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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 March 3, 1988.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Energy.]

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

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

DIVISION 10

CONFIDENTIAL TREATMENT OF INFORMATION

330-010-0005

Purpose

The purpose of these rules is to establish standards and proce-

dures 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 ORS 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: The publication(s) referred to or incorporated by reference in this rule 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 OAR 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 OAR 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 OAR 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 OAR 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. 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: The Table(s) referenced in this rule are not printed in the OAR Compilation. Copies 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, ORS 469.040, 469.470, 469.501 to 469.507, 469.530, 469.560 and ORS 192.500, in order to implement their joint responsibility under ORS 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 OAR 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 formation 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 ORS 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

WEATHERIZATION AND ENERGY CONSERVATION SERVICES PROGRAMS

330-060-0005

Purpose

OAR 330-060-0005 through 330-060-0095 prescribe how fuel oil dealers shall provide energy conservation services to their residential customers as required by ORS 469.673 through 469.679.

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

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 fuel oil dealer, or a person bonded and employed by a dealer or under contract to the Department, who is trained as specified in OAR 330-060-0090 and 330-060-0085. The auditor collects data for energy audits in dwellings and presents results to customers.
- (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 mea-

sure shall receive a ten 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) “Department” — The Oregon Department of Energy.
- (11) “Director” — The Director of the Department of Energy.
- (12) “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.
- (13) “Dwelling Owner” — The person:
 - (a) 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; and
 - (b) Whose dwelling receives space heating from a dealer.
- (14) “Energy Audit” means:
 - (a) The measurement and analysis of the heat loss and energy use efficiency of a dwelling;
 - (b) An analysis of the energy and dollar savings that would result from energy conservation measures for the dwelling;
 - (c) An estimate of the cost of the measures that includes:
 - (A) Labor for installing these items; and
 - (B) The items installed.
 - (d) A decision whether each measure is cost-effective; and
 - (e) A decision whether the following can be installed:
 - (A) Passive solar space heating;
 - (B) Solar domestic water heating; and
 - (C) Solar swimming pool heating.
- (15) “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;
 - (B) Weatherstripping and other materials which prevent infiltration;
 - (C) Insulation of ceilings or attics, including insulation installed on flat roofs (but excluding any fire- or weatherproofing or roofing materials installed over the insulation);
 - (D) Insulation of outside walls;
 - (E) Insulation of walls in heated basements;
 - (F) Insulation of floors over unheated spaces, and materials to support the insulation;
 - (G) Insulation of supply and return air ducts in unheated spaces;
 - (H) Insulation of water heaters, water pipes, or steam pipes in unheated spaces;
 - (I) Vapor barrier materials;
 - (J) Ground cover in crawl spaces;
 - (K) Storm doors;
 - (L) Storm or double glazed windows;
 - (M) Replacement 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;
 - (N) Replacement oil furnaces or boilers with an AFUE of at least 80 percent;
 - (O) Timed thermostats;
 - (P) Attic ventilation, excluding electric ventilators;
 - (Q) Dehumidifiers; and
 - (R) Air-to-air heat exchangers.
 - (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 (15)(a) of this rule, the measures shall include but not be limited to:
 - (A) Automatic energy control systems;
 - (B) Equipment, associated such control systems, which is needed to run variable steam, hydraulic and ventilating systems;

and

(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.

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

(21) "Space-Heating" — The heating of living space within a dwelling.

(22) "State Incentive" — The weatherization rebate or any other state incentive which gives a customer an up-front cash payment for a weatherization job.

(23) "Sunchart" — A chart or form showing the plotted path of the sun and any objects which block the sun. This shall include plant life and structures. The view point shall be from the center lower edge of the collector.

(24) "Tenant" — A tenant as defined in ORS 91.705 or any other tenant.

(25) "Unheated Space" — An area in a dwelling which has no way to be heated to at least of 60 degrees F. during the winter.

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

(a) In the case of a dwelling which has an installed central heating system, wood must provide at least 90 percent of the space heat; or

(b) In the case of a dwelling which has baseboard or portable space heaters, wood must provide at least 75 percent of the space heat.

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

330-060-0015

Description of Residential Energy Conservation Program

As defined in ORS 469.673 through 469.679, each dealer shall submit for approval by the Director a Residential Energy Conservation Program which complies with these rules. A dealer may rely upon the services contracted for by the Director pursuant to ORS 469.677, to fulfill this obligation. The Program shall:

(1) Offer free information about energy conservation measures and available financing to all residential customers of the dealer.

(2) Upon request of a customer of the dealer, offer technical advice about how to save energy in the dwelling. This shall include but not be limited to an energy audit of the dwelling. Each dealer shall have a set procedure to conduct energy audits. The energy audit:

(a) Shall conform to the standards in OAR 330-060-0060 through 330-060-0095;

(b) Shall not be given to a tenant who is not billed directly by a dealer. Such a tenant may, however, contact their landlord. The landlord may request an energy audit for the whole building from the dealer;

(c) Shall not be given more than once on any one dwelling for a given customer;

(d) Written results and cost estimates shall be given to the customer by the dealer within 60 calendar days of the customer's request;

(e) Results shall be presented as required under OAR 330-060-0065 and 330-060-0085.

