percent of the loan request amount, whichever is greater, but not to exceed \$10,000.

(C) Charges for items including, but not limited to credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals, unless charges incurred also benefit another application, in which case the charges will be divided equitably. Such charges will be estimated or itemized for the applicant before they are incurred.

(b) For loan amounts up to \$100,000, refer to the department's Loan Fee Chart for a fee that combines the fees and charges described in this section and that is equal to or less than the sum of the fees and charges described in this section.

(c) A charge for the cost of each request to release or modify security.

(14) An Alternative Fuel Vehicle Revolving Fund borrower must report, on an annual basis for the term of the loan, the following:

(a) Miles driven,

(b) Amount of fuel consumed, and

(c) Other data as described in the loan agreement.

Stat. Auth.: ORS 469.040-469.963 & 469.966

Stats. Implemented: ORS 469.960-469.966

Hist.: DOE 4-2013, f. & cert. ef. 12-12-13; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0020

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0040

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.

(3) 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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

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 PPFA.

(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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0070

Standards for Contractors during Pilot Programs

Contractors without certification may work on projects under pilot programs if no certified contractor is available, and the PPFA 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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0080

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0090

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.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0100

Fees

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

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

DIVISION 118

STATE AGENCY ENERGY SAVINGS PROGRAM

330-118-0000

Purpose

OAR 330-118-0000 through 330-118-0090 allows state agencies to retain and spend 50 percent of the net savings from energy projects pursuant to ORS 469.752 to 469.756.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

330-118-0010

Definitions

As used in Chapter 487, Oregon Laws 1991 and in these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) “Baseline Energy Budget” means the expenditure limitation amount budgeted for energy costs by the agency immediately prior to installation of the project.

(2) “Budget and Management Division” means the Department of Administrative Services Budget and Management Division.

(3) “Cogeneration” has the meaning given that term in ORS 758.505(2).

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

(5) “Efficiency of Energy Use” means the ratio of output (work done) to input (energy used).

(6) “Electric Utility” means a utility which is regulated by the state or the Federal Energy Regulatory Commission that provides retail electric power to consumers.

(7) “Energy Cost savings” means the dollar savings based on the annual monitored savings from the project calculated as follows:

(a) For projects which do not sell energy or power to an electric utility or the Bonneville Power Administration, energy savings times the last rate in effect or fuel cost during the monitored savings period;

(b) For projects which sell energy or power, the amount of energy or power delivered to one or more electric utilities or the Bonneville Power Administration as a result of the project times the rates(s) stated in the energy or power sales agreement(s);

(c) For projects which do not either sell or use all of their energy or power savings or production, the energy cost savings shall be the sum of amounts proportionally calculated as in subsection (a) and (b) of this section.

(8) “Energy Savings” means the amount of energy not used as a result of the project as compared to a prior period. Prior period energy use may be adjusted for changes in building use or occupancy. Energy savings result from the efficiency of energy use. Energy savings shall be measured in millions of Btus (MMBtus), and may be the result of vehicle, aircraft or vessel miles not travelled.

(9) “Gas Utility” means a public utility as defined in ORS 757.005(1)(a)(A) which provides natural gas service to consumers.

(10) “Infrastructure Improvements” means improvements to facilities, buildings, equipment and other components which make up and support the physical structure of the agency.

(11) “Monitored Savings” means measurements of actual energy savings or the miles reduced per vehicle, and may include, but not be limited to, energy accounting systems, energy bill comparisons, and metering. Subject to the approval of the Department, engineering estimates may be used in cases where measurement of actual savings is not practical.

(12) “Net Savings” means the operating savings and the energy cost savings, after debt service, leases, operations and maintenance costs, service contracts insurance, fuels and their transport and storage, transmission, and other recurring direct costs, resulting from a project. Net savings shall accrue only during the savings period.

(13) “Operating Savings” means reduction or elimination of: labor or service contracts; demand charges; chemicals; maintenance of energy consuming conversion and distribution equipment; replacement equipment; and lubricants and maintenance expenses in the case of vehicles, aircrafts, and vessels; providing each item is \$1,000 or more annually.

(14) “Performance Measures” means performance measures, as required by Executive Department, that address energy use in buildings, facilities, and transportation. Wherever possible the performance measures should be based on monitored savings, or metered power and energy production.

(15) “Project” means a state agency’s improvement of the efficiency of energy use, development of cogeneration facilities or use of renewable resources by or at state facilities. For the purposes

of these rules, a project includes only those agency activities which the agency is pursuing under the authority of ORS 469.754.

(16) "Renewable Resources" has the meaning given that term in ORS 758.505(9)(a).

(17) "Revolving Fund" means a fund in the State Treasury, or a separate account or fund in the General Fund in the State Treasury, that by law is dedicated, appropriated or set aside for the purposes listed in ORS 469.754(3). "Revolving fund" does not have the meaning used in 291.002 or the **State Accounting Manual, Section 21 05 01(4)** self-sustaining accounts.

(18) "Savings Period" means:

(a) For energy efficiency projects without an energy or power sales contract with an electric utility or the Bonneville Power Administration, the expected useful life of the project;

(b) For energy efficiency, cogeneration or renewable resource projects which provide energy or power pursuant to a contract with an electric utility or the Bonneville Power Administration, the term of the contract or the expected useful life of the project whichever is greater; or

(c) For cogeneration and renewable resource projects without an energy or power sales contract with an electric utility or the Bonneville Power Administration, the expected useful life of the project;

(d) For projects which provide energy or power to any combination of the state agency, an electric utility or the Bonneville Power Administration, the longest term of any energy or power sales contract or the expected useful life of the project, whichever is greater.

(19) "Service" has the meaning given that term in ORS 856.010.

(20) "State Agency" has the meaning given that term in ORS 278.005

(21) "State Facility" means the land and all buildings, structures, improvements, machinery, equipment or fixtures, and tangible personal property including, but not limited to vehicles, aircraft, vessels as defined by ORS 278.005, moveable machinery and equipment, and moveable fixtures, which are erected or operated on, above or under the land, which is owned, leased, controlled or possessed by a state agency.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

330-118-0020

Project Eligibility

(1) Eligible projects include, but are not limited to, the following:

(a) Projects which improve efficiency or attain high efficiency of energy use through energy system or process changes, equipment replacement, or waste heat recovery;

(b) Projects consisting of measures meeting energy efficiency criteria encouraged or approved by the electric or gas utilities providing service to the state facility or the Department;

(c) Employee awareness campaigns and on-going training; and

(d) Projects that meet these eligibility requirements, that began construction or installation after September 30, 1991, and that were not completed prior to final adoption of rules. These projects are not subject to the provisions of the Offering the Right of First Refusal.

(2) The following projects are not eligible:

(a) A project that saves dedicated funds, which are not transferable to the General Fund; and

(b) A plan of a state agency to improve the efficiency of energy use in a state-rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(3) In the event eligibility is unknown or disputed, the party(ies) may petition the Director of the Department for a decision. The Director's decision shall be final.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

330-118-0025

Project Notice

(1) Whenever an agency proposes to undertake a project under ORS 469.754 the state agency shall provide a notice to the Department and to the gas and electric utilities which serve the state facility where the project is domiciled and to a mailing list of interested persons developed by the state agency for this purpose. The notice shall be provided to any requesting person and include a statement of whether the agency intends to rely on the authority in ORS 469.754 and these rules, or whether the agency intends to rely on its own authority to proceed with the project.

(2) When a state agency intends to proceed with a project other than listed in section (3) of this rule, the notice shall, in addition to the information above, include:

(a) The physical location of the project(s);

(b) The anticipated size or size range of the project(s) stated in annual energy (in kWh or Btu) or capacity (in kW, horsepower or pressure), and its anticipated seasonal disposition;

(c) Whether the project(s) may provide steam or useful heat, and its anticipated seasonal disposition;

(d) A description of how the project(s) could be developed, financed and operated;

(e) An intended schedule for completion and operation of the project(s); and

(f) The anticipated fuel source(s).

(3) If a state agency plans a project costing less than \$50,000, an energy efficiency project encompassing under 50,000 square feet, a project affecting the efficiency of energy use in transportation, a renewable resources project which does not generate electricity, and employee awareness campaign, or project with a useful life of less than 5 years, then they are exempt from OARs 330-118-0030, 330-118-0040, 330-118-0050 and 330-118-0055. Also exempt from these rules are other projects as predesignated by the utilities which serve the state agency. ODOE will maintain a list of such predesignated exempt projects.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 2-1994, f. & cert. ef. 12-12-94

330-118-0030

Right of First Refusal

(1) To exercise their right to first negotiate and right of first refusal the electric and gas utilities which serve the project's domicile must submit a proposal in response to an agency's procurement solicitation.

(2) A state agency shall provide the electric and gas utilities which serve the project's domicile, and any other potential suppliers, timely access to the project site for the audit and planning purposes.

(3) An electric or gas utility which serves the project's domicile that wants to negotiate for or to match any sales of a project's electrical or steam output which may be sold must state such interest in their proposal in response to the agency's procurement solicitation.

(4) A state agency is not obligated by these rules to commit to utility proposals to buy electricity, develop, finance, operate or otherwise act together in energy conservation or cogeneration and renewable resource projects which generate electricity or sell energy or power to electric utilities or the Bonneville Power Administration. These rules do not alter the agency's or utility's rights and obligations under ORS 758.505-758.555 and 18 CFR 292, et seq.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

330-118-0040

Selection of Project Vendors and Participants

(1) Agencies shall undertake competitive procurements for projects. The agency's applicable rules and regulations for competitive procurement and confidentiality shall apply along with additional authorities vested in the agency by ORS 469.752-469.756. Nothing in these rules requires an agency to use a competitive pro-

curement for exempt projects per OAR 330-118-0020(2). A copy of the procurement solicitation shall be sent to the electric and gas utilities which serve the project's domicile and to a list of all interested persons developed by the state agency for this purpose.

(2) Agency procurement solicitations must include:

(a) A description of the preferred state facility(ies) to domicile the project(s);

(b) As applicable, the preferred size or size range of the project(s) stated in annual energy (in kWh or Btu) or capacity (in kW, horsepower or pressure), and its preferred seasonal disposition;

(c) Whether the project(s) must provide steam or useful heat and its preferred seasonal disposition;

(d) A description of any specific problems, needs or issues the project should address;

(e) A preferred schedule for completion and operation of the project(s);

(f) Any limitations or preferences for fuel source(s);

(g) Notification of the agency's rights cited in OAR 330-118-0030(4) and 330-118-0055; and

(h) A complete description of the criteria used for evaluation of proposals.

(3) The criteria used for evaluation shall include but need not be limited to:

(a) Timeliness;

(b) Estimated costs and financing impacts;

(c) Experience;

(d) Risks retained by the agency;

(e) Environmental impacts;

(f) Design feasibility;

(g) Estimated net savings over the life of the project; and

(h) Technical merit.

(4) Proposals in response to agency procurement solicitations must include the following:

(a) A statement of how the applicant proposes to jointly or solely develop, finance, operate or otherwise act together to develop or operate the project;

(b) A technical plan, as appropriate, with a timeline;

(c) A statement of capabilities, experience and operational track record for projects of a similar nature;

(d) A budget with a description of all applicable fees and costs, and proposed payment schedule;

(e) A description of what project-related risks the applicant and other suppliers propose to assume;

(f) The results of a completed technical audit, as appropriate;

(g) A list of benefits the applicant proposes to bring to the project and agency;

(h) A written commitment to participate in the proposed manner according to the proposed terms; and

(i) A description of any limitations that may impair the applicant's ability to fulfill its proposed commitments.

(5) The deadline for accepting proposals after issuance of the procurement solicitation shall not be any sooner than:

(a) Two months for energy efficiency and renewable resource projects which do not generate electricity; or

(b) Three months for cogeneration and electricity generating renewable resource projects.

(6) Proposals received in response to the procurement solicitation shall, in consultation with the Department, be evaluated according to published criteria.

(7) Upon evaluation, the agency may select project vendors or participants for contract negotiations. The agency reserves the right to reject all proposals. If an agency determines that negotiations are at an impasse, it may terminate negotiations and select another proposal. If an agency judges a proposal from an electric or gas utility which serves the project's domicile to be of equal merit to the highest ranking proposal, the utility's proposal shall be deemed a match and be selected for contract negotiations, all else equal. Upon written notice from the agency the electric and gas utilities which serve the state facility where the project is domiciled shall have the right to match the best offer available to the agency for a period of 30 days. The agency may use competitive negotiations to select the best offer. The utility will have the right to match the best offer whether or not competitive negotiations are used. Should two

utilities which serve the project's domicile be judged to have the highest ranking proposals, the agency may select either one.

(8) The agency will notify all persons who submitted proposals the reasons for rejection.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

330-118-0050

Negotiating Agreement

The agency is authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance a project at state-owned or state-rented facilities. Utilities may be vendors. The procedure shall be:

(1) Upon entering into a commitment with a vendor, the agency appoints representative(s) to work with the vendor to develop the project. Within three months the agency representative(s) and the vendor complete a project plan, including commissioning and training; develop a detailed budget; decide the allocation of risks and responsibilities of each party from project development through operation; determine costs to be assumed by the agency and by the vendor; determine length of agreement; set timelines.

(2) The agency and the vendor execute a written agreement within two months of completing the above tasks.

(3) The Department resolves disputes between agency and vendor arising from the project. The director's decision is final.

(4) If changes to the project are made subsequent to the written agreement, the agreement may be amended.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

330-118-0055

Disposition of Steam and Electricity

(1) An agency is not obligated to sell any or all of a project's energy, power, steam, or any other energy form.

(2) If an electric or gas utility which serves the project's domicile has responded according to OAR 330-118-0030(3) the agency shall initiate an auction for the sales of the electric output or steam which the utility has expressed interest in acquiring. The auction shall be open to all potential buyers of the energy and solicit bids. Upon evaluation of bids, and with consultation with the Department, the agency may select buyer(s) for contract negotiations. The agency reserves the right to reject all proposals. If an agency determines that negotiations are at an impasse, it may terminate negotiations and select another buyer. If an agency judges an offer from an electric or gas utility which serves the project's domicile to be of equal merit to the highest ranking offer, the utility's offer shall be deemed a match and be selected for contract negotiations, all else equal. Upon written notice from the agency at the close of the auction the electric and gas utilities which serve the state facility where the project is domiciled shall have the right to match the best offer available to the agency for a period of 30 days. The agency may use competitive negotiations to select the best offer. The utility will have the right to match the best offer whether or not competitive negotiations are used. Should two utilities which serve the project's domicile be judged to have the highest ranking offers, the agency may select either one. Criteria for selecting buyers of steam and electricity shall include:

(a) Transaction costs;

(b) Risks retained by the agency;

(c) Term; and

(d) Impact on estimated net savings over the life of the project.

(3) Nothing in these rules impairs an agency's rights under any other provisions of law including rights to market energy from qualifying facilities according to ORS 758.505-758.555 and the implementing rules and orders of the Oregon Public Utility Commission, and 18 CFR 292 et. seq. Nothing in these rules affects any authority, including the authority of a state agency or a municipality to regulate utility service or the development and use of electricity, gas or steam.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756
Hist.: DOE 2-1994, f. & cert. ef. 12-12-94

DIVISION 125

RESIDENTIAL STANDARDS DEMONSTRATION
PROGRAM SELECTION RULES**330-118-0060****Budget Not Cut**

The net savings shall not be deducted from the agency's budget throughout the savings period, as long as the project produces savings. When preparing its biennial budget request the agency may use the baseline energy budget. This amount may be adjusted by an inflationary factor to cover increases in utility rates or fuel costs, increases in energy costs due to weather variations, or similar events causing changes in energy use.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

330-118-0070**Retaining Fifty Percent of Net Savings**

A state agency that implements a project in accordance with this rule may retain 50 percent of the net savings and maintain its baseline energy budget by:

(1) Prior to implementation of the project, the agency shall submit to the Budget and Management Division:

(a) Notification in writing of their intent to exercise their 50 percent savings option, pursuant to ORS 469.754; and

(b) Performance measures pertaining to the project.

(2) The agency shall send annual reports of monitored savings and net savings for the project to the Budget and Management Division by September 1 of each year.

(3) Upon Budget and Management Division approval, the agency shall transfer from its operations account half the amount of the accrued net savings to the revolving fund. The balance shall be transferred to the State's General Fund.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

330-118-0080**Use of Savings**

A state agency shall spend the 50 percent of net savings to increase productivity through: Energy efficiency projects; high-tech improvements, such as the purchase or installation of new desk-top or lap-top computers or the linkage of computers into systems or networks; or infrastructure improvements. The agency shall submit to Budget and Management Division a plan for use of the revolving fund through the biennial budget process.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

330-118-0090**Agreements with the Department for Technical Assistance**

(1) The agency may request an assessment of energy and power marketing opportunities, energy audit and/or engineering study through the Department's Small Scale Energy Loan Program.

(2) The agency may submit written requests to the Department for specific assistance, including but not limited to marketing of energy and power, engineering, architectural, and energy analysis. At the discretion of the Department, an Interagency Agreement, in accordance with ORS Chapter 190, may be executed. The Department reserves the right to charge the agency fees for work not covered by Small Scale Energy Loan Program statutes, such as arbitration, technical review, etc.

(3) Any loans with the Small Scale Energy Loan Program must comply with OAR chapter 330, divisions 105 and 110.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

330-125-0005**Purpose**

(1) These rules describe how the Oregon Department of Energy will select persons or businesses who will receive incentives for building electrically-heated residences that meet model energy efficiency standards. The incentives will be offered by the Department contingent on an agreement with the Bonneville Power Administration (BPA). The incentives program will test model residential conservation standards proposed for residences by the Northwest Power Planning Council.

(2) Neither the Department nor the State of Oregon warrant or certify as cost-effective any measure or design for which an incentive is granted. Compliance with the model conservation standards does not guarantee or assure the safety, reliability, or performance of any energy conservation device or installation. These rules are only for the selection of incentive recipients.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0010**Definitions**

(1) "Appendix J": **1983 Northwest Conservation and Electric Power Plan**, Volume 2, Appendix J (with errata), adopted pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Public Law 96-501), April 27, 1983, by the Northwest Power Planning Council (NPPC).

(2) "Applicant": A person or business applying to the Oregon Department of Energy for an incentive to build a new electrically-heated residence that meets model conservation standards.

(3) "Control House": A single-family residence of similar size, construction type, style, and materials as a model code standards residence and which is built to the 1979 Oregon Structural Specialty Code as amended. The control house must be near the model code standards house. The occupants of the control house must agree to participate in Department or BPA monitoring.

(4) "Cost-Accounting Data": Cost-related information gathered according to a process provided by Area 15 National Association of Home Builders. The purpose is to compare the costs of building a residence to the model conservation standards with the costs of building a similar residence to the Oregon Structural Specialty Code.

(5) "Department": Oregon Department of Energy.

(6) "Floor Area, Gross": Gross floor area is the floor area within the perimeter of the outside walls of the building for all heated spaces, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

(7) "Heated Spaces": A space within a building which is provided with a positive heat supply to maintain air temperature at 50°F. or higher. The presence of finished living space within a basement, or registers or heating devices designed to supply heat to a basement space shall automatically meet the definition of heated space.

(8) "Incentive": A cash award to a person or business for building a residence to model conservation standards. The incentive may include more than one payment. The amount of the incentive will be set in the agreement between the Department and BPA.

(9) "Matched-Pair Control House": A single-family residence essentially the same in design to a residence for which an incentive is granted, but in which the energy efficiency measures meet only the current Oregon Structural Specialty Code. If the residence is a passive solar or sun-tempered design, it must have equivalent solar orientation and solar exposure as its matched residence. The matched-pair control house must be built by the builder of the model conservation standard residence, and must be near the model conservation standards residence. The gross floor area of each matched-pair house must be between 1,200 and 1,800 square

feet. Occupants of the matched-pair control house must agree to allow the residence to be monitored by the Department or BPA.

(10) “Model Conservation Standards”: Standards for building energy-efficient, electrically-heated residences established in Appendix J of the **1983 Northwest Conservation and Electric Power Plan** or provided by the Department.

(11) “Multi-Family Residence”: Any building which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each and doing their own cooking in the said building, and shall include flats and apartments. The building shall be only for residential uses and shall be three stories or less.

(12) “Oregon Structural Specialty Code”: State of Oregon Structural Specialty Code and Fire and Life Safety Regulations.

(13) “Residential Standards Demonstration (RSD) Program”: A program administered by the Oregon Department of Energy by agreement with BPA. The RSD Program provides incentives to build up to 200 electrically-heated, single-family residences and 20 electrically-heated multi-family buildings in Oregon to model conservation standards.

(14) “Single-Family Residence”: A structure that has one or two residential units and is only for residential use.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0020

General Eligibility Requirements

(1) A home buyer or a home builder may apply for participation in the program; however, the cash incentive will be paid to the home builder and contract awarding the incentive can be signed only by the home builder.

(2) An applicant must demonstrate the financial ability to build the number of single-family residences or multi-family buildings for which incentives are requested. Such residences or buildings must be built in Oregon within eight months of entering into a contract with the Department, except in the case of natural disasters, strikes, and unavoidable shortages in materials and supplies. A time extension may be granted at the discretion of the Director of the Department for reasonable delays due to unforeseeable circumstances.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0022

Home Builder Eligibility Requirements

(1) A home builder must demonstrate to the Department:

(a) That he or she has built at least three residences since January 1, 1979; or

(b) That he or she has done at least \$250,000 gross business in building construction since January 1, 1979.

(2) All home builders who participate in the program must be bonded and licensed as required by ORS Chapter 701.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0025

General Limitations

(1) Only one incentive will be granted for each residential unit.

(2) The total cost of a single-family residential unit, excluding land costs, on-site and off-site improvements, may not exceed \$120,000.

(3) No person or company may receive an incentive for more than five single-family residential units. This limitation may be waived by the Director of the Department if a sufficient number of incentives have not been awarded within 60 days of the beginning of the selection and evaluation period.

(4) No Departmental employees, BPA employees involved in the RSD Program, or their immediate families are eligible to receive an incentive under this program.

(5) Proposed residences which will use heat pumps must have a gross floor area of at least 2,000 square feet.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0030

Guidelines for Selection

(1) The Department will announce the first date that applications will be evaluated for selection. Qualified applicants will be given a preference on a “first-in-time” basis. First-in-time is determined by the date of the postmark on the envelope containing the application or the date of receipt in the Department for applications that are delivered in person. However, all applications received before the first day for selection and evaluation will be treated as if they were post-marked or received on the first day.

(2) Applications will be evaluated according to the following guidelines:

(a) Attain 30 single-family model standard residences with a matched-pair control house;

(b) Attain single-family residences with more than one control house;

(c) Attain single-family residences with one control house;

(d) Achieve a geographic distribution of residences between the climate zone of 6,000 degree-days or less and that of 6,001 degree-days or more. (See **Figure 53.A, Design Criteria, Oregon Structural Specialty Code**);

(e) Achieve a distribution of design types based on Appendix J, **Northwest Conservation and Electric Power Plan** or design types provided by the Department;

(f) Achieve the following distribution of single-family residences: 45 percent that have less than 1,400 sq. ft.; 35 percent that have between 1,401 and 2,000 sq. ft.; and 20 percent that have more than 2,000 sq. ft.;

(g) Expedite building of residences by selecting applicants who are most prepared to build, as shown by financial resources, lot ownership, and progress on building design.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0035

Application Procedures

(1) An applicant shall submit an application on forms prescribed by the Department. The application shall:

(a) Estimate the total cost of each proposed residential unit;

(b) State the gross floor area of each proposed residential unit;

(c) State the location of each proposed residence;

(d) State the choice(s) of design type(s) to meet the model conservation standards;

(e) Provide sufficient information to document the applicant’s financial ability to construct each residence for which an incentive is requested;

(f) Provide sufficient information to document the home builder’s record of construction;

(g) State number of control houses or matched-pair control houses the applicant can provide;

(h) If the residence (or matched-pair control house) is a sun-tempered or passive solar design, provide a sun chart for the site;

(i) State that the land is appropriately zoned;

(j) Provide information on available utilities;

(k) State the applicant has control over the land by ownership or by option to purchase;

(l) Provide the home builder’s state registration number;

(m) State the name of proposed lender that will finance construction.

(2) The first day of the selection and evaluation period will be announced by the Department. Applications will be accepted until no more than 200 qualified recipients have been selected by the

Department. The Director of the Department may close the application period when a sufficient number of qualified applications have been received or after 60 days, whichever is earlier. If a sufficient number of applications has not been received within 60 days, the Director may establish a second application period.

(3) Applications will be assigned a file number upon receipt.

(4) Applicants will be notified by the Department of the status of their applications within 30 days of their receipt by the Department.

(5) Incomplete applications and applications from parties who do not meet the minimum qualifications will be returned.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0040

Incentive Contract

(1) Parties selected to receive an incentive must sign a contract with the Department concerning compliance with RSD Program design, siting, construction, reporting, and monitoring requirements and return the contract to the Department within 30 days of the contract being offered. Failure to sign the contract will void the Department's offer of an incentive. Where an incentive has been reserved for a home buyer, that home buyer will have 30 days from notification by the Department to identify a home builder. That home builder then must sign a contract within 30 days of the Department's offer of a contract.

(2) The home builder contract will provide the method of payment(s) and inspection requirements that must be met before payment(s) is made.

(3) The home builder contract may be made contingent upon the home builder or a potential home buyer obtaining a loan commitment to pay for building the model conservation standards residence.

(4) The home builder signing the contract shall:

(a) Agree to build in Oregon an electrically-heated residence(s) to the model conservation standards;

(b) For residences that are not pre-sold at the time the incentive is approved, agree to request that the home buyer permit and assist in the monitoring of the residence's energy consumption and indoor air quality by the Department or BPA. However, agreement by the home buyer to participate in monitoring is a requirement for a home builder to receive a full incentive for matched-pair residences;

(c) Agree to provide cost-accounting data on the incremental costs of building to the model conservation standards;

(d) Agree to allow the Department, BPA, or their agents to inspect the construction of the residence to ensure compliance with the plans approved by the Department;

(e) Agree to attend and complete the technical and cost-accounting training sessions being provided by the Department and its agents.

(5) Any home buyer who is identified at the time the home builder signs a contract with the Department will be required to enter into a contract with the Department. The home buyer must:

(a) Agree to participate in Departmental or BPA monitoring of energy use and indoor air quality in the residence for at least one year; and

(b) Agree not to require any design or construction changes that will affect the model conservation standard provisions in the residence without prior written approval of the Department.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

330-125-0045

Compliance with Land Use Laws

Any party receiving an incentive shall agree to comply with all local land use ordinances and building codes and to obtain all necessary permits for construction of a residence. A portion or all of the incentive payment may be withheld until an occupancy permit is issued by the local jurisdiction.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

DIVISION 130

ENERGY EFFICIENT DESIGN AND OPERATION 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

(2) Reducing agency energy use by 20 percent in existing buildings by the year 2015 compared to the year 2000.

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; DOE 5-2011, f. & cert. ef. 6-27-11

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 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/ft²–yr or kWh/ft²–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) “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.

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

[Publications: Publications referenced are available from 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 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

330-130-0025

Alternate Compliance Paths

(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.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 276.900 - 276.915

Hist.: DOE 5-2011, f. & cert. ef. 6-27-11

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 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 330-130-0040(9).

(2) Class 2 Buildings. The agency shall contact 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; DOE 5-2011, f. & cert. ef. 6-27-11

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 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 efficient facility" as defined in these rules and to the SEED process. The department may develop language the agency may use to include 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 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. The energy systems performance verification plan must be carried out and a copy of the test reports must be submitted to the department.

(f) Training. It is recommended that instruction on the design intent and operation of the building as a system be offered to the owners and operators 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.

(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 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:

(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 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 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 5-2011, f. & cert. ef. 6-27-11

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; DOE 5-2011, f. & cert. ef. 6-27-11

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; DOE 5-2011, f. & cert. ef. 6-27-11

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.

(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; DOE 5-2011, f. & cert. ef. 6-27-11

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 of every odd-numbered year.

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; DOE 5-2011, f. & cert. ef. 6-27-11

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.

(1) Energy use shall be tracked on a monthly basis using billing data. Electricity and heating fuels shall be tracked separately. The use of standard commercially available software for uniform tracking is recommended.

(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.

(5) When significant changes of facility size or use takes place, adjustments to the baseline energy consumption may be made.

(6) 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; DOE 5-2011, f. & cert. ef. 6-27-11

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. Agencies must only select persons or firms that have been prequalified by the department to perform energy analysis and energy savings performance contracting services.

(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 RFP process that uses qualifications-based scoring criteria to determine a person's ability to perform building energy analysis.

(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) 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 project under consideration by the contracting agency; and

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

(B) Pre-qualification process: The department must 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 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 contracting agency must choose from for distribution of RFPs.

(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.

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

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

(f) Limit eligible contracting phases to:

(A) Phase I parts A and B for the technical energy audit and project development plan;

(B) Phase II Design Build contract; and

(C) Phase III for the energy savings guarantee and measurement and verification contract.

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

(h) Advertise a simplified RFP 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.

(j) At a minimum, the RFP must include a technical facility profile, mandatory pre-proposal walk-through, and an interview process.

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

(l) 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; DOE 5-2011, f. & cert. ef. 6-27-11

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

(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 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; DOE 5-2011, f. & cert. ef. 6-27-11

330-130-0500

Use of Fuel Cell Power Systems

(1) This rule establishes the criteria for agencies to use when comparing fuel cell power systems to other equipment options as required by ORS 276.910.

(2) State agencies who are constructing or renovating a Class 1 building with an identified requirement for emergency backup power or with critical power application shall compare and evaluate, in collaboration with the design team, available equipment options, including fuel cell power systems, to meet the identified need. The evaluation shall include, but not be limited to:

(a) An evaluation of the emissions over the expected life cycle of the system, including the estimated activity related to standby, testing, maintenance, fueling, and operational activity. An agency may, if the information is available, consider the emissions generated during manufacturing and shipping of the equipment, including its components.

(b) A comparison and documentation demonstrating that the agency considered the environmental impact for the following:

(A) Nitrous Oxide;

- (B) Sulfur Oxide;
- (C) Carbon Monoxide;
- (D) Carbon Dioxide;
- (E) Other regulated particulates; and
- (F) Any other pollutant identified by the agency.

(c) A comparison of the life cycle costs of all equipment under consideration, which may include estimates of acquisition, installation and commissioning, siting and permitting, maintenance, fueling and decommissioning and training costs; and

(d) An analysis of the ability of the systems to meet the design and stress needs of the application, the availability of fuel over the life cycle of the system and the availability of service support, maintenance and parts during system life cycle.

Stat. Auth.: ORS 276.910

Stats. Implemented: ORS 276.910

Hist.: DOE 12-2010, f. & cert. ef. 10-1-10

DIVISION 135

1.5 PERCENT FOR SOLAR ENERGY IN PUBLIC BUILDING CONSTRUCTION CONTRACTS

330-135-0010

Purpose

The purpose of these rules is to establish procedures to administer ORS 279C.527 through 279C.528 and Oregon Laws 2013 ch. 612 (HB 3169), which require a contracting agency to include an appropriate green energy technology in the construction, reconstruction, or major renovation of a public building by spending an amount equal to at least 1.5 percent of the total contract price associated with that building.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0015

Definitions

For the purpose of this division, the following definitions apply:

(1) "Building" means any structure used or intended for supporting or sheltering any use or occupancy, as defined in Section 202 of the 2010 Oregon Structural Specialty Code.

(2) "Contracting agency" means a public body as defined in ORS 174.109 that plans to enter into a public improvement contract for the construction, reconstruction or major renovation of a public building.

(3) "Cost-effective" means an investment in green energy technology away from the site has a higher estimated economic benefit than an investment in corresponding green energy technology at the site. The comparison must include, but is not limited to, the cost of green energy technology, the cost of energy transmission infrastructure back to the public building, the value of electrical energy produced, saved or used over the life of the system, and the value of thermal energy produced, saved or used over the life of the system.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Direct use" of geothermal energy means using the geothermal resource directly for space or water heating in a building without the assistance of a heat pump. For the purpose of these rules, direct use applications employ resource temperatures of at least 140°F, except when applied to public school construction, in which case the minimum resource temperature is 128°F.

(7) "Geothermal energy" means the energy from a geothermal source including, but not limited to, indigenous steam, hot water, and hot brines.

(8) "Green energy technology" has the definition given in ORS 279C.527 as updated by Oregon Laws 2013, chapter 612 (HB 3169).

(9) "Green energy technology database" means a database of public building construction projects that are subject to these rules, and is administered by Oregon Department of Energy.

(10) "Public school" means a kindergarten through grade 12 public school institution.

(11) "Site" means a land parcel or a group of contiguous land parcels, controlled by the contracting agency, on which a building either is or will be located.

(12) "Total contract price" means the estimated cost to construct a building including building systems, interior finishes, site infrastructure within five feet of the building perimeter, connections to existing utilities, landscaping, and sidewalks and parking lots built for the immediate use of the building. It does not include the cost of major new utility infrastructure that needs to be brought to the site or wetland mitigation requirements.

(13) "Total solar resource fraction" (TSRF) means the percent of energy produced by a fixed axis solar energy system when compared to the annual performance of the same system with optimal tilt and orientation and no external shading.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)

Stats. Implemented: ORS 279C.527, 279C.528, 2013 OL, Ch. 612

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13; DOE 5-2015, f. & cert. ef. 10-14-15

330-135-0018

Requirement for Inclusion of Green Energy Technology

(1) Except as provided in OAR 330-135-0040, contracting agencies must spend an amount equal to at least 1.5 percent of the total contract price of an eligible public building project, as defined in OAR 330-135-0020, for the inclusion of green energy technology in the eligible public building.

(2) Contracting agencies may install the green energy technology required under subsection (1) of this section at a site located away from the eligible public building in accordance with ORS 279C.527(2)(b) to (c).

(3) Contracting agencies may defer expenditure of these funds under the conditions of OAR 330-135-0045 and 330-135-0050.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612 (HB 3169)

Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0020

Eligible Building Projects

(1) These rules apply to any permanent building(s) which will be owned, partially owned or controlled by a contracting agency and which is either:

(a) Used for conducting public business; or

(b) Used or occupied by employees of the contracting agency on a regular basis for a significant part of their work.

(2) Eligible public building projects are new capital construction projects for which the total contract price is \$1,000,000 or more for a single building or a group of buildings on the same site and major renovations for which the total contract price is \$1,000,000 or more and at least 50 percent of the insured value of the building.

(3) These rules apply to projects advertised, but if not advertised then projects with building construction contracts entered into, on or after the effective date of these rules.

(4) Public improvement projects that are not buildings are not required to comply with these rules. Projects that are not subject to these rules include, but are not limited to:

(a) Group U occupancies as defined in Section 312 of the 2010 Oregon Structural Specialty Code.

(b) Motor pool lots, parking lots not associated with a building, highways, bridges, sewers, fishponds, fish ways, and similar non-architectural structures.

(c) Buildings that house public industrial processes where only a small portion of the square footage houses employees of the contracting agency, such as: maintenance sheds, and water and waste water facilities including reservoirs, dams, conduit, pipe, pumps, wells, collection basins, pump stations, controls and other

buildings primarily used for the purpose of water or waste water treatment.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
 Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
 Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0025

Eligible Contract Price

(1) The 1.5 percent to be spent on green energy technology must be based on the total contract price.

(2) The total contract price must not be reduced by federal, state, or other incentives that may be available for the green energy technology.

(3) Any constitutionally, statutorily or contractually dedicated government funds for the building that have been determined to be unavailable for the installation of green energy technology may be excluded when determining eligible costs under this section.

(4) For buildings with a joint public-private ownership, the total contract price must be pro-rated based on the contracting agency's share of the ownership.

(5) For buildings that are being constructed or renovated with private funding but which are intended for ultimate ownership by a contracting agency, the total contract price must include the privately-funded share of the construction contract.

(6) Dividing a single project into multiple smaller projects in order to avoid or reduce the level of compliance with ORS 279C.527 and 279C.528 and these rules is not permitted.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
 Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
 Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0030

Green Energy Technology Performance Requirements

(1) Solar electric (photovoltaic), solar water heating, solar pool heating, and active solar space heating systems are to be installed in locations that have a total solar resource fraction (TSRF) of 75 percent or greater.

(2) Photovoltaic and geothermal electric systems must be separately metered to record electricity production.

(3) Geothermal systems that directly supply heat to the building system(s), passive solar thermal systems, daylighting systems or any combination thereof must jointly reduce the building's baseline energy use by 20 percent or more, as demonstrated with whole building energy modeling prepared under the direction of a professional engineer.

(a) The baseline energy use includes space heating, space cooling, fan, pump, domestic hot water, and lighting loads. Other equipment and process loads are excluded.

(b) The baseline building model must follow the 2010 SEED Guidelines, Appendix L.

(A) For local or special government bodies, the baseline building must be modeled according to the requirements of the 2010 Oregon Energy Efficiency Specialty Code.

(B) For state government bodies, the baseline building must be modeled according to the requirements of the Proposed Building as defined in the 2010 SEED Guidelines, Appendix L.

(c) The system(s) must be commissioned by a third-party commissioning agent.

(4) Purchase of renewable energy certificates does not constitute compliance with the requirements of ORS 279C.527 through 279C.528 and Oregon Laws 2013, chapter 612.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
 Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
 Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0035

Eligible Green Energy Technology Costs

(1) For photovoltaic systems, eligible costs include the photovoltaic modules, mounting structure and hardware, modifications to the building structure specifically to accommodate the solar energy system, associated electrical equipment, metering, labor

and system commissioning. Costs for auxiliary distribution systems such as chargers in electric vehicle charging stations or energy storage system (batteries or other) do not qualify.

(2) For building integrated photovoltaic (BIPV) systems, eligible costs include the difference between the costs for the BIPV components and the costs of the conventional building components that are modified or replaced to accommodate the installation of the BIPV system components.

(3) For solar water heating and solar pool heating systems, eligible costs include the solar collectors, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning. Costs for backup systems that use conventional energy sources do not qualify.

(4) For active solar space heating systems, eligible costs include the solar collectors, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning. Costs for heat distribution systems, such as ductwork or radiant floors, or costs for backup systems that use conventional energy sources, do not qualify.

(5) For passive solar systems and daylighting systems, eligible costs include materials and labor costs that can be directly and exclusively attributed to the passive solar and daylighting system, the cost for modeling the building energy performance, and commissioning.

(a) For passive solar systems eligible costs may include, but not be limited to, added thermal mass and shading controls.

(b) For daylighting systems, eligible costs may include, but not be limited to, automatic controls, light shelves, overhangs, automated louvers and blinds and related controls, skylights in spaces where automatic controls are present, and the portion of windows higher than 7 feet above the floor.

(6) For geothermal electricity generation, eligible costs include the cost of supply and disposal pipelines, turbine generators, controls, transformers, metering, labor and balance of plant.

(7) For geothermal energy use in building systems, eligible costs include the cost of supply and disposal pipelines, pumps, heat exchangers, controls, the cost for modeling the building energy performance, metering and labor.

(8) Costs for permanent educational displays located in or on the building that explain the green energy technology incorporated in the project are allowed.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
 Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
 Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0040

Alternative Financing

(1) Alternative financing arrangements to allow leveraging of federal, state, utility and other incentives, including but not limited to, lease-purchase agreements, power purchase agreements or energy savings performance contracts qualify under this program if the contracting agency documents that the costs of the green energy system meets or exceeds 1.5 percent of the total contract price.

(2) The minimum term of the agreement between the owner of the green energy system and the contracting agency must be at least ten years, unless ownership of the green energy system reverts to the contracting agency before that time.

(3) The agreement between the owner of the green energy system and the contracting agency must be exclusive to the green energy system required under the provisions of ORS 279C.527 through 279C.528 and Oregon Laws 2013, chapter 612. It may not include terms relating to operation and maintenance or capital equipment purchase of any other equipment or services. For power purchase agreements and energy savings performance contracts, the output of the green energy system must be separately metered.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
 Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
 Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0045

Determination Whether Green Energy Technology is Appropriate

(1) The contracting agency must determine whether constructing green energy technology at the site of the public building is appropriate. In making its determination, the contracting agency may consider factors including but not limited to:

(a) Whether there is opportunity to use photovoltaic or geothermal electric, solar thermal, passive solar heating systems or the direct use of geothermal energy in building systems

(b) Whether green energy technology can be installed in a manner that meets the minimum performance requirements of OAR 330-135-0030;

(c) Whether the building is listed or eligible for listing on the National Register of Historic Places and the green energy technology installation would be disruptive to the historic character of the building;

(d) Whether the installation of green energy technology would create security risks for staff or inhabitants of the building.

(2)(a) The contracting agency must also determine whether constructing green energy technology away from the site is appropriate if the contracting agency:

(A) Determines that constructing green energy technology at the public building site is not appropriate; or

(B) Prefers to construct the green energy technology away from the public building site instead of at the public building site.

(b) In making its determination, the contracting agency must consider whether green energy technology installed away from the public building site meets the factors listed in subsection (1) of this section and the requirements of ORS 279C.527(2)(b) and (c).

(3) If a contracting agency intends to install green energy technology away from the site, the contracting agency must request from the department, in accordance with OAR 330-135-0052, a technical review of its determination that an away-from-the-site installation is appropriate.

(4) The contracting agency must report its determination to the department in accordance with the reporting requirements in OAR 330-135-0055.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0050

Requirements for Deferral of Expenditures

(1) If a contracting agency determines, in accordance with OAR 330-135-0045, that it is not appropriate to install green energy technology at the public building site or away from the public building site, the contracting agency must:

(a) Defer the expenditure of 1.5 percent of the total contract cost of the current public building project to the contracting agency's next eligible public building project;

(b) Request from the department a technical review of its determination in accordance with OAR 330-135-0052; and

(c) Report, in accordance with OAR 330-135-0055, information about the deferred expenditure and the future project to which the deferred expenditure will be applied, if known.

(2) If the contracting agency defers the expenditure, the amount spent on green energy technology in the next building project must include the deferred expenditure from the current building project plus the 1.5 percent of total project cost for including green energy technology in the future building project, if required.

(3) Any amount spent on green energy technology in excess of 1.5 percent of the total contract price may not be credited to other current or future projects.

(4) Public improvement contracts for which state funds have not been appropriated for the construction or renovation of the public building are not required to defer funds.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0052

Requirements for Technical Review

(1) The director will appoint a permanent technical panel with members serving terms of up to three years. The technical panel will include, but not be limited to, the following membership:

(a) A chair from the Oregon Department of Energy;

(b) A representative from a public body;

(c) A representative from green energy technology industry; and

(d) An engineer or architect.

(2) A contracting agency that intends to construct green energy technology away from the public building site must submit to the department a request for technical review of its determination that green energy technology constructed away from the site is appropriate and meets the requirements of ORS 279C.527(2)(b) and (c). The contracting agency must provide supporting documentation for review.

(3) A contracting agency that intends to defer expenditure of 1.5 percent of the total contract cost to a future building project must submit to the department a request for technical review of its determination that green energy technology is not appropriate either at the public building site or away from the public building site. The contracting agency must provide supporting documentation for review.

(4) Within two weeks of receiving the contracting agency's request for technical review and supporting documentation, the department will forward the request along with the supporting documentation to the technical review panel. The department will request supplemental information from the contracting agency if needed by the technical review panel to make its recommendation.

(5) Within 60 days of receiving the department's request for technical review, the technical review panel will provide its recommendation to the department, and the department will convey the recommendation to the contracting agency.

(6) After receiving the technical review panel's recommendation, the contracting agency must make a final determination about whether installing green energy technology is appropriate either at the public building site or away from the public building site. The contracting agency must enter its final determination and the technical panel's recommendation into the green energy technology database described in OAR 330-135-0055.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612

Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; Renumbered from 330-135-0048, DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0055

Requirement to Report on Green Energy Technology

(1) A contracting agency must enter information about its public building project into the green energy technology database after it makes its final determination about whether green energy technology is appropriate and before the construction/renovation of the building(s) commences.

(2) The contracting agency will enter the information into the green energy technology database using an online form provided by the department and accessible from the department website.

(3) Information entered in the green energy technology database must include, but not be limited to:

(a) Project name;

(b) Address of public building;

(c) Name of contracting agency;

(d) Contact information for reporting person;

(e) Utility companies serving the building;

(f) Date the contracting agency first advertised or otherwise solicited a contract for the construction, reconstruction or major renovation of the public building;

(g) Total contract price;

(h) Total insured building value (renovation projects);

(i) Whether the project includes previously deferred funds, the name of the previous project(s), the amount of the deferred funds, and the aggregate amount of funds to be spent on the current project;

(j) Projected start of construction and occupation date of building;

(k) Description of the proposed green energy technology;

(l) Location details of the green energy technology installation;

(m) Disclosure of non-public funds used in financing the green energy technology;

(n) Estimated annual energy production or savings of the green energy system;

(o) Contracting agency determination of whether green energy technology is appropriate at the public building site or away from the public building site, or contracting agency decision to defer the expenditure;

(p) Technical review panel recommendation;

(q) Future project to which funds will be deferred and projected start of construction of the future building, if applicable and future project is known;

(r) The aggregate amount of funds the contracting agency has deferred but not yet used for green energy technology in another project;

(s) Cost-effectiveness comparison between green energy technology away-from-the-site of the public building compared to green energy technology at the site of public building under construction or renovation, if applicable; and

(t) Evidence of additional new renewable energy generation from green energy technology installed at the away-from-the-site location, if applicable.

(4) Upon completion of construction of the new building or major renovation and at the request of the department, the contracting agency must provide to the department the actual amount spent for green energy technology and, if significant changes were made to the green energy technology system design, an updated project description and updated estimated annual energy generation or savings.