(3) Shall be provided free to the person who requests an energy audit.

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

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. A dealer may rely on these contracted services instead of presenting a separate Program.

(2) Each dealer shall notify the Director in writing within 15 days of the effective date of Chapter 778, Oregon Laws 1981 whether it:

(a) Will submit a separate Program; or

(b) Will rely on the Department's statewide energy audit program to fulfill its Program obligations.

(3) The Director shall notify each dealer of these two options. This notice shall include a form to be returned to the Director on which the dealer shall state which option it chooses. Receipt of this form by the Director shall satisfy the notification requirement in this section. A dealer providing a separate program must also follow requirements in OAR 330-060-0025.

(4) A dealer who relies on the statewide energy audit program complies with requirements in OAR 330-060-0015, and 330-060-0025 through 330-060-0095 without further action on the dealer's part.

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

(a) Notify its customers about this program, including the toll-free number to request energy audits; 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 energy audits to the statewide energy audit contractor chosen by the Department. Such requests shall be given to the contractor within three working days of their receipt.

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

330-060-0022

Contracting for Residential Energy Conservation Program Services

(1) If a dealer notifies the Director first, a dealer may, in order to provide the required Residential Energy Conservation Program:

(a) Form a non-profit corporation with one or more other dealers; or

(b) Contract with one or more other dealers or any other person competent to perform home energy audits, as stated in OAR 330-060-0090. Dealers may contract with persons other than their own employees to provide the required services under these conditions:

(A) The person must be bonded;

(B) A written agreement must be signed between the dealer and the person, stating duties and terms;

(C) The Director shall receive a copy of the agreement, with the person's name, address and phone number;

(D) A customer receiving an energy audit from such a person shall receive a checklist to be returned to the Director. This checklist will help the customer verify that all required analyses were done;

(E) The person shall disclose to the customer before starting

the energy audit any interest which the person or the person's employer has in the sale or installation of any weatherization, energy conservation, or solar materials or services.

(2) Each dealer shall ensure the availability, objectivity, accuracy, and quality of weatherization services provided under such contract(s).

(3) An employee, contractor or agent of a dealer while doing an energy audit under OAR 330-060-0015(2) and 330-060-0060 through 330-060-0080 or when presenting the written results of the inspection under OAR 330-060-0015(3) and 330-060-0085 shall not sell weatherization, energy conservation, or solar materials or services, or make a bid or proposal for such materials or services.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.675
Hist.: DOE 3-1987, f. & ef. 12-18-87

330-060-0025

Submission of Residential Energy Conservation Programs

(1) Each dealer shall submit for the Director's approval within 30 days of the effective date of Chapter 778, Oregon Laws 1981, a Residential Energy Conservation Program which complies with OAR 330-060-0005 through 330-060-0095.

(2) Each dealer shall, no later than February 1 of each year, submit to the Director any changes to its Program needed to comply with amendments made to OAR 330-060-0005 through 330-060-0095 during the preceding year. In any case, dealers shall provide all services required by those rules as amended, beginning on the effective date of the amendment.

(3) The Program shall give enough detail to amply describe the Program and comply with these rules. The dealer shall make copies of the approved Program, or a summary thereof, available to the public upon request.

(4) Forms used to give energy audit results to customers must be approved by the Director.

(5) Sample copies of training materials, heat loss analysis forms and worksheets, cost estimate forms, brochures, fliers, bibliographies, advertisements, articles, public service announcement scripts, handouts, mailers, bill stuffers, or other materials given out by the dealer shall be submitted to the Director along with the dealer's Program.

(6) The dealer shall also include a schedule showing when the Program will be made available to all customers. If a dealer does not notify all customers of the Program at one time, the dealer shall submit a planned, time-phased schedule to tell customers about the Program.

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 3-1987, f. & ef. 12-18-87

330-060-0026

Notifying Customers of the Program

(1) The dealer shall notify its residential customers about the free home energy audit program.

(2) The notice shall be in the form of a "bill stuffer" or other notice mailed directly to the customer. After November 1, 1981, the dealer shall give this notice at least once a year.

(3) The notice shall state:

(a) That technical information on weatherization services and other energy conservation measures is available from the dealer;

(b) That the dealer will perform a free home energy audit to recommend cost-effective energy conservation measures for the dwelling;

(c) That the dealer will provide information on low interest or other subsidized financing;

(d) That having an energy audit enables the dwelling owner to apply for a 6.5 percent loan for cost-effective measures; and

(e) A telephone number that the customer can call to obtain these services.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675
Hist.: DOE 3-1987, f. & ef. 12-18-87

330-060-0030

Approval of Residential Energy Conservation Programs

(1) The Residential Energy Conservation Programs required of dealers shall be deemed submitted when received by the Director.