Stat. Auth.: Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13; DOE 8-2015, f. 12-23-15, cert. ef. 1-1-16

330-135-0060

Outreach to Public Bodies

The department will conduct outreach to public bodies at least once per year to help inform them of the requirement ORS 279C.527 through 279C.528 to spend at least 1.5 percent of the total contract price for eligible public buildings on green energy technology.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 7-2013, f. & cert. ef. 12-23-13

DIVISION 140

SELF DIRECTION OF PUBLIC PURPOSES CHARGES BY LARGE RETAIL ELECTRICITY CONSUMERS

330-140-0010

Scope and Applicability of These Rules

(1) The rules contained in this division include the criteria and procedures by which a large retail electricity consumer with a site located within the State of Oregon, using more than one average megawatt in a calendar year (8,760,000 kilowatt hours/year), may become a self-directing consumer of a portion of its public purpose charges.

(2) The rules contained in this division apply to large retail electricity consumers of electric companies and electricity service suppliers, except that these rules do not apply to retail electricity consumers of an electric company serving less than 25,000 consumers in this state unless the electric company offers direct access

to any of its large retail electricity consumers in this state or offers to sell electricity services available under direct access to more than one large retail electricity consumer of another electric utility.

(3) The rules contained in this division apply to large retail electricity consumers of consumer-owned utilities and electricity service suppliers, once the consumer-owned utility governing board has elected to allow open access to a class of customers for which that electricity consumer is a member. These rules only apply to the first three percent of public purpose charges imposed upon retail electricity consumers by a consumer-owned utility.

(4) The rules contained in this division apply to a public purpose charge equal to 1 percent of the total revenue from the sale of electricity to large retail electricity consumers that are an aluminum plant whose electric company's service territory abuts the greatest percentage of the site of the aluminum plant that uses more than 100 average megawatts of electricity per year.

(5) Large retail electricity consumers eligible to become self-directing consumers shall not claim a credit against public purpose charges owed for new energy conservation or new renewable resource purchases until they are issued certificates for qualified expenditure under these rules.

(6) All information submitted to or collected by the Oregon Department of Energy or its agent under these rules shall be protected as business trade secrets to the extent permitted under the Public Records Act.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0020

Definitions as Used in This Division

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source with the same term of contract.

(2) "Attest" means attestation services as defined in ORS 673.010(1).

(3) "Certification of Qualified Expenditure for New Energy Conservation" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies the cost of an installed energy conservation project is eligible to be claimed as a credit against public purposes charges owed by the large electricity consumer under these rules.

(4) "Certification of Qualified Expenditure for New Renewable Resources" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies the contracted cost of new renewable resource purchases is eligible to be claimed as a credit against public purpose charges owed by the large electricity consumer under these rules.

(5) "Commission" means the Public Utility Commission of Oregon.

(6) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(7) "Declaration of Intent to Self-Direct Public Purposes Charges" means a request in writing from a large electricity consumer that requests the Oregon Department of Energy recognize the large electricity consumer as eligible to self-direct public purpose charges under these rules.

(8) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the Commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

(9) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(10) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of

local area power poles, transformers, conductors, meters, substations and other equipment.

(11) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(12) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(13) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(14) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(15) "Electricity" means electric energy measured in kilowatt-hours, or electric capacity measured in kilowatts, or both.

(16) "Electricity services" means electricity distribution, transmission, generation or generation-related services.

(17) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(18) "Energy Conservation Project" means a capital investment in equipment that reduces the electric energy use or improves electric energy efficiency at a large electricity consumer's site or system at that site which has a simple payback of greater than one year and less than ten years. The simple payback shall be determined by using the eligible capital cost of the project divided by the first year electric energy cost savings.

(19) "Energy conservation project cost" means the costs of necessary features of an energy conservation project that include but are not limited to capital costs, administrative costs, general expenses, facility energy audits resulting in capital investment in an energy conservation project, design and engineering, shipping, materials, permits, installation, performance evaluation, and equipment operations training. The cost of a new energy conservation project may include large electricity consumer's cost of an energy analysis or study conducted by any public or private party, and any administrative costs paid.

(20) "Independent Energy Audit" means an evaluation by an independent auditor of all potential electricity using systems at an electric consumer's site that identifies in a written report the characteristics of electric energy use of those systems and all energy conservation projects for each of the electric energy using systems at the site.

(21) "Independent Energy Auditor" means a provider of energy systems audits that identify potential energy conservation projects for large electricity consumers that is not in the employ of the retail electricity consumer's company or any of its subsidiary or affiliate organizations except under contract as an independent service provider that is selected to provide independent audit service under these rules. An independent auditor may include a consumer-owned utility.

(22) "Independent certified public accountant" means a certified public accountant recognized by the State of Oregon and independent as defined by the ethics rules implemented under ORS 673.010–673.480.

(23) "Large electricity consumer" means a nonresidential consumer that is a retail electricity consumer that has used more than one average megawatt of electricity (8,760,000 kWh/year) at any one site in the prior calendar year.

(24) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(25) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(26) "New" as it refers to energy conservation, market transformation and low-income weatherization means measures, projects

or programs that are installed or implemented after the date direct access is offered by an electric company, with the exception that "new energy conservation" also includes expenditures by large electricity consumers eligible for self-directing public purpose charges that meet the following conditions:

(a) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(A) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(B) the energy conservation measure did receive funding from an electric company conservation program and the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access or the date they request preliminary certification under these rules. A self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(b) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(27) "New renewable energy resource" means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before January 1, 2000. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before January 1, 2000.

(28) "Nonresidential consumer" means a retail electricity consumer that is not a residential consumer.

(29) "Oregon Department of Energy" means the Oregon Department of Energy, an agency of the State of Oregon, created under Oregon Revised Statute (ORS) 469.030.

(30) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

(31) "People's utility district" has the meaning given that term in ORS 261.010.

(32) "Precertification of new energy conservation projects" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies that a proposed energy conservation project will be eligible for a certificate of qualified expenditure if it is installed as described in the retail electricity consumer's application for precertification.

(33) "Precertification of new renewable resource purchases" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies that a proposed renewable resource purchase will be eligible for a certificate of qualified expenditure, if contracts of commitment to purchase are established as described in the retail electricity consumer's application for precertification.

(34) "Public purpose charge" is an amount equal to 3 percent of the total revenues billed to large consumers for electricity services, distribution, ancillary services, metering, billing, transition charges and other types of costs that were included in electric rates on or after March 1, 2002 by electric utilities offering direct access to their large electricity consumers, except for an aluminum plant that is a retail electricity consumer where the amount is equal to 1 percent of the total revenues billed.

(35) "Qualifying expenditures" means those expenditures for new energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources.

(36) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; or

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(37) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after January 1, 2000, whether or not each end user purchases the electricity from the electric utility. Retail electricity consumers include any direct service industrial consumer that purchases electricity without distribution services from the electric utility.

(38) "Self-directing consumer" means a retail electricity consumer using more than one average megawatt of electricity at any one site for the twelve billing months preceding January 15 of each year or an aluminum plant using more than 100 average megawatts of electricity for the twelve billing months preceding January 15 of each year. Consumers in electric utility service territories qualify as self-directing if they have a certification of qualified expenditure from the Oregon Department of Energy for new energy conservation or new renewable energy resources.

(39) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Each building or structure included in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings or structures; and

(C) Land shall be considered contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(40) "Statement of Eligibility" means a written declaration by an authorized officer of a large electricity consumer's firm that it meets the definition of a large electricity consumer under these rules and that it intends to comply with the requirements contained in these rules for self-direction and reporting of public purpose charges for a given site.

(41) "System" means any individual process or series of equipment contributing to energy end use in a large electricity consumer's site. A system may include heating, ventilating and air conditioning, domestic hot water, lighting, or a specific industrial process such as air compression, refrigeration, shredding, forging, or other such specific process described by the large electricity consumer.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

330-140-0030

Eligibility as a Self-Directing Consumer

(1) Oregon retail electricity consumers using more than one average megawatt of electricity at one site in the twelve billing months preceding January 15 of each year, beginning with 1999, may apply in writing to the Oregon Department of Energy to qualify to self-direct a portion of their public purpose charges starting October 1, 2001. Application must be made each year that an electricity consumer wants eligibility as a self-directing consumer.

(2) The request for eligibility as a self-directing consumer shall include a statement that electric energy consumption at the site is over one average megawatt for the twelve billing months preceding January 15 of the year preceding the date of request for initial or renewal of eligibility.

(3) The written request for eligibility as a self-directing consumer shall be on a form provided by Oregon Department of Energy and include but not be limited to the following: name of the Oregon business or organization as a customer of record for the customer's electric utility; description of the site; site street and mailing addresses; business or organization contact; calendar year for which electric energy consumption qualifies the business or organization; electric energy consumption at the site for the given calendar year; name of the electric distribution utility; name of electricity service supplier(s); account numbers at the site for the electric distribution utility and each energy service supplier; and electric meter numbers at the site. The written application for eligibility to self-direct public purpose charges and statement of eligibility shall be signed and dated by a representative of the business or organization authorized by the highest ranking officer of the business or organization.

(4) Retail electricity consumers requesting eligibility from the Oregon Department of Energy under this rule shall retain evidence of energy consumption from their energy service suppliers and distribution utility used to qualify for self-direction.

(5) Retail electricity consumers are eligible for self-direction for the one calendar year following the year for which the Oregon Department of Energy has based its approval of their request for eligibility, regardless of the electricity purchases at that site in the following calendar year.

(6) Retail electricity consumers that receive Oregon Department of Energy approval of the request for eligibility for self-direction for a specific site may submit applications for precertification of new energy conservation projects and new renewable energy resource purchases for that site.

(7) The Oregon Department of Energy may request documentation to determine the validity or accuracy of any request for eligibility to self-direct public purpose charges.

(8) The Oregon Department of Energy shall notify the large electricity consumer's electric distribution utility in writing that the large electricity consumer is recognized as eligible for self-direction within 30 days of receipt of the request.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0040

Precertification of New Energy Conservation Projects

(1) Retail electricity consumers approved as eligible to become self-directing consumers by the Oregon Department of Energy may submit applications for precertification of new energy conservation projects.

(2) Retail electricity consumers shall apply directly to the Oregon Department of Energy for precertification of new energy conservation project investments that have a simple payback of greater than one year and less than ten years on a form supplied by the Oregon Department of Energy. Information submitted on the form shall include but not be limited to: the name of the retail electricity consumer; a description of the site; a description of the electricity conservation project; detail of the costs of the electricity conservation project; estimated electricity savings from the project; and calculations that support or demonstrate the electricity savings and simple payback of the project.

(3) The Oregon Department of Energy shall determine the eligible costs for the energy conservation project.

(4) Precertification of the cost eligible for credit and a description of the new energy conservation project shall be approved or denied in writing by the Oregon Department of Energy within 30 days of the receipt of a complete application.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0050

Precertification of New Renewable Resource Purchase

(1) Retail electricity consumers approved as eligible to become self-directing consumers by the Oregon Department of Energy may submit applications for precertification of new renewable resource purchases.

(2) Retail electricity consumers shall apply directly to the Oregon Department of Energy for precertification of new renewable resource purchases on a form supplied by the Oregon Department of Energy. Information submitted on the form shall include but not be limited to: the name of the electricity consumer; a description of the site; a description of the new renewable resource to be purchased; the electricity consumer's market price for electricity from conventional sources; costs of the new renewable resource; estimated electricity to be purchased from the new renewable resource; length of time of a proposed purchase agreement; method of certifying that the renewable energy resource purchased has not been duplicatively sold to other parties either in whole or part; and, any contract terms that would otherwise affect the cost or amount of new renewable resource purchased.

(3) The Oregon Department of Energy shall determine if the above-market cost of the proposed purchase of renewable resources, described in the application, are to be precertified as eligible self direction costs.

(4) Precertification of the cost eligible for a credit and a description of the new renewable resource purchase shall be approved or denied in writing by the Oregon Department of Energy within 30 days of the receipt of a complete application.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0060

Certification of Qualifying Expenditure for New Energy Conservation Projects

(1) Once the costs, or portion of the costs identified in the precertification as a component eligible for certification as an individual expense for a project, are expended, the retail electricity consumer may apply to the Oregon Department of Energy for a certificate of qualified expenditure on a form provided by the Office of Energy.

(2) Proof of amount paid must accompany the application for certificate of qualified expenditure.

(a) Proof of purchase for projects costing less than \$50,000 may include canceled checks, credit card statements, and binding contracts or agreements.

(b) Projects costing \$50,000 and more shall have an independent certified public accountant attest to the cost of the project.

(3) A certificate of qualified expenditure for all or part of the cost of precertified new energy conservation project(s) shall be approved or denied by the Oregon Department of Energy in writing within 30 days of the receipt of a complete application. A certificate of qualified expenditure may be issued for a portion of the cost of a new energy conservation project(s) that is an individual cost component or project phase defined in the preliminary certificate application and approved in the preliminary certificate.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

330-140-0070

Certification of Qualifying Expenditure for New Renewable Resources

(1) Retail electricity consumers whose new renewable resource purchases have received precertification from the Oregon Department of Energy may apply for a certificate of qualified expenditure on a form provided by the Oregon Department of Energy.

(2) A signed contract to purchase or receipt(s) for purchase of renewable resource certificates for new renewable energy describing the amount to be paid and the length of the agreement must accompany the application for certificate of qualified expenditure.

(3) Proof of amount paid must accompany the application for certificate of qualified expenditure for constructed new renewable resource projects.

(4) Proof of purchase for constructed projects costing less than \$50,000 may include canceled checks, credit card statements, and binding contracts or agreements.

(5) Constructed project costs of \$50,000 and more shall have an independent certified public accountant attest to the cost of the project.

(6) Certificate of qualified expenditure shall be approved or denied by the Oregon Department of Energy within 30 days of the receipt of a complete application.

(7) The certificate of qualified expenditure shall describe the term for which a contracted new renewable resource purchase is eligible for credit against public purposes charges owed.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

330-140-0080

Claiming a Public Purpose Charge Credit

(1) Large electricity consumers who are eligible for direct access, starting with the date of direct access, may claim credits against public purposes charges owed.

(2) Credits claimed may not exceed the amount of cost documented on certificate(s) of qualifying expenditure for that self directing consumer's site. When qualifying expenditures are certified they may be claimed as follows:

(a) Credits in excess of the amount owed for a given month's conservation or renewable resource public purpose charges shall be available for future credit use (carried forward) for up to ten years but not past February 29, 2012.

(b) Credits in excess of the amount owed for a specific site may be applied to public purpose charges at other sites owned by the electricity consumer, its subsidiaries or affiliate firms in the same distribution utility service territory provided the site is also eligible as a self-direction consumer under these rules.

(3) The maximum credit against public purpose charges owed by a self-directing consumer shall not exceed the following:

(a) The maximum self-direction credit for sites in electric company service territories shall be 73.8 percent of the public purpose charge owed. Self-direction credit for the new energy conservation portion shall not exceed 56.7 percent of the public purpose charge owed and 17.1 percent for the new renewable resource purchase portion; or

(b) The maximum credit for sites in consumer owned electric service territory shall be 68 percent of the first 3 percent public purpose charges for new energy conservation. Any remaining amount, up to the maximum of the first 3 percent public purpose charge, is limited to the portion of the public purpose charge billed for new market transformation or above market costs of renewable resource purchase.

(c) The maximum credit for at an aluminum plant site shall be 68 percent of 1 percent of the total revenue from the sale of electricity to the retail electricity consumer for new energy conservation projects and 17.1 percent for new renewable resource purchases of 1 percent of the total revenue from the sale of electricity to the retail electricity consumer, where the electric companies service territory abuts the greatest percentage of the site of the aluminum plant that uses more than 100 average megawatts of electricity per year.

(4) Large electricity consumers, who have received recognition that their site is eligible for self-direction with a certificate of qualified expenditure for credit against public purpose charges issued by the Oregon Department of Energy, may request that their electric distribution utility or energy service supplier apply their credit against public purpose charges owed.

(5) To remain eligible to self-direct public purpose charges, large electricity consumers shall pay on a monthly basis any balance of public purpose charges owed to their electric distribution utility or energy service supplier.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0090

Exclusion from Payment of a Portion of the Public Purpose Charge

(1) Retail electricity consumers approved to become self-directing consumers by the Oregon Department of Energy may request exclusion from payment of a maximum of 54 percent of the public purpose charges for energy conservation for a specific site. Oregon Department of Energy shall notify the retail electricity consumer's electric distribution utility of the request for exclusion from payment of a portion of public purpose charges.

(2) To be eligible for relief from payment of public purpose charges, an independent energy audit shall determine that all new energy conservation with a simple payback of one year or greater and ten years or less has been implemented at the site or that the cost of any uninstalled new energy conservation projects identified in the independent energy audit are paid first.

(3) The independent energy audit estimated cost for the new energy conservation measure must be paid as a public purpose charge up to the amount of the energy conservation portion of the retail electricity consumer's public purpose charges. The retail electricity consumer may only be relieved of public purposes costs above the auditor's estimated cost for the new energy conservation that the electricity consumer has chosen not to install up to the maximum stated under these rules.

(4) By the second annual anniversary of the date that the Oregon Department of Energy grants exclusion from payment of a portion of public purpose charges, the retail electricity consumer shall enter into an agreement to commence another independent energy audit.

(5) The large electricity consumer shall notify their electric distribution utility that a certificate of eligibility to be relieved of a portion of public purpose charges owed has been issued for that site prior to claiming any credit allowed under this rule against public purpose charges owed.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0100

Independent Audit Standards and Procedures

(1) An independent energy audit shall document or identify: annual electric energy consumption history for the site, major electricity energy using systems at the site, estimated segmentation of electric energy by end use and system type, industry standard benchmark performance for each electric energy using system at the site, site system performance relative to benchmarks, all installed electric energy conservation measures, all new electric energy conservation measure opportunities at the site by end use and/or system. Industry-established Industries of the Future roadmap technologies improving electric energy efficiency shall be evaluated for applicability at each site.

(2) A retail electricity consumer may contract with an independent energy auditor from a qualified list provided by the Oregon Department of Energy or an independent energy auditor of the retail electricity consumer's choice.

(3) The Oregon Department of Energy shall qualify the independent energy auditor selected by the retail electricity consumer within 30 days of a request in writing for auditor approval if either (a) or (b) below apply:

(a) They are from the qualified auditor list; or

(b) If the independent energy auditor is:

(A) Registered to do business in Oregon; and

(B) Has conducted comprehensive energy use and conservation analysis or facilities design in at least three facilities of similar type and size as the site; and

(C) A sample audit report from the selected independent energy auditor meets the approval of the Oregon Department of Energy for technical accuracy, thorough identification of new energy conservation investment by system or end use at the reported facility, and the report documents accurate cost estimates for new energy conservation investments; and

(D) Documentation or evidence supporting sections (A), (B) and (C) of this rule are submitted with the written request to approve the independent auditor.

(4) The Oregon Department of Energy shall develop a list of qualified independent energy auditors.

(5) Large electricity consumers may select an independent energy auditor from the list of qualified independent energy auditors. The Oregon Department of Energy may use the list when requested by a large electricity consumer to direct auditors to conduct an independent audit of the large retail electricity consumer's site.

(6) Selection of the independent energy auditor will be based on the auditor's experience auditing the type of facility, delivery date of the audit and cost.

(7) The large electricity consumer shall directly contract with the independent energy auditor for all costs of the audit. The contract between the large electricity consumer and the independent energy auditor shall provide the Oregon Department of Energy open access to information on all aspects of the independent energy audit.

(8) Costs for independent energy audit services under this rule are not eligible for precertification as new energy conservation unless a portion of the audit defines design elements of a new energy conservation project installed by the large electricity consumer.

(9) A summary of findings shall be provided to the Oregon Department of Energy once on-site field work is complete and prior to the development of the audit report.

(10) An independent energy audit report, described under subsection 1 of this rule, shall be submitted by the large electricity consumer's independent energy auditor to the Oregon Department of Energy for review.

(11) A certificate of eligibility to be relieved of a portion of the public purpose charges, not to exceed 54 percent of the amount owed, shall be approved or denied in writing by the Oregon Department of Energy within 30 days of the receipt of a complete and approved independent energy audit report.

(12) The Oregon Department of Energy may require that all or part of the independent energy audit be reevaluated and rewritten by the independent energy auditor or the large electricity consumer at the large electricity consumer's expense if data, technical or engineering errors or omissions are identified.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0110

Reporting Self-Direction Credits and Public Purpose Amounts Collected or Paid

(1) Consumer-owned utilities providing open access to any customer class shall report annually to the Oregon Department of Energy the amount of public purpose charges collected from the consumer owned utility retail electricity consumers. The report shall be submitted no later than February 28 of each calendar year starting in the calendar year after the consumer owned utility governing board elects to provide open access for any class of its customers. Reports shall not include the self-direction public purpose charges allowed under these rules.

(2) The Oregon Department of Energy shall notify in writing large electricity consumers or consumer-owned utilities of errors in the amount of self-direction credit claimed, the amount of public purpose charges submitted to the consumer's electric utility, or

other errors or omissions in reports. The notice shall recommend the corrections necessary for the large electricity consumer or the consumer-owned utility.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0120

Denial or Revocation of Eligibility to Participate as a Self-Direction Consumer

(1) The Director of the Oregon Department of Energy shall determine whether a large electricity consumer is eligible to participate or to continue to participate in part or at all under these rules based on the following:

(a) The large electricity consumer no longer qualifies for participation as a self-directing consumer under these rules; or

(b) The large electricity consumer fails to submit public purpose charges owed; or

(c) Changes in an energy conservation project or renewable resource purchase that are not communicated to the Oregon Department of Energy that make the project ineligible for self-direction credit; or

(d) Errors in fact or procedure under these rules go uncorrected after requests for correction are submitted to the large electricity consumer by the Oregon Department of Energy; or

(e) Any intentional commission of error or fraud in any application for participation under these rules; or

(f) It is determined by the Director of the Oregon Department of Energy that self-directing by that large electricity consumer or class of large electricity consumers cannot be accountably administered.

(2) The Oregon Department of Energy shall notify the large electricity consumer in writing of the revocation or denial of the large electricity consumer's eligibility to participate under these rules and include:

(a) The conditions leading to the decision to deny or revoke eligibility of the large electricity consumer's right to self-direct public purpose charges; and

(b) The date that the retail electricity consumer is no longer eligible to apply for project precertification or certification of qualified expenditure; and

(c) The previously certified qualified expenditures that the retail electricity consumer may continue to claim as credits against public purpose charges owed.

(3) The large electricity consumer may appeal the decision to the Director of the Oregon Department of Energy in writing within 30 days of the postmarked date of the notice from the Oregon Department of Energy.

(4) The Director of the Oregon Department of Energy shall approve or deny any request to appeal a revocation or denial of eligibility to self-direct public purpose charges in writing within 30 days of the postmarked date of the appeal request.

(5) The Oregon Department of Energy shall notify the large electricity consumers electric distribution utility in writing, that is an electric company or consumer owned utility, of the revocation or denial of a large electricity consumer's eligibility to participate as a self direction consumer under these rules.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0130

Utility and Electricity Consumer Credits for Public Purpose Expenditures by their Energy Suppliers

(1) Utilities may apply to the Oregon Department of Energy to claim a credit for qualifying public purpose expenditures by their energy supplier for the market transformation activities of the Northwest Energy Efficiency Alliance under the Bonneville Power Administration residential subscription rate.

(2) Application for this credit must be made by March 1 of each calendar year to begin claiming credit by October 1 and shall document the contracted amount owed.

(3) The credit may be taken against the conservation portion of the electric distribution utility payment of collected public purpose charges as directed by Oregon Administrative Rule.

(4) The Oregon Department of Energy shall propose a credit amount to the Oregon Public Utility Commission by July 1, 2002. The credit amount shall be distributed as a reduction to public purpose charges owed equitably among all the electric distribution utility's residential ratepayers whose rates include a Northwest Energy Efficiency Alliance cost component.

Stat. Auth.: ORS 469.040, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

330-140-0140

Administrative Cost Recovery

(1) Large electricity consumers applying to be eligible as self-directing consumers shall pay actual cost of service incurred by the Oregon Department of Energy for services provided for establishing a self-direction account, reviewing request for self direction, and the electricity consumer's portion of the cost for any services or supplies for such administration.

(2) At the request for services by the self-directing consumer, the Oregon Department of Energy may estimate and request payment for the cost of service for self direction services provided. The estimated cost of service provided shall not exceed 4 percent of proposed project costs. The self-directing consumer shall submit payment of the estimated cost of certification services with all applications for precertification. An application for preliminary certification will not be considered complete without payment. The Oregon Department of Energy shall review the actual cost of service annually to assure costs of operation are recovered.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

DIVISION 160

ESTABLISH A RENEWABLE ENERGY CERTIFICATE SYSTEM FOR THE OREGON RENEWABLE PORTFOLIO STANDARD (RPS)

330-160-0005

Purpose

The purpose of these rules is to establish a system of renewable energy certificates to provide a means of compliance with the Oregon Renewable Portfolio Standard (RPS).

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08

330-160-0015

Definitions

For the purposes of Oregon Administrative Rules, chapter 330, division 160, the following definitions apply unless the context requires otherwise:

(1) "Banked Renewable Energy Certificate" has the meaning in ORS 469A.005.

(2) "Bundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(3) "Compliance Year" has the meaning in ORS 469A.005.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Electricity Service Supplier" has the meaning in ORS 469A.005.

(7) "Electric Utility" has the meaning in ORS 469A.005.

(8) "Federal Columbia River Power System" (FCRPS) means the transmission system constructed and operated by Bonneville

Power Administration (BPA) and the hydroelectric dams constructed and operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation in Oregon, Washington, Montana and Idaho.

(9) “Generator representative” means an electricity generating facility’s owner, operator or WREGIS account holder.

(10) “High Water Mark Contract” means a power sales contract between a consumer-owned utility and BPA that contains a contract high water mark, and under which the utility purchases power from BPA at rates established by BPA in accordance with the tiered rate methodology.

(11) “Joint Operating Entity” means an entity that was lawfully organized under State law as a public body or cooperative prior to September 22, 2000, and is formed by and whose members or participants are two or more public bodies or cooperatives, each of which was a customer of BPA on or before January 1, 1999.

(12) “Multiple-fuel facility” means a facility that is capable of generating electricity using more than one type of fuel. A facility that uses fossil fuel for generator start-up but otherwise uses a single eligible resource and is not required to register in WREGIS as a multi-fuel generating unit, as defined by WREGIS, is not a multiple-fuel facility.

(13) “Oregon’s share” as used in ORS 469A.020(3), means the portion of Federal Columbia River Power System generation attributable to the Oregon load of hydroelectric efficiency upgrades that BPA provides to:

(a) Each consumer-owned utility serving load located in Oregon, pursuant to a High Water Mark Contract;

(b) Each Joint Operating Entity with retail utility members serving load located in Oregon, pursuant to a High Water Mark Contract; and

(c) Each investor-owned utility participating in the Residential Exchange Program that serves load located in Oregon.

(14) “Qualifying Electricity” has the meaning in ORS 469A.005.

(15) “Renewable Energy Certificate” (REC or Certificate) means a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one MegaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity.

(16) “Renewable Energy Source” has the meaning in ORS 469A.005.

(17) “Residential Exchange Program” means the arrangement, based on section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act, whereby regional utilities sell BPA an amount of power equal to their residential and small-farm load at their average system cost in exchange for federal electric power, and pass on the benefits to their residential and small-farm customers in the form of a bill credit.

(18) “RPS” means the Oregon renewable portfolio standard as established in ORS 469A.

(19) “Stranded electricity” means qualifying electricity that:

(a) Was generated between January 1, 2007, and March 4, 2011, by a generating unit that was registered in WREGIS on or before March 4, 2011; and

(b) Was reported to the Department on or before March 11, 2011.

(20) “Unbundled Renewable Energy Certificate” has the meaning in ORS 469A.005.

(21) “Vintage” means the month and year that qualifying electricity was created in accordance with WREGIS protocol.

(22) “WREGIS” means the Western Renewable Energy Generation Information System, which is the renewable energy certificate tracking and reporting system established by the California Energy Commission and the Western Governors’ Association and governed by the Western Electricity Coordinating Council for use by states and provinces throughout the western power interconnection.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11; DOE 1-2011, f. & cert. ef. 2-22-11; DOE 2-2011, f. & cert. ef. 3-4-11; DOE 11-2012, f. & cert. ef. 11-14-12; DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0020

Establishment of Renewable Energy Certificate System

(1) Renewable energy certificates that are issued, monitored, accounted for and transferred by or through the regional renewable energy certificate system and trading mechanism known as the Western Renewable Energy Generation Information System (WREGIS) shall be the only renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the Oregon Renewable Portfolio Standard (RPS).

(2) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must establish and maintain accounts in good standing with the WREGIS renewable energy certificate system. These entities must comply with all information, data reporting and verification requirements of the WREGIS Operating Rules dated July 15, 2013, including costs required for compliance. These accounts must be established before January 1, 2009 or before the earliest vintage of Certificate to be used to comply with the Oregon RPS, whichever is later.

(3) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must participate in the system in accordance with the WREGIS Operating Rules dated July 15, 2013. The Operating Rules for WREGIS are publicly available from the WREGIS web site at www.wregis.org.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11; DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0025

Types of Renewable Energy Certificates

(1) A bundled or unbundled renewable energy certificate may be used to comply with the RPS when it is issued through the WREGIS renewable energy certificate system, and is otherwise consistent with the rules and requirements of the Oregon RPS. The Department will identify those generating facilities eligible for creation of Certificates that can be used to satisfy the Oregon RPS.

(2) Each bundled renewable energy certificate used to comply with the RPS must be supported by documentation demonstrating that one megawatt-hour of electricity that was associated with the bundled renewable energy certificate was delivered to the Bonneville Power Administration, to the transmission system of an electric utility or to another delivery point designated by an electric utility for the purpose of subsequent delivery to the electric utility.

(3) To demonstrate that a renewable energy certificate is bundled under Subsection (2) of this rule, an electric utility must either:

(a) Electronically affix to the certificate a valid North American Electric Reliability Corporation (NERC) electronic tagging number (“e-Tag”) or another unique identifier adopted by WREGIS or the Department, which demonstrates that one megawatt hour of electricity was delivered to a point described in Subsection (2) of this rule; or

(b) In a manner prescribed by the Department, submit documentation to the Department demonstrating that:

(A) The renewable energy certificate for the qualifying electricity was acquired by an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the certificate that was issued for the electricity; or by an electric utility by generation of the electricity for which the certificate was issued; and

(B) The qualifying electricity associated with the bundled renewable energy certificate was initially delivered to a point described in Subsection (2) of this rule.

(4) An electric utility required to demonstrate compliance with the RPS through the use of bundled renewable energy certificates, and which demonstrates that a renewable energy certificate is bundled pursuant to 330-160-0025(3)(b), may be required to electronically affix to that certificate a unique identifier adopted by WREGIS or the Department.

(5) The Department may conduct verification audits or may designate a third party for verification services to review any documentation submitted under Subsection (3) of this rule for purposes of verifying compliance with the RPS.

(6) A bundled renewable energy certificate does not need to demonstrate that the electricity identified by the NERC e-Tag is qualifying electricity or that the originating source identified by the NERC e-Tag is a renewable energy source.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.135 - 469A.145

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11; DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0030

Allowed Vintage of Renewable Energy Certificates

(1) The system of renewable energy certificates established through this rule may be used to comply with or participate in the Oregon RPS through the use of Certificates with a vintage of January 2007 or later.

(2) No renewable energy certificate that derives from the WREGIS renewable energy certificate system with a vintage before January 2007 will be eligible for compliance with the Oregon RPS.

(3) Banked renewable energy certificates with a vintage of January 2007 or later, both bundled and unbundled, may be held for future use within the WREGIS renewable energy certificate system to comply with the Oregon RPS.

(4) Generating facilities that produce qualifying electricity shall be eligible to receive certificates associated with generation beginning on January 1, 2007.

(5) Renewable energy certificates created by WREGIS that are associated with stranded electricity may be used to comply with the Oregon RPS.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11; DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0035

Application Process

(1) To apply for certification by the Department that electricity from a generating facility qualifies for the Oregon RPS, the generator representative must submit to the Department a completed general application form and, for hydroelectric, hydro efficiency, hydrogen, biomass, and multiple-fuel facilities, the applicable supplemental form available on the Department's website.

(2) The Department may require from the applicant supporting documentation such as photographs of the facility, records of generating equipment purchases, records of installation or service work orders, and an explanation of the relationship between the applicant and the WREGIS account holder.

(3) The Department will determine whether the facility meets the requirements in ORS 469A.010 to 469A.025 and these rules for generating qualifying electricity and will provide written notification of its determination to the applicant.

(a) If the Department determines that the facility meets the requirements for generating qualifying electricity, it will certify the facility as Oregon RPS-eligible in WREGIS and provide the Oregon RPS certification number and the first eligible REC vintage date in writing to the applicant.

(b) If the Department determines that the facility does not meet the requirements for generating qualifying electricity, it will provide the reasons for its determination in writing to the applicant.

(c) If the Department lacks information necessary to make a determination, it will not certify the facility in WREGIS and will provide the reasons it is unable to make a determination in writing to the applicant.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0037

Confidential Treatment of Information

A generator representative may request confidential treatment of information provided to the Department pursuant to OAR 330-010-0005 through 330-010-0030.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0038

Expiration of Oregon RPS Certification

Except as otherwise indicated in these rules, a facility's Oregon RPS certification will not have an expiration date.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0040

Low-impact Hydro Electric Facilities

(1) The Department recognizes the Low Impact Hydropower Institute (LIHI) as the national agency to certify hydroelectric facilities as low impact for purposes of the Oregon RPS. A hydroelectric generation facility with current certification from LIHI and that complies with other requirements of ORS 469A and these rules is eligible for the Oregon RPS.

(2) For a low impact hydroelectric facility to remain eligible for the Oregon RPS, the generator representative must maintain a current LIHI certificate and provide the Department a copy of its LIHI certificate upon renewal.

(3) The Department will enter into WREGIS an expiration date for a low impact hydroelectric facility's Oregon RPS certification that matches the facility's LIHI certificate expiration date.

(4) The Department will provide written notice to a generator representative at least 60 days before its low impact hydroelectric facility's Oregon RPS certification is scheduled to expire.

(5) Upon receiving a copy of the renewed LIHI certificate from the generator representative, the Department will update the facility's Oregon RPS certification expiration date in WREGIS with the new LIHI certificate expiration date.

Stat. Auth.: ORS 469A.025, OL 2010, Ch. 71(SS)

Stats. Implemented: ORS 469A.025

Hist.: DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11; DOE 1-2011, f. & cert. ef. 2-22-11; DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0050

Hydroelectric Facility Upgrades

(1) Efficiency upgrades from an Oregon RPS qualifying hydroelectric facility refers to additional incremental qualifying electricity production at an existing hydroelectric facility due to upgrades to existing generators, turbines and other Department-approved equipment changes. Efficiency upgrades do not include increased generation achieved through increased impoundments or increased appropriation or diversions of water.

(2) The generator representative must estimate the percentage increase in efficiency of the facility's hydroelectric power production due to an efficiency upgrade and provide that estimate to the Department via the supplemental application form provided by the Department for hydroelectric efficiency upgrades, with supporting documentation substantiating the estimate.

(3) The Department will determine the eligibility of incremental hydroelectric power production at an existing hydroelectric facility for purposes of Oregon RPS compliance.

(a) Eligibility is based solely on any operational changes at the facility that are directly associated with efficiency upgrades as defined in subsection (1) of this section.

(b) The determination of the percentage increase in the efficiency of hydroelectric power production as described in subsection (1) of this section shall be based on the best available evidence, including but not limited to, representations by the Federal Energy

Regulatory Commission or, for federal projects, by the authorized power marketing agency or agencies with jurisdiction over the federal projects.

(c) The annual electricity production eligible for RPS-eligible renewable energy certificates is the annual hydroelectric power production at the facility multiplied by the percentage increase in efficiency from paragraph (b) of this subsection.

(d) The Department will provide to WREGIS the increment of percentage increase in hydroelectric power production attributable to the facility efficiency upgrades that is RPS-eligible.

(4) Capacity upgrades to a hydroelectric project are not eligible under ORS 469A.025(4)(b) for the Oregon RPS. Capacity upgrades to a hydroelectric project include any increase in generating capacity other than an increase from an efficiency upgrade.

(5) For hydroelectric efficiency upgrades made to a Federal Columbia River Power System facility consistent with this section, only the incremental generation attributable to Oregon's share, per ORS 469A.020(3), is eligible for the Oregon RPS.

(a) Utilities or Joint Operating Entities that make sales of electricity to retail customers or members in more than one state may receive Oregon's share only for their Oregon load.

(b) The Department will certify in WREGIS as eligible for compliance with the Oregon RPS those REC's associated with Oregon's share, as may be adjusted by the Department.

(6) Effective January 1, 2013, annually and no later than December 31, the Department will publish a list of electric utilities that make sales of electricity to retail customers in more than one state. The list will indicate the most recent proportion of retail load that is located in Oregon, or, for investor-owned utilities, the most recent proportion of eligible Residential Exchange Load located in Oregon.

(a) Annually and no later than October 1, the Department may request that a consumer owned utility that serves retail customers in more than one state provide its total retail load and state-by-state retail load percentages to the Department. Upon such request, the consumer owned utility must provide such retail load information by November 15.

(b) Annually and no later than October 1, the Department may request an investor-owned utility that serves retail customers in more than one state provide its total eligible Residential Exchange Load and state-by-state Residential Exchange Load percentages and values to the Department. Upon such request, the investor-owned utility must provide such retail load information by November 15. After the Department receives percentages and values, there may be a period of reconciliation.

(c) If no submission is received or no reasonably current information is available, the Department will not publish load information for that utility.

(7) Annually, on or around April 1, the Department may request that BPA provide the Department with a copy of the certificate transfer directions that BPA provides to WREGIS.

(8) After the fifth anniversary of the date the Department determines that a hydroelectric efficiency upgrade is eligible for the Oregon RPS, the Department will request from the generator representative a review of the performance of the efficiency upgrade. Except as provided in subsection (9) of this section, within six months of the Department's request, the generator representative must provide to the Department a new estimate of the facility's percentage increase in efficiency attributable to the efficiency upgrade with supporting documentation.

(9) The Department may grant an exemption from the review described in subsection (8) of this section to any facility for which the generator representative, within six months of the Department's request:

(a) Demonstrates to the Department's satisfaction that the customer generator's estimated percentage increase in efficiency is supported by historical data such that it represents the long term average; and

(b) Signs a form, provided by the Department, attesting that the physical equipment and operation of the facility has not changed in a manner that would affect the percentage increase in efficiency attributable to the efficiency upgrade since that efficiency increment was established.

(10) If the Department determines that the percentage increase in efficiency attributable to the efficiency upgrade has changed from the facility's current RPS certification, it will revise the increment in WREGIS accordingly and notify the generator representative of the revised increment in writing. The revised increment in WREGIS will apply to all electricity generated on or after the date WREGIS is updated with the revised increment.

Stat. Auth.: ORS 469A.005 - 469A.210 & 469.040

Stats. Implemented: ORS 469A.005 - 469A.210

Hist.: DOE 2-2011, f. & cert. ef. 3-4-11; DOE 11-2012, f. & cert. ef. 11-14-12; DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0060

Periodic Review of Multiple-fuel facilities

(1) Multiple-fuel facilities are subject every three years to a review of the percentage of the facility's electricity generation that is allocated to RPS-eligible fuels.

(2) The Department will enter into WREGIS an expiration date for a multiple-fuel facility's Oregon RPS certification that is three years from the date the Department completes its review of the percentage of the facility's electricity generation that is allocated to RPS-eligible fuels.

(3) The Department will provide written notice to a generator representative at least 6 months before its multiple-fuel facility's Oregon RPS certification is scheduled to expire.

(4) For a facility to remain RPS-eligible, the generator representative must complete one of the following actions prior to the facility's Oregon RPS certification expiration date:

(a) Sign a form provided by the Department attesting that the physical equipment and operation of the facility has not changed in a manner that would affect the facility's RPS-eligible fuel allocation since that RPS-eligible fuel allocation was established; or

(b) Provide to the Department an updated calculation of the facility's RPS-eligible fuel allocation with supporting documentation requested by the Department.

(5) Within 30 days of receiving the information provided by the generator representative pursuant to subsection (4) of this section, the Department will update WREGIS to extend the multiple-fuel facility's Oregon RPS certification expiration date by three years.

(6) If the Department determines that the percentage of the facility's electricity generation allocated to RPS-eligible fuels has changed from the facility's current RPS certification, the Department will revise the facility's RPS-eligible fuel allocation in WREGIS accordingly and notify the generator representative of the revised fuel allocation in writing.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 1-2014, f. & cert. ef. 2-10-14

330-160-0070

Required Notice of Facility Changes

For a facility to remain RPS-eligible, the generator representative must notify the Department of any change to its generating facility that constitutes a change to any of the following fields in the facility's static data, as defined by WREGIS: multi-fuel generator indicator, generation technology, fuel type, fuel source. The generator representative must notify the Department of any such change within 30 days of updating the facility's static data in WREGIS by providing a copy of the facility's updated WREGIS static data to the Department. If the Department determines that a change in a facility's static data affects the facility's RPS eligibility, the Department will revise the facility's RPS eligibility in WREGIS accordingly and notify the generator representative of the revision in writing.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 1-2014, f. & cert. ef. 2-10-14

DIVISION 170

BIOMASS PRODUCER OR COLLECTOR TAX CREDIT

330-170-0010

Purpose and Scope

(1) OAR chapter 330, division 170 establishes the procedure and criteria for certifying tax credits under ORS 315.141 and 469B.403.

(2) These rules apply to tax years beginning on or after January 1, 2016.

Stat. Auth.: ORS 315.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14; DOE 1-2016, f. & cert. ef. 3-1-16

330-170-0020

Definitions

For the purposes of OAR chapter 330, division 170 the definitions in ORS 315.141 apply and in addition the following definitions shall apply:

(1) "Applicant" means an individual or a legal entity (including but not limited to any domestic or foreign corporation, trust, partnership, cooperative, or limited liability company), but does not include a nonprofit organization or a government entity, applying for the tax credit under ORS 315.141 and 469B.403.

(2) "Certificate" means a document issued by the department representing the right to claim a tax credit described in ORS 315.141 for the amount described on the certificate.

(3) "Charcoal" means biomass produced into a densified, carbon rich product used in filters, as an absorbent, soil amendment, or a fuel marketed for cooking purposes and not including biofuels produced by torrefaction.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the department.

(6) "Dry ton" means the amount of biomass that would weigh 2,000 pounds at zero percent moisture content.

(7) "Firewood" as used in this rule means whole or split pieces of wood that are in a form commonly used for burning in campfires, stoves, or fireplaces.

(8) "Manure" means feces and urine of domestic livestock as excreted.

(9) "Oil Seed Crops" means canola, camelina, soybean, sunflower, safflower, mustard, and flaxseed grown for use as a biofuels feedstock.

(10) "Rendering Offal" means the waste or by-products of a rendering process.

(11) "Slash" means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban interface environment and collected at the harvest site.

(12) "Used Cooking Oil" means waste vegetable oil from food preparation.

(13) "Vegetative Biomass from Agricultural Crops" means residual material derived from crop production and crops grown solely to be used for energy, but does not include food processing residuals.

(14) "Virgin Oil" means un-used oil that has been extracted from an agricultural crop.

(15) "Waste Grease" means waste vegetable oil, animal fat, or organic grease from food preparation that is recovered from a grease trap, grease interceptor, grease recovery or similar device.

(16) "Wastewater Biosolids" means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application. This term has the same meaning as the term "sludge" in ORS 468B.095.

(17) "Yard Debris" is defined in ORS 459.005(31).

Stat. Auth.: ORS 351.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0030

Applicant Eligibility

To be eligible for certification, the applicant must:

(1) Be subject to taxation under ORS 316, 317 or 318;

(2) Be an agricultural producer or biomass collector;

(3) Have title to the biomass at the time the biomass is delivered to a biofuel producer;

(4) Produce or collect the biomass in Oregon; and

(5) Deliver or cause the delivery of the biomass to be:

(a) Used as biofuel in Oregon; or

(b) Used to produce biofuel in Oregon.

Stat. Auth.: ORS 351.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0040

Biomass Eligibility

(1) The biomass must be eligible under these rules, fall within the definitions in ORS 315.141 and have a credit rate listed in ORS 469B.403.

(2) The biomass must be converted into biofuel in Oregon or used as biofuel in Oregon.

(3) Waste grease that is not dewatered prior to delivery to a biofuel producer is considered to have an eligible biomass content of 10 percent of the delivered weight of the oil and water mixture, unless the applicant can demonstrate, to the satisfaction of the department, an alternative measurement.

(4) Forest or rangeland woody debris must be collected and produced at the harvesting or thinning site.

(5) Only one certified credit may be issued for each unit of biomass as defined in ORS 469B.403.

(6) The following material is not eligible:

(a) Material used to produce firewood or charcoal.

(b) Construction and demolition debris, urban wood waste, yard debris.

(c) Forest or rangeland woody debris not collected and produced at the harvesting or thinning site.

(d) Algae.

(e) Material from pre-construction or construction activities and golf courses.

(f) Canola grown, collected or produced in the Willamette Valley.

(g) Grain corn.

(h) Other material that is not listed in ORS 315.141 or does not have a credit rate listed under ORS 469B.403.

Stat. Auth.: ORS 351.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0050

Application Process

(1) Applicants requesting a Biomass Producer or Collector Tax Credit must apply on the department approved form. The form must include the following information:

(a) The name of the applicant, address, phone number and email;

(b) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law;

(c) A description of the quantity and type of biomass produced or collected;

(d) The name of the biofuel producer that received the biomass for use as biofuel or to produce biofuel;

(e) The applicant's certification statement; and

(f) The name, address, email address and telephone number of the responsible party for the applicant.

(2) In addition to the information on the form, the applicant must provide all of the following information related to the amount of biomass claimed in the application:

(a) Evidence that the agricultural producer or biomass collector held title to the biomass at the time the biomass was delivered. Evidence of title that may be satisfactory to the department, includes, but is not limited to: contracts, receipts, settlement sheets.

(b) Documentation indicating the origination of the biomass, such as the physical address; township, range, section and quarter/quarter section; or other specific geographic indicator.

(c) A summary or settlement sheet for each shipment received by the biofuel producer. Each summary or settlement sheet must include the following:

(A) The name and address of the biofuel producer to which the biomass was delivered;

(B) The date of delivery for each shipment of biomass;

(C) The type of biomass included in each shipment and the applicable tax credit rate for each shipment;

(D) The amount of biomass delivered in each shipment;

(E) The delivered price for each shipment of biomass, including the dry ton payment rate if applicable;

(F) The weight ticket number or a similar unique identifier for each shipment; and

(G) For woody biomass and vegetative biomass from agricultural crops, the dry ton weight equivalent of the actual tonnage in each shipment, calculated in a manner acceptable to the department.

(d) A receipt of qualifying biomass that includes the type of biomass, name and address of biomass producer or collector, name and address of the person receiving the biomass from the applicant, type of biofuel facility, dates delivered, amount of biomass received and a statement attesting to the receipt and use of biomass. An applicant may complete the department approved Receipt of Qualifying Biomass form or provide a receipt satisfactory to the department.

(e) All calculations used to convert one measure of the biomass to another measure and source references for the calculations and all variables.

(f) An application fee of \$100 plus 3.8 percent of the total amount of tax credit.

(g) If eligible biomass is stored or aggregated with other biomass or materials after the initial production or collection activities and prior to delivery to a biofuel producer, the biomass producer or collector must provide detailed records certifying the amount and source of each type of biomass.

(h) Agricultural producers or biomass collectors that produce or collect animal manure must use the department approved worksheet or the following formula to calculate the amount of eligible manure:

(A) $A \times b \times c / 2000$; where:

(i) A is equal to the number of 1,000 pound animal units contributing manure during the period,

(ii) B is equal to the average animal manure production value from the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Revision 2, March 2008, and

(iii) C is equal to the number of days in the period.

(B) The following documentation must be included with the application:

(i) The log of animal numbers and calculation of 1,000 pound animal units: [Number of animals contributing manure, by classification, (conduct a separate calculation for milkers, dry cows, heifers, calves)] multiplied by [the average lbs./1,000] = number of 1,000 pound animal units;

(ii) Documentation indicating the manure was used or is to be used as biofuel in Oregon or to produce biofuel in Oregon; and

(iii) A copy of the Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit Summary; and

(iv) The most recent Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit Annual Report.

(i) When it is not practicable to produce weight tickets for deliveries to a biofuel producer, agricultural producers that produce oil seed crops, grain crops, grass, wheat, straw or other vegetative biomass must include the following records with their application:

(A) Documentation demonstrating the quantity of biomass produced, which must include one or more of the following:

(i) Acreage report(s) or yield data submitted to the United States Department of Agriculture;

(ii) Crop insurance records of acreage planted and quantity harvested of biofuel crop; or

(iii) Additional documentation showing the actual yields of the biomass crop.

(B) Receipts or equivalent documentation indicating the biomass was used or is to be used as biofuel in Oregon, or to produce biofuel.

(j) If the applicant is transferring biomass that cannot be weighed or calculated, the applicant must supply documentation indicating the amount of biomass as measured by metering equipment or a similar device.

(A) Applicants must provide documentation, including manufacturer's specifications that indicate the measurements are accurate and reliable.

(B) Metering equipment or similar devices must be calibrated according to the manufacturer's specifications and the calibration records must be maintained for a period of no less than five years.

(3) The department may require the applicant to provide further information to complete a review of the application and verify compliance with statute and these rules. This information may include, but is not limited to, demonstration that the biomass is used as biofuel in an eligible manner. The department will notify the applicant in writing requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(4) If a biomass collector requests a tax credit in place of the agricultural producer that produced the biomass, the application must include a signed statement from the agricultural producer that they are aware the biomass collector will be applying for the credit and that the agricultural producer will not apply for a tax credit for the same unit of biomass.

(5) Applications must be received within 60 days following the end of the applicant's tax year during which the biomass is delivered to a biofuel producer. Applications received after this date will be returned and any application fee will be fully refunded.

(6) The department may refund up to 75 percent of the application fee if the application is withdrawn prior to review by the department. Only refunds that are \$100 or greater will be issued.

(7) The department may require the applicant to pay reasonable costs, not to exceed actual costs, incurred in connection with reviewing the application that exceed the original application fee and which the Director determines are incurred solely in connection with processing the application. The department shall advise the applicant of any additional costs the applicant must pay before the department incurs the costs.

Stat. Auth.: ORS 351.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14; DOE 1-2016, f. & cert. ef. 3-1-16

330-170-0060

Certification and Denial

(1) If the department approves an application, the Director will issue a Certificate to the applicant identifying the name of the Certificate holder, the biomass, and the amount of the tax credit certified.

(a) The amount of tax credit certified will be determined by multiplying the amount of eligible biomass delivered to a biofuel producer by the applicable tax credit rate found in ORS 469B.403.

(b) Except for oil seed crops, tax credit certificates will be issued for the tax year the biomass is delivered to a biofuel producer for use in Oregon. Tax credit certificates for the production of oil seed crops used to produce biofuel will be issued for the tax year in which the oil seeds are delivered to an oil seed processor. The department will not certify tax credits for agricultural producers that produce oil seeds until documentation indicating the oil has been used in Oregon to produce biofuel is provided in accordance with these rules.

(2) The department may adjust the amount of tax credit certified from the applied amount if miscalculations, inconsistencies or errors are found during the technical review.

(3) If multiple types of eligible biomass are included in a load that is appropriately documented under these rules, the department will apply the lowest credit rate associated with the biomass in determining the amount of certified credit for the entire load of eligible biomass.

(4) The department may review the biomass origination, production or collection activities, or the operating activities of the biofuel producer. The information gathered during a review may be used to determine if the application complies with applicable statutory provisions and rules.

(5) If the department does not approve an application, the Director will provide written notice of denial, including a statement of the findings and reasons for the denial, by mail. The department may deny the application if:

(a) The application does not comply with applicable statutory provisions and rules;

(b) The applicant does not provide information requested by the department within 30 days from date of request;

(c) The application is for biomass that is not eligible for the tax credit, or the department cannot determine the amount of eligible biomass that is co-mingled or combined with biomass that is not eligible; or

(d) The department is unable to determine whether the application complies with applicable statutory provisions and rules based on the information provided by the applicant or gathered during the review process.

(6) The applicant may request reconsideration in writing no later than 60 days after the Director issues a decision denying an application.

Stat. Auth.: ORS 351.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0070

Minimum Discount Value

The minimum discounted value of a tax credit issued under ORS 315.141 is 90 percent of the amount of the tax credit.

Stat. Auth.: ORS 351.141 & 469.791

Stats. Implemented: ORS 351.141 & 469.791

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12

DIVISION 180

GREENHOUSE GAS EMISSIONS STANDARD

330-180-0010

Purpose and Scope

These rules provide procedures to assist the governing boards of consumer-owned utilities to comply with the greenhouse gas emissions performance standard for electricity established in ORS 757.522 to 757.536.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

330-180-0020

Definitions

(1) "Cogeneration facility" means a facility where the sequential generation of electric energy and the production of steam or other forms of useful energy (such as heat) from the same primary energy source or fuel are used for industrial, commercial, heating, or cooling purposes.

(2) "Department" means the Oregon Department of Energy pursuant to ORS 469.020(5).

(3) "Director" means the director of the department pursuant to ORS 469.020(6).

(4) "Low-Carbon Emissions Resource" means a generating facility that is capable of meeting the greenhouse gas emissions standard through the use of technologies, fuels, or feedstocks that work together to result in an emissions rate at or below the emissions standard, or by sequestering a sufficient portion of greenhouse gas emissions such the net greenhouse gas emissions at the generating facility are maintained at or below the standard.

(5) "Useful thermal energy" is the net thermal energy made available by a cogeneration facility for processes or applications other than for the generation of electricity, taking into account any portion of the total thermal energy produced that is used as part of the cogeneration process or that is discharged as waste.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

330-180-0030

Greenhouse Gas Emissions Standard

(1) The greenhouse gas emissions standard is 1,100 pounds (0.5 metric tons) of greenhouse gases per megawatt-hour (MWh) of electricity for a generating facility as specified by ORS 757.528(1).

(2) The greenhouse gas emissions standard includes only carbon dioxide (CO₂) emissions.

(3) A governing board of a consumer-owned utility entering into a long-term financial commitment as defined at ORS 757.522(10)(a) demonstrates compliance with these rules by making a written determination that baseload electricity acquired under the long-term financial commitment entered into by the utility's governing board is produced by a generating facility that complies with the greenhouse gas emissions standard established in this rule.

Stat. Auth.: ORS 757.522 - 757.538, 469.040

Stats. Implemented: ORS 757.522 - 757.538

Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

330-180-0040

Low-Carbon Emissions Resource Plan

(1) The governing board of a consumer-owned utility, or entity acting on behalf of one or more governing boards, may submit a plan for a generating facility to become a low-carbon emissions resource to the department. The department will make a determination as to whether the plan includes sufficient technical documentation to demonstrate that the generating facility is capable of becoming a low-carbon emissions resource within seven years of commencing operations at the generating facility. The plan must contain sufficient technical documentation to demonstrate:

(a) The net greenhouse gas emissions from the generating facility taking into account any greenhouse gas emissions that are captured, sequestered, or otherwise prevented from being released into the atmosphere — will be at or below the greenhouse gas emissions standard established in this rule;

(b) Additional capacity or capability exists to lower net greenhouse gas emissions over time to meet potential reductions in the greenhouse gas emissions standard;

(c) To the extent that maintenance of the low-carbon emissions resource requires one or more feedstocks, that sufficient supply of the feedstock(s) will be available for use by the generating facility;

(d) How other conditions identified by the governing board(s) to meet and maintain the low-carbon emissions resource status over time can and will be met by the generating facility.

(2) The department determination that the plan includes sufficient technical documentation to demonstrate that the generating facility is capable of becoming a low-carbon emissions resource within seven years of commencing operations must be obtained prior to entering into a long-term commitment with that generating facility.

(3) The department will begin a review within 90 days of receipt of a plan and provide a determination to the governing board(s) as to whether the plan includes sufficient technical documentation to demonstrate that the generating facility is capable of becoming a low-carbon emissions resource within seven years of commencing operations. A plan may be re-submitted to the department for reconsideration if additional technical documentation is available.

(4) If the Oregon Public Utility Commission makes a determination pursuant to ORS 757.531(2)(c) that a plan for a generating facility to become a low-carbon emissions resource is sufficient then the governing board of a consumer-owned utility may consider that determination to provide a sufficient demonstration for purposes of ORS 757.533(2)(c) to consider the same generating facility, utilizing the same plan and under the same time frame, as a low-carbon emissions resource in lieu of a review of that plan by the department.

(5) The department may waive the need or alter the timeline to submit a plan to become a low-carbon emissions resource for good cause shown.

Stat. Auth.: ORS 757.522 - 757.538, 469.040
Stats. Implemented: ORS 757.522 - 757.538
Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

330-180-0050

Unspecified Emissions

(1) Long-term financial commitments consisting of contracts for electricity where the greenhouse gas emissions cannot readily be determined with any specificity are those in which:

(a) The contract does not allow for the identification of one or more generating facilities from which the contracted energy is derived; or,

(b) The contract does not provide sufficient detail about the resource mix from which the contracted energy is derived to determine the greenhouse gas emissions associated with the contracted energy.

(2) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard in this rule are to be derived as follows:

(a) By utilizing data from greenhouse gas emissions reports or otherwise submitted to the Oregon Department of Environmental Quality or the US Environmental Protection Agency characterizing the emissions profile of the baseload electricity if that electricity is anticipated to be representative of the contracted energy in the long-term financial commitment; or,

(b) By utilizing the greenhouse gas emissions reporting protocols and emissions factors required by the Oregon Department of Environmental Quality or the US Environmental Protection Agency to estimate the expected emissions profile of the baseload electricity in the long-term financial commitment; or,

(c) If unable to use the greenhouse gas reporting data, procedures, or protocols utilized by the Oregon Department of Environmental Quality or the US Environmental Protection Agency to assign emissions to the baseload electricity by multiplying the amount of energy for which emissions cannot be determined with specificity by an emissions factor of 1,100 pounds of greenhouse gases per megawatt hour to determine the greenhouse gas emissions.

Stat. Auth.: ORS 757.522 - 757.538, 469.040
Stats. Implemented: ORS 757.522 - 757.538
Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

330-180-0060

Methodology for Calculating Greenhouse Gas Emissions

(1) A generating facility's annual average electricity production in megawatt-hours (MWh) is the sum of the electricity available for all of the following:

- (a) Use onsite;
- (b) Use at a host site in a commercial or industrial process;
- (c) Sale; or
- (d) Transmission from the generating facility.

(2) The greenhouse gases for cogeneration facilities must include the total usable energy output of the process and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy.

(a) A cogeneration facility's annual average electricity production is the sum of the MWh of electricity produced and the useful thermal energy output expressed in MWh.

(b) The useful thermal energy output must be converted into a MWh equivalent using the standard engineering conversion factor of 3.413 MMBtu per MWh (or 3,413 Btu per kWh).

(3) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing energy at the generating facility must be included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

Stat. Auth.: ORS 757.522 - 757.538, 469.040
Stats. Implemented: ORS 757.522 - 757.538
Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

330-180-0070

Exemptions

The requirement for a governing body to report exemptions to the department as required by ORS 757.528(7) must be in writing and may be submitted electronically or by regular mail.

Stat. Auth.: ORS 757.522 - 757.538, 469.040
Stats. Implemented: ORS 757.522 - 757.538
Hist.: DOE 9-2011, f. & cert. ef. 11-22-11

DIVISION 200

RENEWABLE ENERGY DEVELOPMENT GRANTS

330-200-0000

Applicability of Rules in OAR 330, Division 200

(1) These rules implement the grant program for renewable energy development established by House Bill 3672 (2011) and amended by House Bill 4079 (2012). The rules provide procedures for submission, agency review and selection of systems for potential grant award, the development of performance agreements and the disbursement of grant funds.

(2) These rules apply to all applicants for renewable energy development grants, as governed by ORS 469B.250 to 469B.265.

Stat. Auth.: ORS 469B.250 - 469B.265
Stats. Implemented: ORS 469B.250 - 469B.265
Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0010

Definitions

For the purposes of this division, the following definitions apply:

(1) "Applicant" means a person who has applied for a renewable energy development grant.

(2) "Business site" means a site operated for business purposes that is owned by the applicant or the applicant has a formal agreement with the property owner to use the site.

(3) "Cost" has the meaning given in ORS 469B.250, the actual cost of the acquisition, construction and installation of the renewable energy production system paid by the applicant for the system, before considering utility incentives.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the director of the department.

(6) "Energy" means electrical energy.

(7) "Grantee" means a person that has received an award of a renewable energy development grant.

(8) "Installation or construction" means the process of physical assembly of a system or supporting infrastructure at its operating location.

(9) "Opportunity period" means the timeframe specified in an Opportunity Announcement for the department to accept applications for renewable energy development grants.

(10) "Person" has the meaning given in ORS 469.020.

(11) "Renewable Energy Development Grant" means a grant awarded as described in these rules.

(12) "Renewable Energy Production System" has the meaning given in ORS 469B.250, a system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0020

Opportunity Announcement

(1) The department will announce the availability of renewable energy development grants by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of grants to ensure that the total amount of grants awarded does not exceed the amounts available in the Renewable Energy Development subaccount within the Clean Energy Deployment Fund.

(3) If the cumulative total of all grants awarded under the Opportunity Announcement is less than the total amount of funding available, the department may reallocate the balance to future Opportunity Announcements.

(4) The Opportunity Announcement will include the following information:

(a) Objectives for the opportunity period;

(b) The amount of grant funds available;

(c) Application requirements as defined in OAR 330-200-0050;

(d) Dates of the application opportunity period;

(e) Instructions and directions to the required application forms and materials;

(f) Minimum technical standards based on relevant industry standards for renewable energy production systems;

(g) The criteria to be applied in prioritizing applications for grant awards, as described in OAR 330-200-0060;

(h) Guidance on submitting an acceptable resource assessment; and

(i) Other information the department considers necessary.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0030

Grant Application

(1) Any person may apply for a grant by submitting a complete grant application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application. The department will not process applications received outside of an opportunity period.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) The department will not accept amendments to applications during the opportunity period. An applicant may withdraw an application and submit a replacement application during the opportunity period. The department will not process fees for applications withdrawn before the end of the opportunity period.

(4) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating in the partnership, joint venture or association. The department may use this information to ensure compliance with ORS 469B.256(3).

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation or LLC and its parent corporations, members and any close affiliates or subsidiaries. The department may use this information to ensure compliance with ORS 469B.256(3).

(C) If the applicant is a public or government entity, the application must include written authorization from the entity's governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the renewable energy production system at the time of installation or construction of the system.

(d) If the applicant has received final certification of tax credits or payment of grants issued by the department within the last five years, the application must contain a statement about the operational status of the systems awarded such grants or tax credits.

(e) A detailed description of the renewable energy production system that includes the following:

(A) The nameplate capacity of the system;

(B) The projected amount of net energy the system will generate, in kWh per year;

(C) The proposed location of the system and an assessment of the suitability of the site;

(D) The expected operational life of the system;

(E) Technical specifications including manufacturer's information for the selected technology and all major system equipment; and

(F) A description of the operation of the system, including information that demonstrates the system will operate for at least five years.

(f) A resource assessment demonstrating adequate resource supply for the proposed system operations. The resource assessment must describe the type of resource available, explain how the applicant evaluated the resource and describe how the system will access the resource.

(g) A statement of compliance with applicable state and local regulations and that the applicant will notify the appropriate agencies and obtain required licenses and permits.

(h) The number and type of new jobs that will be created by the system and the number of existing jobs sustained throughout the construction, installation and operation of the system. Job estimates should be submitted in hours. These hours must directly relate to the system.

(i) The anticipated system cost.

(j) The amount of anticipated or received incentives directly related to the system.

(k) A description of the applicant's installation or construction financing plan.

(l) Pro-forma financial statements for the proposed system, including the balance sheet at system commissioning and balance sheet, cash flow statement and income statement for three years. The application must include a clear and explicit statement of the assumptions used in preparing the pro-forma.

(m) A project management plan that contains the following required elements:

(A) A detailed project schedule with major milestones during development, construction and operation, including the target operational date of the system.

(B) A description of how the following will be managed:

(i) Installation and construction.

(ii) Verification of system construction and start-up. If the applicant has developed a commissioning plan, the application must describe the plan.

(iii) Operations and maintenance requirements.

(n) The amount of grant requested by the applicant.

(o) If the applicant has already started installation or construction of the system, a written description of the special circumstances that rendered the filing of an application prior to the start of installation or construction unreasonable.

(p) Other information the department considers necessary.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0040

Fees

The department adopts the following schedule of fees as provided by ORS 469B.259 for applicants. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants must submit a fee of \$500 with their initial application.

(2) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying system cost multiplied by 1.25 percent.

(3) Applicants requesting amendments must submit a fee of \$300 with their amendment request.

(4) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 469.040, 469B.259 & 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12; DOE 3-2013, f. & cert. ef. 10-2-13; DOE 2-2015, f. 8-28-15, cert. ef. 9-1-15

330-200-0050

Completeness Review

(1) Following the opportunity period, the department will review all applications to determine whether:

(a) All sections of the application are complete as outlined in the Opportunity Announcement.

(b) The applicant has submitted the required fee.

(c) The system meets the definition of a renewable energy production system.

(d) The applicant intends to begin construction within 12 months of award.

(e) The applicant is applying prior to the installation or construction of the system.

(A) If the applicant applies after installation or construction of the system has started, the department will deny the application unless a written explanation of the special circumstances is received and approved by the director.

(B) Failing to submit a timely application or the fact that the project was not selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

(f) The system is located in Oregon.

(2) If the department finds that the application is complete, the application will move into the competitive review process and the department will notify the applicant in writing.

(3) The department will deny all incomplete applications and notify applicants in writing of the reason for denial of the application.

(4) The department considers the completeness review a test; the decision to deny an incomplete application is not an action subject to review under ORS 183.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0060

Competitive Review

(1) The department will conduct a competitive review of all applications that pass completeness review.

(2) Through competitive review, the department's internal review team will prioritize applications for grants according to the criteria described in the rules. Depending on the Opportunity Announcement objectives, the department may give greater or lesser weight to each of the criteria listed in rules.

(3) In the Opportunity Announcement the department will list the evaluation criteria for the competitive review. The criteria the department may consider includes:

(a) The internal rate of return of the system, calculated using the formula provided by the department.

(b) The number of new jobs created by the system and the number of existing jobs sustained throughout the construction, installation and operation of the system.

(c) The strength of the financial plan of the system.

(d) The amount of net energy generated.

(e) The use of the energy generated.

(f) Integration into broader energy and environmental goals.

(g) The geographic diversity of the renewable energy production systems compared with the other systems for which grants have been requested in the current opportunity announcement.

(h) The technology or resource diversity of the renewable energy production systems compared with the other systems for which grants have been requested in the current opportunity announcement.

(i) If the applicant has previously received any Renewable Energy Development Grants or Business Energy Tax Credits, the operational status of the system for which such grants or tax credits was awarded.

(j) The feasibility of the system.

(4) The department's internal review team will recommend to the director which systems to advance to technical review based on the competitive review results. The director will review and then amend or approve the recommendations.

(5) The department will notify applicants of the competitive review outcome. The department may place systems not advanced to the technical review phase on a supplemental list, pending the technical reviews of the selected systems. The department will retain the supplemental list until performance agreements are signed for the selected systems. The supplemental list will include only those projects submitted in response to the particular Opportunity Announcement.

(6) If an applicant has not started installation or construction of the system, an applicant may apply again for the same system in a future opportunity period by submitting a new application and fee. The department will not credit fees or applications submitted in response to a previous Opportunity Announcement to future Opportunity Announcements.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0070

Technical Review

(1) Once the applicant has paid the technical review fee, the department will conduct a technical review of systems advanced from the competitive review process. If the applicant does not submit the required payment to the department within 21 calendar days of notification of the advancement to technical review, the department may deny the application.

(2) The department will review the information provided in the application against industry standards to determine whether the system is technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible, the renewable energy production system must meet the following requirements:

(a) The system must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be the owner, contract purchaser or system lessee at the time of the system's installation or construction.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, tribe or public entity. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A system located at a residential property must be rental property. A rental property must comply with laws related to rental accommodation and contain a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner.

(e) A system located on a site that includes a residence, that is not a rental dwelling, must be separately metered from the residence.

(f) Within the project schedule and detailed project description provided in the grant application, the applicant must demonstrate the ability to begin construction within 12 months from the date the department awards the grant.

(g) The applicant may not receive funding for the system from the Feed-In Tariff program under ORS 757.365.

(4) The department will review renewable energy production system costs for eligibility. The application must document cost by providing a list of itemized costs.

(a) Eligible system costs include:

(A) The cost of components of the proposed system.

(B) Materials and supplies required for the construction and installation of the proposed system.

(C) The cost of title searches, escrow fees, permits and license fees and shipping.

(D) Design or engineering expenses related to system components.

(E) Cost of work performed by employees or independent contractors of the applicant, based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed or otherwise qualified to complete the work;

(ii) The work must be associated with the acquisition, installation or construction of the proposed system;

(iii) Project management and similar costs may only account for up to 15 percent of eligible system costs; and

(iv) Costs for employees' or contractors' work on the renewable energy system must be detailed and documented as to specific tasks, hours worked and compensation costs. This cost may include employee benefits and employment taxes.

(F) Environmental studies, including source testing.

(G) Other costs the department determines should be included.

(b) Eligible system costs do not include:

(A) Costs paid by a person other than the applicant.

(B) Interest and warranty charges.

(C) Litigation or other legal fees and court costs.

(D) Patent searches, application and filing payments.

(E) Costs to maintain, operate or repair the system.

(F) Administrative costs to apply for grants, loans, tax credits or other funding for a system including, but not limited to, the renewable energy development grant fees.

(G) Training or education expenses.

(H) Costs that are incurred to bring a host building up to building code standards or otherwise repair the building in order to install the system, including design or engineering expenses.

(I) Costs for a system or portion thereof, that has previously received a tax credit under ORS 469 or 469B.

(J) Donated, in-kind or volunteer labor and materials.

(K) Costs for a system, or portion thereof, if the project or system previously received a Business Energy Tax Credit or a Renewable Energy Development Grant.

(L) Other costs the department determines should be excluded.

(c) If a system is built under a lease or contract purchase, the applicant must provide system cost information. System cost may be demonstrated by providing a declaration of representative market value for the system that includes the anticipated cost of supply and installation. Such a declaration must include a list of primary system components and their costs.

(d) An applicant may incur qualifying costs prior to the submission of an application, but may not begin installation or construction.

(5) The department will determine whether the system is a single renewable energy production system or is part of a larger system in combination with other applications.

(a) The department considers a single renewable production system as one or more electrical energy production devices that are applied for in response to the same Opportunity Announcement, use the same renewable resource, are located at the same site and are owned or controlled by the same person.

(b) For the purposes of this subsection, "same person" includes affiliated or subsidiary corporations, other subsidiary business organizations or other affiliated entities owned or controlled by the same parent corporation but excludes equity-only financing partners.

(c) The department may reduce the potential grant award or deny the application if the department finds that the proposed system is part of another renewable energy production system that has applied for or received a renewable energy production grant.

(d) The department will not divide renewable energy production systems applied for in the same application.

(6) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(7) During the review the department may inspect the proposed location of a system. The department will schedule inspections during normal working hours, following reasonable notice to the applicant.

(8) The department will notify the applicant in writing if the department denies the application during the technical review.

(9) If the technical review determines that information reviewed during the competitive review process was inaccurate, the department may deny the application.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0080

Performance Agreement

(1) The department may offer a performance agreement to the applicant if it determines that the renewable energy production system is technically feasible and capable of operating in accordance with the representations made by the applicant. The offer will include a copy of the performance agreement and a deadline for acceptance.

(2) The performance agreement will be based on information provided by the applicant.

(3) The grant provided for in the performance agreement may not exceed 35 percent of the cost of the project and may not exceed \$250,000 per system.

(4) The department will reduce the amount of grant awarded to an applicant if, when combined with other government incentives or grants available to the applicant, the total amount of incentives and grants exceeds 75 percent of the total system cost. The department will not include loans or loan guarantees in this calculation.

(5) The department may offer a grant that is less than the amount requested in the application, pursuant to statute and applicable rules.

(6) Applicants will have 30 calendar days from the date of the notice to accept the performance agreement. An applicant's failure to accept the offer of a performance agreement by the deadline may

cause rejection of the renewable energy development grant application.

(7) In place of applicants who do not enter into a performance agreement within 30 calendar days of the department's offer, the department may select alternative applicants from the supplemental list, in order of their ranking. Selected applicants will have to complete a technical review.

(8) The performance agreement must include the following terms and may include additional terms.

(a) The maximum amount of the renewable energy development grant and the entity to which funds will be disbursed.

(b) A listing of the documentation that the grantee must provide to the department prior to the disbursement of grant funds including, but not limited to:

(A) An account of system costs.

(B) Proof that the owner or owners of the system location are current on their property taxes for that location, if appropriate.

(c) The amount by which the department may reduce the grant amount in response to changes in actual system cost.

(d) The maximum duration of the performance agreement.

(e) The requirement that the grantee install or construct the renewable energy production system substantially as described in the renewable energy development grant application.

(f) The requirement that installation or construction of the system begin within 12 months after the date that the performance agreement is signed by all parties. If construction does not begin within 12 months, the performance agreement and grant are void. The performance agreement must include details of the work that must be completed within 12 months to meet this standard.

(g) The requirement that the grantee be the owner, contract purchaser or lessee of the system at the time of installation or construction of the system.

(h) The requirement that the system be located in Oregon.

(i) The requirement that the grantee make periodic reports to the department on the status of the system during system development and during installation or construction of the system.

(j) The requirement that the applicant obtain all applicable licenses, permits or other authorizations that are required within the jurisdiction of the system and must comply with applicable federal, state and local laws and regulations.

(k) The requirement that the grantee allow the department to inspect the system or its proposed location at any time during construction to verify compliance with the performance agreement. The department will schedule inspections during normal working hours, following reasonable notice to the applicant.

(l) The terms under which the performance agreement may be transferred, upon notification and agreement of the department.

(m) Reporting requirements during the first five-years of system operation, including information on jobs, quantity of energy produced annually and other information outlined in the performance agreement.

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

(o) A provision that if the director determines that the applicant has violated the provisions of the performance agreement or ORS 469B.250 to 469B.265, the applicant will be liable to the department for up to 100 percent of grant moneys disbursed to the applicant.

(9) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to completion.

(10) The renewable energy development grant will be awarded upon signature of the performance agreement by all parties. The grant funds will be disbursed upon verification that the applicant has complied with the applicable terms of the performance agreement including completion and commissioning, if required, of the system.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0090 Amendments

(1) The grantee must submit a written amendment request to the director to amend a performance agreement or change any aspect of the renewable energy production system.

(2) The grantee must describe the proposed change to the performance agreement or renewable energy production system and the reasons for the change.

(3) The grantee must demonstrate that the system, with the proposed change, will continue to meet the requirements of statute, rule and the Opportunity Announcement; be technically feasible, will operate as represented and will remain in operation for at least five years. The grantee has the responsibility to provide an amendment request with complete technical documentation supporting the proposed amendment. The department may deny amendments submitted without such justification.

(4) If an amendment request does not include all information needed to complete the review, the department may provide the grantee a written request for additional information. If the grantee does not provide the requested information to the department within 30 calendar days, the department may deny the request.

(5) Requests for amendments must include payment of the appropriate fee. The department may accept non-substantive changes, such as change of contact information, without payment of the fee.

(6) The department will evaluate amendments to determine if the change would have affected the outcome of competitive review, which may result in pro-rating the award amount, based on energy generated or project cost, or denial of the amendment request.

(7) Amendment requests will not be approved if the amendment would result in an increased award amount.

(8) The department will decide whether to approve the request.

(a) If approved, the department will draft an amended performance agreement, which may contain new or amended conditions and requirements. The amended performance agreement will become effective upon signature by all parties.

(b) If denied, the department will notify the grantee in writing. The notice will include the reasons for the denial of the amendment request. The amendment fee will not be applied to future amendments.

(c) The grantee may accept the denial of the amendment request and comply with the terms of the performance agreement or the grantee may terminate the performance agreement according to its terms and return any grant funds previously disbursed.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

330-200-0150 Compliance

All participants in this program are subject to OAR 330-230-0000 through 330-230-0060.

Stat. Auth.: ORS 469B.250 - 469B.265

Stats. Implemented: ORS 469B.250 - 469B.265

Hist.: DOE 3-2012(Temp), f. & cert. ef. 2-22-12 thru 8-17-12; DOE 10-2012, f. & cert. ef. 8-15-12

DIVISION 210

CONSERVATION ENERGY INCENTIVE PROGRAM

330-210-0000

Applicability of Rules in OAR 330, Division 210

(1) These rules implement the incentive program for energy conservation projects established by House Bill 3672 (2011) and amended by House Bill 4079 (2012) and House Bill 2448 (2015). The rules also provide procedures for submission, agency review and selection of energy conservation projects for preliminary and final certification of tax credits.

(2) These rules apply to all applications for tax credits and certifications for energy conservation projects, as governed by ORS 315.331 and 469B.270 to 469B.306.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0010

Definitions

For the purposes of this division, the following definitions apply:

(1) “Applicant” means a person who has applied for or who has received a preliminary certificate for a conservation energy incentive program tax credit, who has submitted an informational filing for a small premium project, who has applied for or received a final certification for an energy incentive program tax credit, or who has entered into a performance agreement with the department.

(2) “Certified cost” means the cost determined by the department during the review of the final application, used as the basis for calculating the tax credit documented on the final certificate.

(3) “Cost” has the meaning given in ORS 469B.270, the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project.

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

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

(6) “Energy conservation project” has the meaning given in ORS 469B.270, any capital investment for which the first year energy savings yields a simple payback period of greater than three years. “Energy conservation project” does not include:

- (a) Recycling equipment, products and projects;
- (b) Transportation projects;
- (c) Energy recovery as that term is defined in ORS 459.005;

or

(d) Alternative fuel vehicles.

(7) “Incremental cost” means the difference between the cost of doing the energy conservation project with the energy efficient features and the cost to construct a similar project at current Oregon energy code or documented industry standard.

(8) “Installation or construction” means the process of physical assembly of an energy conservation project or supporting infrastructure at its operating location.

(9) “Opportunity period” means the timeframe specified in an Opportunity Announcement for the department to accept applications for energy conservation projects.

(10) “Qualified third party” means a third party, selected by the director, that provides recommendations to the director regarding a research and development energy conservation project.

(11) “Qualifying cost” means the amount of the energy conservation project’s proposed cost that may be eligible for the program.

(12) “Research and development project” means an energy conservation project that a qualified third party recommends to the department as one that demonstrates innovation.

(13) “Service life” means equipment service life as established in the 2015 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers’ (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the department receives a complete preliminary application or, for equipment not rated by ASHRAE, as determined by the department.

(14) “Small premium project” means an energy conservation project with qualifying costs of less than \$20,000 for which the department has identified prequalified measures.

(15) “Total building retrofit” means a comprehensive building retrofit that includes energy efficiency projects for each energy-using system including the building envelope. A building retrofit that does not include each energy-using system may also apply as a total building retrofit; if the project meets the eligibility standards described in OAR 330-210-0070.

(16) “Total project cost” means all costs directly associated with an energy conservation project, including costs that are not qualifying costs.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0020

Opportunity Announcement

(1) The department will announce the availability of tax credits for energy conservation projects by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit caps specified in ORS 469B.303.

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to future Opportunity Announcements, including between categories.

(4) The Opportunity Announcement will include the following information:

- (a) Objectives for the opportunity period;
- (b) The approximate amount of tax credits available;
- (c) Application requirements, as defined in OAR 330-210-0050;

(d) Dates of the application opportunity period;

(e) Instructions and directions to the required application forms and materials;

(f) Minimum technical standards based on relevant industry standards used to conserve or reduce energy use;

(g) The criteria to be applied in prioritizing applications for tax credits, as described in OAR 330-210-0060;

(h) The date of the sunset of the program; and

(i) Other information the department considers necessary.

(5) The department may increase the amount of tax credits available for an Opportunity Announcement.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0030

Preliminary Certification Application

(1) Any person may apply for preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement. A preliminary certification application is not required for applicants submitting an informational filing under the small premium project process.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application “submitted” when the department receives the application accompanied by the fee specified in these rules.

(c) The department will not review applications received outside of an opportunity period and will return the application fee received.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) An applicant may withdraw an application and submit a replacement application during the opportunity period. Replacement applications may be submitted without an additional application fee during an open opportunity period.

(4) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating

in the partnership, joint venture or association. The department may use this information to ensure compliance with ORS 469B.288(3).

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation, or LLC and its parent corporations, members, and any close affiliates or subsidiaries. The department may use this information to ensure compliance with ORS 469B.288(3).

(C) If the applicant is a public or governmental entity, the application must include written authorization from the entity's governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.

(d) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the energy conservation project at the time of installation or construction of the project.

(e) A description of the personnel and teams that will be working on the energy conservation project's development, implementation and operation.

(f) If the applicant has received final certification of tax credits or payment of grants issued by the department within the last 5 years, the application must contain a statement about the operational status of the projects awarded such grants or tax credits.

(g) The location of the energy conservation project.

(h) A statement explaining how and in what amount the energy conservation project will reduce the consumption of purchased energy or use energy more efficiently.

(A) The statement must identify the annual energy use separated by fuel type of the energy conservation project at the following conditions: proposed conditions, baseline conditions, along with existing conditions, if the project involves a retrofit.

(i) Annual energy use at proposed conditions must be calculated using energy engineering methods as outlined in the Opportunity Announcement.

(ii) Baseline conditions and assumptions must be described in detail.

(iii) For retrofit projects, existing annual energy usage must be supported by a minimum of 24 consecutive monthly utility bills or a calculation approved by the department.

(B) If applicable, provide information about the expected level of sustainable building practices project performance.

(i) A detailed description of the energy conservation project, including information that demonstrates how the project will be technically feasible and how the project will operate for at least five years as represented in the application. This may require documentation in addition to the application form.

(j) The expected operational life of the energy conservation project.

(k) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits.

(L) The number and type of new jobs that will be created by the energy conservation project and the number of existing jobs that will be sustained throughout the construction, installation and operation of the project. Job estimates should be submitted in hours. These hours must directly relate to the energy conservation project.

(m) The energy conservation project's anticipated total project cost, including the energy conservation project's incremental cost, if applicable.

(n) The amount of anticipated or received incentives directly related to the energy conservation project.

(o) A project schedule.

(p) All research and development projects must include a recommendation from a qualified third party that the project demonstrates innovation.

(q) A description of the applicant's installation or construction financing plan.

(r) The dollar amount of tax credit requested by the applicant.

(s) If the applicant has already started installation or construction of the energy conservation project, a written description of the special circumstances that rendered the filing of an application prior to the start of construction or installation unreasonable.

(t) Other information the department considers necessary.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0040

Fees

The department adopts the following schedule of fees as provided by ORS 469B.294 for applicants. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants, except those applying through the small premium project process, must submit an application fee of \$500 with their preliminary certification application.

(2) Applicants applying through the small premium project process must submit a fee of \$75 with their informational filing.

(3) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying cost multiplied by 0.9 percent. Small premium projects are not subject to the technical review fee.

(4) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(5) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying cost multiplied by 0.55 percent. All applicants seeking final certification for a project, including small premium projects, are required to apply for final review and pay the final review fee.

(6) Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant, except those using the small premium project process, in obtaining a pass-through partner or partners, the fee for that assistance is 1.25 percent of the tax credit amount plus \$200 per tax credit certificate issued.

(b) If the department does not assist the applicant, except those using the small premium project process, in obtaining a pass-through partner, the fee is \$200 per tax credit certificate issued.

(c) Applicants for small premium projects, the fee is \$200 plus \$100 per each additional tax credit certificate issued. The additional fee of \$100 per certificate issued does not apply to the first certificate.

(7) Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee. The fee for small premium project applicants is \$200 plus \$100 per each additional tax credit certificate issued and the fee for all other applicants is \$200 plus \$100 per tax credit certificate issued. The additional fee of \$100 per certificate issued does not apply to the first certificate for small premium project applicants.

(8) Applicants subject to recertification must submit a fee of \$750 with each application for recertification.

(9) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 3-2013, f. & cert. ef. 10-2-13; DOE 2-2015, f. 8-28-15, cert. ef. 9-1-15; DOE 2-2016, f. & cert. ef. 3-15-16; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0045

Small Premium Project Review Process

(1) Projects with qualifying costs of less than \$20,000 may utilize the small premium project informational filing process, instead of the preliminary certification and competitive review pro-

cess, if the project complies with the minimum department-established standards.

(a) Qualifying costs for the purposes of the small premium project informational filing process are determined by the predetermined tax credit amounts based on savings and cost. The department will post the predetermined tax credit amounts. Based on the estimated predetermined tax credit, the department will calculate the qualifying cost for the project.

(b) Based on the requested predetermined tax credit amount in the informational filing, the department will reserve a tax credit for the project.

(c) Energy conservation projects with qualifying costs of less than \$20,000 may participate in the preliminary certification process. Applicants may not receive an energy conservation tax credit for the same project from both processes.

(2) The department will issue an Opportunity Announcement for small premium projects. The opportunity period will remain open from the date the department issues the Opportunity Announcement until stated in the Opportunity Announcement and could end sooner if funds are exhausted. The Opportunity Announcement will list the types of technologies with the minimum standards as defined by the department. The types of technologies may include:

- (a) Adjustable Flow Irrigation Pumping,
- (b) Agricultural Irrigation System Improvement,
- (c) Boiler-Vent Dampers,
- (d) Building Envelope Thermal Improvement,
- (e) Commercial Indoor Lighting,
- (f) Compressed Air Systems Components,
- (g) Direct-fired Radiant Heating in High Volume Spaces,
- (h) Ductless Heat Pumps with Variable Refrigerant Flow,
- (i) Energy Improvements to Commercial Greenhouses,
- (j) High Performance Homebuilding,
- (k) Heat Pump Service Hot Water Heating,
- (L) Industrial Piping Insulation,
- (m) LED Outdoor Lighting,
- (n) Premium Efficiency Electric Air Conditioning Equipment,
- (o) Solar Thermal Water Heating, and
- (p) Technology offerings approved by the department under section (9).

(3) Applicants must submit a complete informational filing prior to the project's installation or construction on the form specified in the Opportunity Announcement and include:

- (a) The required filing fee; and
- (b) Information demonstrating that the project meets the definition of an energy conservation project and is located in Oregon.

(4) The required fee to submit an informational filing is non-refundable, even if the informational filing is denied. The fee will be returned if tax credits for small premium projects have been fully allocated.

(5) Small premium projects are eligible for predetermined tax credit amounts based on savings and cost. During final certification, the department will determine the tax credit amount based on the certified cost, but the tax credit cannot exceed the lesser of:

(a) 35 percent of the cost actually incurred that are eligible for the energy conservation project as described in OAR 330-210-0070(4); or

(b) The credit reserved on the acknowledgment of the informational filing form.

(6) The sum of any incentives, grants, credits and the energy conservation tax credit may not exceed total project costs.

(7) The department will determine whether the project is a single energy conservation project, or is part of a larger project when considered in combination with other applications as described in OAR 330-210-0070(5).

(a) For small premium projects, the department considers a single energy conservation project as one or more projects that are applied for in response to the same Opportunity Announcement, for the same technology sector, owned or controlled by the same person and located at the same building or structure.

(b) The department may reduce the potential tax credit award or deny the application if the department finds that the proposed

project is not a single energy conservation project as described in subsection (a).

(8) If the tax credits available for small premium projects have been fully allocated before the department receives a complete informational filing from an applicant, the applicant will not be eligible for any tax credits for the project under the small premium review process but may participate in the preliminary certification competitive review process.

(9) If the department finds that the informational filing is complete, the department will confirm in writing the receipt of the informational filing. The department will not process incomplete filings, and will provide written notification to the applicant of the fact that the filing is incomplete.

(10) Receipt of an informational filing does not guarantee eligibility and issuance of a final certification for the tax credit. Applicants must also comply with all applicable statutory requirements and requirements listed these rules in order to receive tax credits. The department will determine the eligibility of the small premium project prior to issuing a final certificate.

(11) Informational filings for small premium projects may not be amended.

(12) Small premium project informational filings will expire 12 months after the date the department receives the informational filing or the sunset of the program, whichever comes first. The department must receive a complete final certification application before the end of the 12 month period or prior to the sunset of the program, whichever comes first.

(13) The department may consider proposals for new technology offerings for small premium projects within this section. The proposal application will include a set of guidelines that define the information that must be submitted for department review. The department will evaluate proposals and determine whether to include the technology and the rate at which to incentivize. The department may provide an opportunity for public comment on approved proposals prior to adding them to the Opportunity Announcement. All proposals must include:

- (a) Regional data on the mean and range of technology unit costs,
- (b) Regional data on the mean and range technology unit energy savings,
- (c) Market projections,
- (d) Evaluation of barriers and opportunities to market,
- (e) Research references (e.g. periodical and article reviews),
- (f) Evidence that the technology is currently listed as an emerging energy conservation technology by the Northwest Energy Efficiency Alliance, Bonneville Power Administration, U.S. Department of Energy or other agencies recognized and approved of by the department, and
- (g) Any other information the department requires.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0050

Completeness Review

(1) The department will review all preliminary certification applications, other than those participating in the small premium project process, to determine whether:

(a) All sections of the application are complete as outlined in the Opportunity Announcement.

(b) The applicant has submitted the required fee.

(c) The project meets the definition of an energy conservation project.

(d) The applicant is applying prior to the installation or construction of the project.

(A) If the applicant applies after installation or construction of the project has started, the department will deny the application unless a written explanation of the special circumstances is received and approved by the director.

(B) Failing to submit a timely application or the fact that the project was not selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

(c) The energy conservation project is located in Oregon.

(2) If the department finds that the application is complete, the application will move into the competitive review process and the department will notify the applicant in writing.

(3) The department may deny incomplete applications and notify applicants in writing of the reason for denial of the application.

(4) The department considers the completeness review a test; the decision to deny an incomplete application is not subject to review under ORS chapter 183.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0060

Competitive Review

(1) The department will conduct a competitive review of all applications that pass the completeness review, other than those participating in the small premium project process.

(2) During the competitive review, the department's internal review team will prioritize applications for preliminary certification according to the criteria described in the rules. Depending on the Opportunity Announcement objectives, the department may give greater or lesser weight to each of the criteria listed in rules.

(3) For the purposes of the competitive review, the department will compare projects of similar technology types against each other. The department may issue an Opportunity Announcement combining two or more of the following technological sector categories and compare projects from the technological sector categories together. The technological sector categories for energy conservation projects are:

(a) Building envelopes, weatherization.

(b) Renewably sourced thermal energy projects that use a renewable energy source, such as solar, biomass or geothermal, directly without converting it to electricity. Within this category, energy savings will be determined through energy displacement.

(c) Commercial building systems.

(d) Sustainable buildings. This category is for projects that are eligible for tax credits under the standards for new construction and total building retrofit.

(e) Commercial, agricultural and industrial processes.

(f) Combined heat and power or co-gen.

(4) Within the technological sector categories, the department may divide the applications into tiers based on project size. The Opportunity Announcement will have details about any tiers prior to implementation.

(5) In the Opportunity Announcement, the department will list the evaluation criteria for the competitive review. The competitive review will give preference to projects that have the highest energy savings over the five-year tax credit period per tax credit dollar requested. Additional criteria the department may consider includes:

(a) The amount of energy saved over the equipment's lifetime;

(b) The market or industry sector;

(c) The project's expected lifespan compared to the project's simple payback period;

(d) The incentive structure and whether the energy savings benefit a party other than the owner;

(e) Lifetime energy savings compared to lifetime cost (benefit-to-cost ratio);

(f) The project implementation plan;

(g) The project financial plan;

(h) Information on jobs created and sustained;

(i) The geographical area and local economic conditions of the site location;

(j) Agreement to a voluntary reduction of requested tax incentive; and

(k) Agreement to a voluntary measurement and verification plan, which includes an agreement to share the results with the department.

(L) Integration with broader energy and environmental goals.

(6) The department's internal review team will recommend to the director which projects to advance to technical review based on the competitive review results. The director will review and then amend or approve the recommendations.

(7) The department will notify applicants of the competitive review's outcome. The department may place projects not advanced to the technical review phase on a supplemental list, pending the technical reviews of the selected projects. The department will retain the supplemental list until preliminary certifications have been issued for the selected energy conservation projects. The supplemental list will include only those projects submitted in response to the particular Opportunity Announcement.

(8) The department will deny applications not advanced to the technical review phase or advanced from the supplemental list. The department will notify applicants in writing of the reason for denial of the application.

(9) If an applicant has not started installation or construction of the energy conservation project, an applicant may apply again for the same project in a future opportunity period by submitting a new application and fee. The department will not apply fees or applications submitted in response to a previous Opportunity Announcement to future Opportunity Announcements.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0070

Technical Review

(1) Once the department requests the technical review fee and the applicant has paid the technical review fee, the department will conduct a technical review of the project application. If the applicant does not submit the required technical review fee to the department within 21 calendar days of from the date of the request for payment of the technical review fee, the department may deny the application.

(2) The department will review the information provided in the preliminary certification application against industry standards to determine whether the project is financially and technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible the energy conservation project must meet the following requirements:

(a) The project must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be the owner, contract purchaser or project lessee at the time of the project's installation or construction.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, a federally recognized tribe or public entity that partners with an Oregon business or resident. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A project located at a residential property must be rental property. A rental property must meet laws related to rental accommodations and contain a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner.

(e) The energy conservation project must have a simple payback period of greater than three years. The department bases simple payback on total project cost divided by the qualified annual energy savings. Total project cost is calculated for this purpose before any tax credits or grants are applied.

(f) An applicant for a new construction or total building retrofit project must indicate that the project will meet the current

standard, at the time of application submission, for one of the following:

- (A) Leadership in Energy and Environmental Design (LEED)
 - (i) The project must be seeking LEED platinum certification with a minimum of eight Optimize Energy Performance points; or
 - (ii) Using the appropriate peer reviewed energy modeling program, the project must show a minimum 26 percent improvement over ASHRAE 90.1-2007, without addenda.
- (B) Green Globes
 - (i) The project must be seeking Green Globes, Four Globes certification; or
 - (ii) Using the appropriate peer reviewed energy modeling, the project must be a building falling within the 95th percentile, or better, of the equivalent building stock listed in the Commercial Buildings Energy Consumption Survey (CBECS). Where an equivalent building type is not listed, the modeling must be equivalent to a minimum 26 percent improvement over ASHRAE 90.1-2007, without addenda.
- (C) Reach Code
 - (i) Project plans must be submitted to a local building department and approved for building under the Oregon Reach Code.
 - (ii) For proposed buildings either required to model or opting for the modeling path, the energy model must show at least an 18 percent improvement over the Oregon Energy Efficiency Specialty Code.
- (D) Earth Advantage
 - (i) The project must be seeking Earth Advantage Gold Certification; or
 - (ii) Using the appropriate peer reviewed energy modeling program, the project must show a minimum 18 percent improvement over the Oregon Energy Efficiency Specialty Code.
 - (g) An application for replacing inefficient equipment must demonstrate that the equipment being replaced is within its useful service life and in a good state of repair.
 - (h) A qualified third party must evaluate and recommend research and development projects.
 - (i) The qualified annual energy savings of the energy conservation project must pay back the qualifying cost within the service life of the project. This requirement does not apply to research and development projects.
 - (j) The department may require that the baseline energy conservation project be specifically identified and permanently decommissioned.
 - (k) A combined heat and power or co-gen project must:
 - (A) Increase the overall efficiency as compared to existing energy use or standard separate power and heat production that would provide the same amount of net energy.
 - (B) Meet or exceed annual fuel conversion efficiency as outlined in the Opportunity Announcement.
 - (C) Meet any other requirements listed in the Opportunity Announcement.
 - (4) The department will review energy conservation project costs for eligibility to determine the qualifying cost. Qualifying costs may include the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project. The application must document total project cost by providing a list of itemized costs.
 - (a) Qualifying costs, that directly contribute to the claimed energy savings of the energy conservation project, include:
 - (A) The cost of components of the proposed energy conservation project;
 - (B) Fees to design or engineer the energy conservation project;
 - (C) The cost of title searches, escrow fees, permit and license fees, excluding fees required by this rule, and shipping;
 - (D) Costs for all materials and supplies needed for the erection, construction, installation or acquisition of the proposed energy conservation project;
 - (E) Cost of work performed by employees or independent contractors of the applicant based on the following conditions:
 - (i) Employees or contractors must be certified, accredited, licensed or otherwise qualified to do the work;
 - (ii) The work must be associated with the erection, construction, installation or acquisition of the proposed energy conservation project;
 - (iii) Project management and other similar costs may only account for up to 15 percent of the qualifying project costs; and
 - (iv) Costs for employees' or contractors' work on the energy conservation project must be detailed and documented as to specific tasks, hours worked and compensation costs. This cost may include employee benefits and taxes;
 - (F) Costs for legal counsel that is directly related to the development of an energy conservation project (excluding litigation, intellectual property, etc.);
 - (G) Costs of training associated with the energy conservation project that is approved by the department; and
 - (H) Other costs the department determines should be included.
 - (b) Qualifying costs do not include:
 - (A) Interest and warranty charges;
 - (B) Litigation or other operational-related legal fees and court costs;
 - (C) Intellectual property search, application and filing payments;
 - (D) Donated, in-kind or volunteer labor and materials;
 - (E) Administrative costs to apply for grants, loans, tax credits or other similar funding for an energy conservation project including, but not limited to the tax credit review charge, costs associated with the creation and development of the certified public accountant attestation letter and costs associated with securing a pass-through partner for the project;
 - (F) Routine operational, routine maintenance and repair costs associated with the energy conservation project;
 - (G) Expenses that are directly or indirectly offset with federal fee waivers;
 - (H) Expenses that are deemed not to have a benefit to the energy conservation project, including but not limited to, fines, penalties, entertainment, food, alcohol, gifts and lobbying;
 - (I) Costs that are incurred to bring a building up to building code standards or otherwise repair the building in order to install the project, including design or engineering expenses;
 - (J) Any portion of the cost for an energy conservation project that has previously received a tax credit or grant under ORS chapters 469 or 469B; and
 - (K) Other costs the department determines should be excluded.
 - (c) The department may do inspections to verify information reported on the preliminary certification application.
 - (d) Qualifying costs will be limited to the incremental costs for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required. The department will calculate incremental cost as the difference between the cost of the energy conservation project with the energy efficient features and the cost to construct a similar project at code or industry standard.
 - (A) In new construction and total building retrofit projects, incremental cost is the difference between building to code and building to exceed the applicable required standards.
 - (B) In other energy conservation projects, incremental cost is the difference between prevailing practices for that business or industry and a more energy efficient method.
 - (e) Qualifying costs may be reduced by the following amounts:
 - (A) If the energy conservation project has a simple payback greater than the service life of the project, the qualifying costs may be prorated down to an amount that would result in a payback within the service life of the project.
 - (i) Based on the 2015 edition of ASHRAE standards or as otherwise determined in these rules, the department may prorate qualifying cost based on the remaining service life of the equipment. If the baseline project has exceeded its service life, the department will consider only the incremental cost of the project as eligible for calculating the amount of a tax credit.

(ii) An applicant may submit, for department approval, a published or recognized standard or other documentation as considered necessary by the department to determine service life expectancy. If a published or recognized standard is unavailable, the department may use a 15-year limit on service life expectancy.

(B) Costs for a portion of or an entire energy conservation project that has previously received a tax credit certification or grant issued by the department.

(C) Costs to replace the same baseline energy conservation project more than once.

(f) An applicant may incur qualifying costs prior to the submission of an application, but may not begin installation or construction.

(5) The department will determine whether the project is a single energy conservation project, or is part of a larger project when considered in combination with other applications.

(a) For projects applying for preliminary certification, the department considers a single energy conservation project as one or more projects that are applied for in response to the same Opportunity Announcement, owned or controlled by the same person and located at the same building or structure.

(b) For small premium projects, the department considers a single energy conservation project as one or more projects that are applied for in response to the same Opportunity Announcement, for the same technology sector, owned or controlled by the same person and located at the same building or structure.

(c) For the purposes of this subsection, "same person" includes affiliated or subsidiary corporations, other subsidiary business organizations or other affiliated entities owned or controlled by the same parent corporation but excludes equity-only financing partners.

(d) The department may reduce the potential tax credit award or deny the application if the department finds that the proposed project is not a single energy conservation project as described in subsection (a) and (b).

(e) The department will not divide energy conservation projects applied for in the same application.

(6) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(7) The department will notify the applicant in writing if the department denies the application during the technical review.

(8) If the technical review determines that inaccurate information was submitted by the applicant during the competitive process, the department may deny the application.

(9) If the department denies the application or reduces the tax credit during the technical review, the applicant may request reconsideration in writing within 60 days from the date of denial or reduction.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0080

Preliminary Certification

(1) The department may issue a preliminary certificate if it determines that the energy conservation project is technically feasible and capable of operating in accordance with the representations made by the applicant.

(2) The department may issue a tax credit that is less than the amount requested in the energy conservation project application, pursuant to statute and applicable rules.

(3) The sum of any incentives, grants, credits and the energy conservation tax credit incentive may not exceed total project costs.

(4) The preliminary certificate will state the qualifying cost, the potential amount of allowable tax credit and may include any conditions for claiming the credit. The applicant has 60 days from

the issue date of the preliminary certificate to return the signed conditions of preliminary certification. Failure to return the signed conditions of preliminary certification within the specified time period may result in revocation of the preliminary certificate.

(5) The applicant must report to the department on the project's status beginning one year from the issuing date of the preliminary certificate, unless the department has already received the project's application for final certification. The applicant must continue to submit project progress reports to the department every six months after the initial report until the department receives the project's application for final certificate. Failure to submit reports may result in denial of a final certification.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the original preliminary certification or until the sunset of the program, whichever comes first.

(7) The department may revise a preliminary certificate to comply with statute, rule, the Opportunity Announcement or to correct clerical errors.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0090

Amendments

(1) Amendments are documentation of changes to the project described in the application for preliminary certification.

(2) An applicant must submit requests for amendments prior to issuance of the final certification.

(3) Small premium projects are not eligible for amendments to informational filings.

(4) Failure of an applicant to submit documentation to the department of changes to the project may result in denial of final tax credit certification.

(5) Changes to the project must be documented by the applicant. The applicant must submit an amendment request on the form specified in the Opportunity Announcement along with the required amendment fee, except that:

(a) Changes that result in less than a five percent aggregate change in energy savings may be documented in the project's status report, the final certification application form, an amendment request form or by otherwise notifying the department in writing. These changes do not require an amendment fee. The applicant must demonstrate that the change to the project resulted in less than five percent aggregate change in energy savings.

(b) A change of responsible party information or applicant contact information may be documented by notifying the department in writing. These changes do not require an amendment fee.

(6) Undeclared changes found in the application for final certification or through later inspection must be documented by the applicant by submitting an amendment request on the form specified in the Opportunity Announcement with the required amendment fee. Undeclared changes that result in less than a five percent aggregate change in energy savings may be documented by the department through an inspection report or final review and do not require an amendment fee.

(7) When documenting a change, the applicant must demonstrate that the energy conservation project, with the proposed change, will continue to meet the requirements of statute, rule and the Opportunity Announcement; be technically feasible; will operate as represented and would remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical documentation supporting the proposed amendment. The department may deny amendments submitted without such justification.

(8) An amendment may result in a reduction in tax credit, but may not increase the tax credit amount certified in the preliminary certificate.

(9) If an amendment request does not include all information needed to complete the review, the department may provide the applicant a written request for additional information. If the

applicant does not provide the requested information to the department within 30 calendar days of the date of the department's written request, the department may deny the amendment request to amend the preliminary certification.

(10) Requests for amendments must include payment of the appropriate fee, unless provided otherwise in this rule.

(11) The department will evaluate amendments to determine impact on energy savings and other factors, including whether the change would have affected the outcome of competitive review, which may result in reduction of the potential tax credit amount based on energy savings or project cost or denial of the amendment request.

(12) The department will decide whether to approve the amendment request.

(a) If the amendment request is approved prior to submission of the application for final certification, the department will draft an amended preliminary certification, which may contain new or amended conditions and requirements.

(b) If the amendment request is approved after submission of the application for final certification, the department will notify the applicant in writing. The amendment may result in a reduction in tax credit and inclusion of conditions in the final certificate.

(c) If the amendment request is denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request. The amendment fee will not be applied to future amendments.

(d) No later than 60 days after the department denies an amendment request or reduces the tax credit under this section, the applicant may request reconsideration in writing. The request for reconsideration will not extend other mandated timelines, such as the expiration date of the preliminary certificate.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012,

f. & cert. ef. 6-19-12; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0100

Final Certification

(1) An energy conservation project must be completed and operating prior to applying for a final certification. An applicant must submit requests for amendments prior to issuance of the final certification.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or informational filing or those without the final review fee.

(a) A preliminary certification remains valid for a period of three calendar years after the date the department issues the original preliminary certification or until the sunset of the program, whichever comes first.

(b) An informational filing remains valid for a period of 12 months after the date the department receives the informational filing, or the sunset of the program, whichever comes first.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection to verify:

(a) That the energy conservation project is complete and operating.

(b) Compliance with statute, rules and the preliminary certification or informational filing.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the project is leased or rented.

(e) That the property taxes for the project location are current.

(f) That the energy conservation project will be maintained and operated for at least five years.

(g) The total project costs for purchase and installation or construction of the energy conservation project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that no contract or loan agreements directly related to the project are in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(D) Applicants must provide itemized documentation of the installed energy conservation project. A detailed invoice or the public accountant's attestation may be sufficient documentation.

(h) Other information the department considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application for final certification.

(6) Applicants may not receive multiple tax credit certifications from the department for the same energy conservation project.

(7) The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification application.

(8) As part of the final certification process, projects with certified cost of \$1 million or more will be required to enter into a performance agreement with the department and applicants with projects with certified cost of less than \$1 million may be required to enter into a performance agreement with the department.

(a) To determine if a performance agreement is required for projects with certified cost of less than \$1 million, the department may, but is not limited to evaluating:

- (A) Financial aspects of the project,
- (B) Technical aspects of the project, and
- (C) Other areas as determined by the department.
- (b) A performance agreement may include:
 - (A) A recertification requirement under ORS 469B.298,
 - (B) Energy performance requirements,
 - (C) Conditions and requirements in the preliminary certificate,
 - (D) A provision allowing the performance agreement to be terminated for reasons stated in the agreement and subject to terms described in the agreement, and
 - (E) Any additional requirements that the department determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306.
- (c) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to entering into the agreement.
- (d) If the department decides to require a performance agreement, the department will send a performance agreement to the applicant for review.
- (e) Applicants will have 30 calendar days from the date of the offer letter accompanying the performance agreement to accept the performance agreement. The offer letter accompanying the performance agreement will specify how an applicant may accept the performance agreement. An applicant's failure to accept the performance agreement as specified in the offer letter may result in denial of the application for final certification.
- (f) After the department receives the performance agreement signed by the applicant and the department executes the performance agreement, the department will issue the appropriate portion of the tax credit certificate. Projects subject to recertification may be issued a certified amount letter showing the total tax credit amount approved along with a final certificate for the initial portion of the tax credit.
- (g) An applicant must submit a written amendment request to the department to amend a performance agreement. The department will decide whether to approve the request. An amendment cannot result in a greater tax credit amount.
- (A) If approved, the department will draft an amended performance agreement, which may contain new or amended conditions and requirements. The amended performance agreement will become effective upon signature by all parties.
- (B) If denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request.
- (9) The department will determine the certified cost upon verification that the energy conservation project's installation or construction is complete and that the project complies with statute, rules, the preliminary certification or informational filing, and any other applicable requirements.
- (a) Except as provided in subsection (c), the department may issue a tax credit certificate of up to 35 percent of the qualifying cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate or reserved in the informational filing, but may not certify a greater amount.
- (b) The sum of any incentives, grants, credits and the energy conservation tax credit may not exceed total project costs.
- (c) If recertification of the tax credit is required under ORS 469B.298 and this rule, the department may issue a certificate for an initial portion of tax credit up to 10 percent of the certified cost. To receive certification of the full value of the tax credit, the applicant must recertify the tax credit as required under ORS 469B.298 and OAR 330-210-0110.
- (10) The department will send a written notification to the applicant of its decision whether to issue a final certification within 60 days, after the department receives a complete application for final certification. If a written decision from the department is not issued within 60 days after receipt of the complete application, then the application is rejected and no further action will be taken. Any time required to provide additional information as provided in OAR 330-210-0100(5) is not included in this 60 day period.

(11) For purposes of administering the sunset of the energy conservation tax credit program under Oregon Laws 2011, chapter 730, section 36:

(a) The department must receive a complete application for final certification prior to the end of the 2017 tax year of the applicant.

(b) For applicants who choose to use the pass-through or transfer process, the entity purchasing the credit must pay for the tax credit prior to the end of its 2017 tax year.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16; DOE 4-2016, f. & cert. ef. 11-14-16

330-210-0110

Tax Credit Recertification

(1) An applicant of an energy conservation project with certified cost of \$1 million or more that is subject to a performance agreement requiring recertification must recertify the tax credit annually up to three years following the date of the issuance of the final certificate for the initial portion of the tax credit to receive the full value of the tax credit.

(2) To recertify the tax credit, the department must receive an application for recertification at least 60 days prior to the anniversary date of the issuance of the initial portion of the tax credit certificate.

(3) The application for recertification must contain the following information:

(a) A description of the business operations conducted at the facility and any changes in the business operations since the project was completed;

(b) Energy consumption or production data for the project or facility as shown in the preceding 12 months of utility billing records;

(c) A statement signed by the applicant attesting that the project is in compliance with all applicable laws related to the ownership and operation of the project;

(d) A statement signed by the applicant attesting that the applicant is current on all obligations to the state and local regulations, including but not limited to obligations for taxes and permitting fees;

(e) Any other information required by the department.

(4) An application for recertification must be accompanied by the recertification fee specified in these rules.

(5) The department may require an inspection of the project or facility as part of the review of the application for recertification.

(6) The department may consult with the city or county in which the facility is located or with any federal or state agency in determining whether to approve an application for recertification.

(7) During review of the application for recertification, the department will compare operation and performance data to the requirements in the performance agreement.

(8) If the application for recertification is approved, the department will issue a tax credit certificate for the approved portion of the tax credit seeking recertification.

(a) In the first recertification period, the department may issue a portion of the tax credit certificate up to 10 percent of the certified cost.

(b) In the second recertification period, the department may issue a portion of the tax credit certificate up to 5 percent of the certified cost.

(c) In the third recertification period, the department may issue two portions of the tax credit certificate up to 5 percent of the certified cost for each certificate. The second portion of the tax credit cannot be claimed until the fifth tax year.

(9) The department may deny the recertification or issue a recertification for a lesser amount if the department determines that the project is not in compliance with all applicable statutes, administrative rules and the performance agreement.

(10) If the department does not approve an application for recertification or reduces the amount of tax credit, the applicant

may not claim, use or transfer that portion of the tax credit for which the recertification was denied.

(11) If an applicant does not receive recertification of a portion of a tax credit, either because of a denial of the application for recertification or failure to submit a timely and complete application for recertification, the applicant loses that portion of the tax credit and that portion is considered revoked. If applicable, the applicant may submit subsequent applications for recertification for portions of the tax credit remaining to be recertified.

(12) A person aggrieved by a decision of the department to deny or reduce the amount of a recertification for a tax credit may request a contested case hearing under ORS Chapter 183.

Stat. Auth.: ORS 469.040, 469B.306, OL 2015 Ch. 545

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331, OL 2015 Ch. 545

Hist.: DOE 2-2016, f. & cert. ef. 3-15-16

330-210-0150

Compliance and Pass-through

(1) All participants in this program are subject to OAR 330-230. If the tax credit is subject to recertification under OAR 330-210-0110, only that portion of the tax credit that has been certified or recertified may be transferred at the five-year present value rate in OAR 330-230-0130.

(2) The department may periodically inspect energy conservation projects and related documents during the five-year term of the tax credit.

Stat. Auth.: ORS 469.040, 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, 315.331

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16; DOE 4-2016, f. & cert. ef. 11-14-16

DIVISION 220

ALTERNATIVE FUEL VEHICLE INFRASTRUCTURE ENERGY INCENTIVE PROGRAM

330-220-0000

Applicability of Rules in OAR 330, division 220

These rules implement the incentives program for alternative fuel vehicle projects established in ORS 315.336 and ORS 469B.320 to 469B.347. The rules also provide procedures for submission, agency review and selection of alternative fuel vehicle projects for preliminary and final certification of tax credits.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0010

Definitions

For the purposes of this division, the following definitions apply:

(1) "Acquisition" includes:

(a) For an alternative fuel vehicle infrastructure project, installation or construction of a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

(b) For an alternative fuel vehicle fleet project, the replacement of two or more vehicles that are not used primarily for personal, family or household purposes, with vehicles that are modified or acquired directly from the factory and that:

(A) Use an alternative fuel, including electricity, biofuel, gasoline with at least 20 percent denatured alcohol content, hydrogen, Hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy as an alternative fuel; and

(B) Produce lower exhaust emissions, or are more energy efficient, than equivalent vehicles fueled by gasoline or diesel.

(2) "Alternative Fuel" means a motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used.

Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel, butanol and other fuels the director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(3) "Alternative fuel vehicle project" has the meaning given in ORS 469B.320.

(4) "Applicant" means a person who has applied for or who has received a preliminary certificate for a transportation energy incentives program tax credit.

(5) "Capital lease" means a fixed-term lease where the lessee records the leased vehicle as assets and is eligible to claim depreciation on those vehicles for tax purposes.

(6) "Certified cost" means the cost certified in the final certification.

(7) "Cost" includes:

(a) For an alternative fuel vehicle infrastructure project, the capital expenditures to acquire, erect, design, build, convert, or install a project.

(b) For an alternative fuel vehicle fleet project, the:

(A) Expenditures necessary to convert two or more existing vehicles into alternative fuel vehicles,

(B) Incremental expenditures to acquire two or more replacement alternative fuel vehicles, or

(C) For class 8 tractors, the incremental expenditure to acquire two or more replacement alternative fuel vehicles as determined and stated by the department in an Opportunity Announcement.

(8) "Department" means the Oregon Department of Energy.

(9) "Director" means the director of the department.

(10) "Incremental expenditure" means the difference between the cost of an alternative fuel vehicle and a comparable traditional fuel vehicle, or an amount determined by the department as defined in OAR 330-220-0010(7)(b)(C).

(11) "Natural gas" means a gaseous fuel comprised primarily of methane derived from either hydro-carbon based or renewable sources, which can be used as a transportation fuel.

(12) "Opportunity period" means the timeframe specified in an Opportunity Announcement for the department to accept applications for alternative fuel vehicle projects.

(13) "Qualifying project cost" means the amount of the alternative fuel vehicle project's cost that may be eligible for tax credits.

(14) "Replacement" or "replaced" means either:

(a) The removal of existing fleet vehicles and substitution of new alternative fuel vehicles, or

(b) Conversion of the fuel system of existing fleet vehicles to use alternative fuels.

(15) "Total project cost" means all costs directly associated with an alternative fuel vehicle project, including ineligible costs.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0020

Opportunity Announcement

(1) The department will announce the availability of tax credits for alternative fuel vehicle projects by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit cap specified in ORS 469B.344.

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to a future Opportunity Announcement.

(4) The Opportunity Announcement will include the following information:

- (a) Objectives for the opportunity period;
 - (b) The amount of tax credits available;
 - (c) Application requirements, as defined in OAR 330-220-0050;
 - (d) Dates of the application opportunity period;
 - (e) Instructions and directions to the required application forms and materials;
 - (f) Minimum technical standards;
 - (g) The process the department will use to allocate tax credits;
 - (h) For alternative fuel vehicle fleet projects, a list of eligible on-road vehicle types;
 - (i) For alternative fuel vehicle fleet projects, a maximum percentage of potential tax credit available an applicant may obtain during an opportunity period;
 - (j) For class 8 tractors, the incremental expenditure upon which to base the tax credit;
 - (k) Required percentage of fleet miles driven in state on an annual basis; and
 - (l) Other information the department considers necessary.
- Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
 Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
 Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0030

Preliminary Certification Application

(1) Any person may apply for a preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application. The department will not process applications received outside of an opportunity period.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating in the partnership, joint venture or association. The department may use this information to ensure compliance with ORS 469B.329.

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation or LLC and its parent corporations, members and any close affiliates or subsidiaries. The department may use this information to ensure compliance with ORS 469B.329.

(C) If the applicant is a public or governmental entity, the application must include written authorization from the entity's governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.

(d) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the alternative fuel vehicle project at the time of acquisition of the project.

(e) A description of the personnel and teams that will be working on project development, implementation and operation.

(f) If the applicant has received final certification of tax credits or payment of grants issued by the department within the last 5 years, the application must contain a statement affirming the

operational status of the projects awarded such grants or tax credits.

(g) The location of the alternative fuel vehicle project.

(h) A statement explaining the amount by which use of the alternative fuel vehicle project will displace petroleum fuel.

(i) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits.

(j) The number and type of new jobs that will be created by the alternative fuel vehicle project and the number of existing jobs that will be sustained throughout construction, installation and operation of the project. Job estimates should be submitted in hours. These hours must directly relate to the alternative fuel vehicle project.

(k) The anticipated total project cost of the alternative fuel vehicle project.

(l) The amount of anticipated or received incentives directly related to the alternative fuel vehicle project.

(m) A project schedule and project management plan.

(n) A description of the applicant's financing plan for the alternative fuel vehicle project including:

(A) Construction or acquisition financing; and

(B) Startup costs.

(o) The dollar amount of tax credit requested by the applicant.

(p) If the applicant has already started acquisition or performance of the alternative fuel vehicle project, a written description of the special circumstances that rendered filing of an application prior to the start of acquisition or performance unreasonable.

(q) For an alternative fuel vehicle infrastructure project, a detailed description of the project including:

(A) Information that demonstrates how the project will be technically feasible and how the project will operate for at least five years as represented in the application. This may require documentation in addition to the application form.

(B) A description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed and the expected annual amount that will be dispensed.

(C) The expected operational life of the alternative fuel vehicle infrastructure project.

(r) For an alternative fuel vehicle fleet project, a detailed description of the project including:

(A) Information that demonstrates the vehicles being replaced with new alternative fuel vehicles are no longer in the project owner's fleet or the fleet of any related entity.

(B) A description of the vehicles being replaced with new alternative fuel vehicles, including:

(i) Vehicle Identification Number;

(ii) Vehicle make, model, year and description;

(iii) Gross vehicle weight and weight class;

(iv) Fuel type;

(v) Fleet average miles per gallon; and

(vi) Estimated annual mileage.

(C) A description of the new alternative fuel vehicles acquired, including:

(i) Vehicle make, model, year and description;

(ii) Gross vehicle weight and weight class;

(iii) Fuel type;

(iv) Estimated miles per gallon; and

(v) Estimated annual mileage.

(D) A description of the existing fleet vehicles being converted or modified to use alternative fuels, including:

(i) Vehicle identification number;

(ii) Vehicle make, model, year and description;

(iii) Gross vehicle weight and weight class;

(iv) Original fuel type and proposed fuel type after conversion to use of alternative fuel;

(v) Fleet average miles per gallon before and after conversion to use of alternative fuel;

(vi) Annual mileage before and after conversion to use of alternative fuel; and

(vii) Information about the conversion kit and the entity converting the vehicles.

(E) The expected operational life of the alternative fuel vehicle project.

(F) Information that demonstrates the alternative fuel vehicles are registered and operating in Oregon. Where applicable, registration under the International Registration Plan must have Oregon as the base jurisdiction.

(s) Other information the department considers necessary.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0040

Application Fees

The department adopts the following schedule of fees as provided by ORS 469B.335. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants must submit a fee of \$300 with their preliminary certification application.

(2) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying project cost multiplied by 0.9 percent.

(3) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(4) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying project cost multiplied by 0.55 percent. All applicants seeking final certification for a project are required to apply for final review and pay the final review fee.

(5) Applicants that choose to transfer their tax credit to a pass-through partner, pursuant to OAR 330-230-0110 to 330-230-0140, must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant in obtaining a pass-through partner, or partners, the fee for that assistance is 1.25 percent of the tax credit amount plus \$200 per tax credit certificate issued.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$200 per tax credit certificate issued.

(6) Applicants issued a tax credit certificate that choose to have their tax credit certificate re-issued to a transferee must pay a transfer fee of \$200 plus \$100 per tax credit certificate issued.

(7) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 469.040, 469B.335 & 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 3-2013, f. & cert. ef. 10-2-13; DOE 2-2015, f. 8-28-15, cert. ef. 9-1-15

330-220-0050

Completeness Review

(1) The department will determine that sufficient potential tax credits are available prior to beginning review of an application. The department may return applications, or offer a lower tax credit amount, if there are not sufficient potential tax credits available to award the amount of tax credit requested.

(2) The department will review all preliminary certification applications to determine whether:

(a) All sections of the application are complete.

(b) The applicant has submitted the required fee.

(c) The project meets the definition of an alternative fuel vehicle project.

(d) The applicant is applying prior to the acquisition of the project.

(A) If the applicant applies after acquisition of the project has started, the department will deny the application unless a written

explanation of the special circumstances is received and approved by the director. An applicant may order an alternative fuel vehicle eligible for the tax credit up to 60 days prior to the department receiving the preliminary certificate application without providing a written explanation. Alternative fuel vehicle conversion kits may not be purchased prior to the department receiving the preliminary certificate application.

(B) Failing to submit a timely application or not being selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

(e) The alternative fuel vehicle project is located in Oregon.

(3) If the department finds that the application is complete, the application will move into the technical review process and the department will notify the applicant in writing.

(4) The department will deny all incomplete applications and notify applicants in writing of the reason for denial of the application.

(5) The department considers the completeness review as a test; the decision to deny an incomplete application is not an action subject to review under ORS chapter 183.

(6) If an applicant has not started acquisition of the alternative fuel vehicle project, an applicant may apply again for the same project in the same or a future Opportunity Announcement by submitting a new application and fee. The department will not apply fees submitted with a previous application to future applications.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0070

Technical Review

(1) Once the applicant has paid the technical review fee, the department will conduct a technical review of alternative fuel vehicle projects advanced from the completeness review. If the applicant does not submit the required payment to the department within 21 calendar days of notification for technical review, the department may deny the application.

(2) The department will review the information provided in the application against industry standards to determine whether the project is financially and technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible, the alternative fuel vehicle project must meet the following requirements:

(a) The project must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be the owner, contract purchaser or project lessee at the time of the project's acquisition.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, a federally recognized tribe or a public body as defined in ORS 174.109 that partners with an Oregon business or resident. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A project located at a residential property must be rental property. A rental property must meet laws related to rental accommodations and contain a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner.

(e) If the alternative fuel vehicle infrastructure project is a Level 1, 120 volt AC or similar, charging station for electric vehicles, the charger must provide an average of at least 12 hours of connection time per use. Applicants must provide anticipated connection and charging patterns as part of the project description section of the application.

(f) An electric charging station project must supply electricity for on-road vehicles.

(g) An alternative fuel vehicle fleet project must be an eligible on-road vehicle type as described in the Opportunity Announcement.

(h) An alternative fuel vehicle fleet must operate in Oregon as specified in the Opportunity Announcement, which will be at least 75 percent of the operation time.

(i) An alternative fuel vehicle fleet project may be acquired with a capital lease. The capital lease terms must be at least five years.

(j) An alternative fuel vehicle fleet project must include at least one eligible alternative fuel.

(k) An alternative fuel vehicle fleet conversion or modification project must include new equipment installed by a qualified technician that is compliant with Environmental Protection Agency or California Air Resources Board standards.

(4) The department will review the alternative fuel vehicle project cost for eligibility. The application must document total project cost by providing a list of itemized costs.

(a) Qualifying project costs for an alternative fuel vehicle infrastructure project include:

(A) The cost of components, including all materials and supplies needed for the erection, construction, installation or acquisition of the proposed project;

(B) The costs to extend or increase the capacity of utility connections are only eligible if located within the property lines of the project location. Qualifying costs for utility connections for electric vehicle charging stations are also limited by location to:

(i) \$5,000 for a Level 1, 120 volt AC or similar, electric vehicle charging station.

(ii) \$15,000 for a Level 2, 240 volt AC or similar, electric vehicle charging station.

(iii) \$30,000 for a DC Fast Charger, or similar, electric vehicle charging station.

(C) Fees to design or engineer the project;

(D) The cost of title searches, escrow fees, permit and license fees, excluding fees required by this rule, and shipping;

(E) Cost of work performed by the applicant's employees or independent contractors if the following conditions are met:

(i) Employees or contractors must be certified, accredited, licensed or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the alternative fuel vehicle infrastructure project;

(iii) Project management and other similar costs may only account for up to 15 percent of the qualifying project costs; and

(iv) Costs for employees' or contractors' work on the alternative fuel vehicle infrastructure project must be detailed and documented as to specific tasks, hours worked and compensation costs.

(F) Costs for legal counsel that are directly related to the development of an alternative fuel vehicle infrastructure project;

(G) Costs of training associated with the alternative fuel vehicle infrastructure project that is approved by the department; and

(H) Other costs the department determines should be included.

(b) Qualifying project costs for an alternative fuel vehicle fleet project include:

(A) Incremental expenditure of new alternative fuel vehicles.

(B) Vehicle modification cost directly related to converting the fuel system of the vehicle to use alternative fuel, which are limited to new conversion component costs and labor to install the new components.

(C) Other costs the department determines should be included.

(c) Qualifying alternative fuel vehicle project costs do not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Intellectual property search, application and filing payments;

(D) Donated, in-kind or volunteer labor and materials;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for an alternative fuel vehicle project including, but not limited to the tax credit review charge, costs associated with the creation and development of the certified public accountant attestation letter and costs associated with securing a pass-through partner for the project;

(F) Routine operational, routine maintenance and repair costs associated with the alternative fuel vehicle project;

(G) Expenses that are deemed not to have a benefit to the alternative fuel vehicle project, including but not limited to, fines, penalties, entertainment, food, alcohol, gifts and lobbying;

(H) Costs for all or any portion of an alternative fuel vehicle project that has previously received a transportation tax credit certification issued by the department; and

(I) Other costs the department determines should be excluded.

(d) The department may do inspections to verify qualified project costs.

(e) An applicant may incur qualifying project costs prior to the submission of an application, but may not begin installation or construction. For fleet projects, no qualifying project costs exclude those incurred more than 30 days prior to the date that the department opens the applicable opportunity period.

(5) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(6) The department will notify the applicant in writing if the department denies the application during the technical review.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0080

Preliminary Certification

(1) The department may issue a preliminary certificate if it determines that the alternative fuel vehicle project is technically feasible and capable of operating in accordance with the representations made by the applicant.

(2) The department may issue a tax credit that is less than the amount requested in the alternative fuel vehicle project application, pursuant to statute and applicable rules.

(3) The sum of any incentives, grants, credits, other public funds and the alternative fuel vehicle project incentive may not exceed total project costs.

(4) The preliminary certificate will state the qualifying project cost, the potential amount of allowable tax credit and any conditions for claiming the credit.

(5) The applicant must report on the project's status beginning one year from the issuing date of the preliminary certificate, unless the department has already received the project's application for final certification. The applicant must continue to submit project progress reports to the department every six months after the initial report until the department receives the project's application for final certificate. Failure to submit reports may result in revocation of the preliminary certification or denial of the final certification.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the preliminary certification or until the sunset of the program, whichever comes first.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0090

Amendments to Preliminary Certifications

(1) The applicant must notify the department of any changes to the project proposal as described in the application for preliminary certification.

(2) An applicant must declare all changes to the alternative fuel vehicle project by the time the department receives the final certification application. Undeclared changes found in the application for final certification or through later inspection may result in denial of final tax credit certification.

(3) Applicants must submit an amendment request to the director to amend an alternative fuel vehicle project preliminary certification.

(4) Applicants must submit amendments on the form specified in the Opportunity Announcement.

(5) The applicant must demonstrate that the alternative fuel vehicle project, with the proposed change, would continue to be technically feasible, would operate as represented and would remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical documentation that will support a case for the proposed amendment. The department may deny amendments submitted without such justification.

(6) An amendment may result in a reduction in tax credit, but may not increase the tax credit amount certified in the preliminary certificate.

(7) If an amendment request does not include all information needed to complete the review, the department may provide the applicant a written request for additional information. If the applicant does not provide the requested information to the department within 30 calendar days of the date of the notice, the department may deny the request.

(8) Requests for amendments must include payment of the appropriate fee. The department may accept non-substantive changes, such as change of contact information, without payment of the fee.

(9) The department will decide whether to approve the request.

(a) If approved, the department will draft an amended preliminary certification, which may contain new or amended conditions and requirements.

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

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0100

Final Certification

(1) An alternative fuel vehicle project must be completed and operational prior to applying for a final certification. An applicant must submit amendments to preliminary certifications before or with the final certification application.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or without the final review fee.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection, to verify:

(a) That the alternative fuel vehicle project is complete and operating.

(b) Compliance with statute, rules and the preliminary certification.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the infrastructure is leased or rented.

(e) That applicable fuel taxes and property taxes for the project location are current.

(f) That the alternative fuel vehicle project will be maintained and operated for at least five years by the project owner.

(g) The total project costs for acquisition of the project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner, nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that contract and loan agreements directly related to the project are not in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(D) For a capital lease, applicant must submit a copy of the lease and demonstrate that lease payments directly related to the project are not in default.

(h) Other information the director considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice requesting additional information, the department may deny the application for final certification.

(6) The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification.

(7) The department will issue a final certification upon verification that the alternative fuel vehicle project is complete and that the project complies with statute, rules, the preliminary certification and any other applicable requirements.

(a) The department may issue a credit up to 35 percent of the certified project cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate, but may not certify a greater amount.

(b) The sum of any incentives, grants, credits or other public funds and the tax credit may not exceed total project costs.

(8) The department will send a written notification to applicants of its decision whether to issue a final certification within 60 days from the department receives a complete application for final certification. If more than 60 days pass from the date the department receives a complete application and the applicant has not received a written decision from the department, then the application is rejected and no further action will be taken. Any time required to provide additional information as provided in OAR 330-220-0100(5) is not included in this 60 day period.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

330-220-0150

Compliance and Pass-through

(1) All participants in this program are subject to OAR 330-230-0000 through 330-230-0150.

(2) The department may periodically inspect records for alternative fuel vehicle projects during the five-year term of the tax credit.

(3) If any alternative fuel vehicles that are part of a project receiving the tax credit are sold, repossessed, destroyed or otherwise no longer owned by the applicant, the applicant must notify the department within 30 days of the date that the vehicle was removed from the project owner's fleet.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15

DIVISION 225

TRANSIT SERVICES ENERGY INCENTIVES PROGRAM

330-225-0000

Applicability of Rules

These rules implement the incentive program for transit services established in House Bill 3672 (2011) and amended by House Bill 4079 (2012). The rules also provide procedures for submission, agency review and selection of transit services for preliminary and final certification of tax credits.

These rules apply to all applications for tax credits for transit services projects, as governed by ORS 469B.320 to 469B.347.

Stat. Auth.: ORS 469.040 & 469B.347

Stats. Implemented: ORS 469B.320–469B.347, 315.336 & OL 2012 Ch. 45

Hist.: DOE 5-2012, f. & cert. ef. 6-11-12

330-225-0010

Definitions

For the purposes of this division, the following definitions apply:

(1) “Allocated project cost” means the amount of the transit services project’s cost that may be eligible for tax credits. The department calculates by dividing the amount of the potential tax credit available to each applicant, determined by the process in OAR 330-225-0050(6), by the tax credit rate in effect for that Opportunity Announcement.

(2) “Applicant” means a person who has applied for or who has received a preliminary certificate for a transit services energy incentives program tax credit.

(3) “Certified cost” means the cost certified in the final certification.

(4) “Cost” has the meaning given in ORS 469B.320.

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

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

(7) “Opportunity period” means the timeframe specified in an Opportunity Announcement for the department to accept applications for transit services.

(8) “Substantial Energy Savings” means a reduction of at least 10 percent in the energy used by the transit service compared to the equivalent energy use of single occupant vehicles traveling the same number of passenger miles.

(9) “Transit Services Provider” means a public or nonprofit entity that provides transit services to the public and that receives state or federal funding for those services, or is the direct recipient of funding from an entity that receives state or federal funding for the services.

(10) “Transit Services” means transportation by a conveyance that provides regular and continuing transportation to the public, but does not include school bus, charter or intercity passenger rail transportation.

(11) “Vehicle Miles Reduced” (VMR) means the difference in miles driven by the transit services compared to miles driven by single occupant vehicles.

Stat. Auth.: ORS 469.040 & 469B.347

Stats. Implemented: ORS 469B.320–469B.347, 315.336 & OL 2012 Ch. 45

Hist.: DOE 5-2012, f. & cert. ef. 6-11-12

330-225-0020

Opportunity Announcement

(1) The department will announce the availability of tax credits for transit services by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit caps specified in ORS 469B.344.

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to a future Opportunity Announcement.

(4) The Opportunity Announcement will include the following information:

(a) Objectives for the opportunity period;

(b) The amount and the percent level of tax credits available;

(c) Application requirements including the time period during which transit services are eligible;

(d) Dates of the application opportunity period;

(e) Instructions and directions to the required application forms and materials;

(f) Minimum technical standards;

(g) The process the department will use to allocate tax credits; and

(h) Other information the department considers necessary.

Stat. Auth.: ORS 469.040 & 469B.347

Stats. Implemented: ORS 469B.320–469B.347, 315.336 & OL 2012 Ch. 45

Hist.: DOE 5-2012, f. & cert. ef. 6-11-12

330-225-0030

Preliminary Certification Application

(1) Any person may apply for preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by statutes, these rules and the current Opportunity Announcement.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application “submitted” when the department receives the application accompanied by the fee specified in these rules. The department will not process applications received outside of an opportunity period.

(c) Only one application will be accepted from each transit services provider for each Opportunity Announcement.

(2) The application must be accompanied by the fee specified in these rules. The department will not process applications received without fee payment.

(3) The department will not accept amendments to applications during the opportunity period. An applicant may withdraw an application and submit a replacement application during the opportunity period. The department will not process fees for applications withdrawn before the end of the opportunity period.

(4) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a nonprofit entity, the application must include evidence of its nonprofit status.

(B) If the applicant is a public or governmental entity, the application must include written authorization from the entity’s governing body allowing submission of the application. An employee of the applicant may sign the application and attest they have the authority through their employment to apply for and receive transit services tax credits.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) The applicant’s federal tax identification number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.

(d) A statement verifying that the applicant is the recipient or sub-recipient of state or federal funds, either confirmed or anticipated to be received for the services and period identified in the Opportunity Announcement.

(e) An identification of the types of State or Federal funds received or anticipated for the transit services included in the application, which may be an executive summary of the agreement or line item budget under which the applicant qualifies as a recipient or sub-recipient.

(f) The geographic area or region for which transit services will be provided.

(g) A calculation estimating the vehicle miles reduced (VMR).

(h) The period during which transit services will be provided.

(i) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits, including any legally required audits associated with the service.

(j) The number and type of new jobs that will be created by the transit services and the number of existing jobs that will be sustained throughout the operation of the transit services. Job estimates should be submitted in hours. These hours must be directly related to the transit services.

(k) The anticipated costs of providing the transit services.

(l) The amount of any anticipated or received incentives or grants directly related to the transit services.

(m) Current line item budget including labor, operations, maintenance, fuel, administrative costs and revenue that corresponds to the funding for the transit provider's service.

(n) The dollar amount of tax credit requested by the applicant.

(o) If the applicant intends to include costs for performance of the transit services prior to the project period in the Opportunity Announcement, a written description of the special circumstances

that rendered filing of an application prior to the start of performance unreasonable. Pre-qualified waivers may be provided in the Opportunity Announcement; a written description is not required for the period covered by a pre-qualified waiver.

(p) Other information the department considers necessary.

Stat. Auth.: ORS 469.040 & 469B.347

Stats. Implemented: ORS 469B.320–469B.347, 315.336 & OL 2012 Ch. 45

Hist.: DOE 5-2012, f. & cert. ef. 6-11-12

330-225-0040

Fees

The department adopts the following schedule of fees as provided by ORS 469B.335 for applicants. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants must submit an application fee of \$500 with their preliminary certification application.