(2) The Director may accept or reject such Programs, or require their amendment if they fail to comply with these rules and ORS 469.673 through 469.679.

(3) After approving the Program, the Director shall send an approval order to the dealer.

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 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87

330-060-0035

Program Reports by Dealers

Within 15 days of the end of each calendar quarter, each dealer shall submit to the Director a Program report. This report will give the number of dwellings of each structure type inspected under this Program during that quarter and other information required to evaluate the Program. The report shall be submitted on a form prescribed by the Director.

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 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87

330-060-0040

Low Interest Loans Through Lenders

(1) State finance 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 measures listed in OAR 330-060-0085, and any loan fee that is included in the body of the loan shall qualify for the loans. However, this cost-effective requirement shall not apply to a dwelling owner who has obtained an energy audit under Chapter 887 or 889, Oregon Laws 1977. In these cases, only weatherization items recommended in that energy audit will qualify for the loan;

(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 non-refundable 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 nonsubsidized 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. Exception: 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 an upfront state 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 Department 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 Department may require that contractors use bid forms provided by the Department; 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 pursuant to Chapter 887, Oregon Laws 1977 or Chapter 889, Oregon Laws 1977, or under ORS 469.633, 469.651, or 469.675. This audit must be conducted by a dealer, a utility, or by a person under contract with the Department. The dealer or utility need not provide the dwelling’s space heating energy; and

(B) Give the lender a copy of:

(i) The results of the energy audit;

(ii) The loan certification form stating that the dwelling receives space heating from fuel oil or wood; and

(iii) A Heating System Certification on which the contractor shall certify the results of a combustion efficiency test. Results shall meet standards set in OAR 330-060-0010(15)(a)(M) and (N).

(iv) The written permission to inspect submitted to the Department under OAR 330-060-0040(2).

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

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

(d) Are made before January 1, 1997; and

(e) Finance those measures recommended in the energy audit in keeping with OAR 330-060-0040(1)(b).

(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 space heat certification, 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 Director no later than one week after the loan is closed. (This is the lender’s only reporting requirement to the Department.)

(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 & ORS 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

330-060-0060

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

(1) The energy audit and preliminary solar assessment shall be performed on-site by the auditor, and be based on actual measurements or inspections of the building shell and the space heating equipment. The energy audit shall include a combustion efficiency test of fuel oil-fired equipment.

(2) The energy audit shall also list no-cost/low-cost energy-saving practices. The auditor shall encourage the customer to carry these out.

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

330-060-0065

Oil Audit Standards: Conduct of the Energy Audit

(1) General Procedure:

(a) Arrival. The auditor shall present credentials to the customer, and briefly explain energy audit procedures;

(b) Interview. The auditor shall interview the customer before the walk-through energy audit to gather the following information:

(A) Number of occupants;

(B) Definition of heated and unheated spaces;

(C) Thermostat settings in winter: when dwelling is occupied, and when dwelling is unoccupied or occupants asleep;

(D) Number of fireplaces and occupant’s damper use habits;

(E) Hot water use;

(F) Heating system description: fuel, age, maintenance schedule, presence of automatic vent damper or flue heat recovery device; secondary heating system fuel type and use; and

(G) Age, size and type of dwelling.

(c) Walk-through energy audit. The auditor shall encourage the customer to go with him or her during at least part of the energy audit. The auditor shall point out how the dwelling could be improved (plugging leaks, etc.), and other low-cost and no cost actions which save energy (as specified in OAR 330-060-0080). The auditor shall make a written note of any special problems or unique situations on the energy audit data collection sheet. The auditor shall perform the calculations and measurements specified in sections (2), (3), (4), and (5) of this rule;

(d) Results. The auditor shall calculate the results of the energy audit, as required in OAR 330-060-0085, and explain to the customer the results and recommendations. The auditor shall explain the 6.5 percent loan program and any other available financial incentives. The auditor shall explain the next steps the customer should take. The customer shall be told that he or she must give the Department permission to inspect the job if a 6.5 percent loan is taken out. The auditor shall tell the customer to use the statewide energy audit program toll-free number for any questions or complaints he or she may have about the energy audit.

(2) Applicability. The auditor shall decide which energy conservation measures apply to the dwelling. He or she shall estimate the energy savings in energy units (gallons) or percentage and how much money the measure could save if applicable. A measure shall apply in a dwelling if the measure is not already present, the measure is not a violation of federal, state, or local law or regulation, and the following conditions are met for individual measures:

(a) Replacement oil burners: if the furnace or boiler has less than 75 percent steady-state efficiency;

(b) Replacement oil furnaces or boilers: if the furnace or boiler has less than 75 percent steady-state efficiency;

(c) Ceiling insulation: if ceiling insulation is R-30 or less;

(d) Floor insulation: if floor insulation is less than R-19;

(e) Wall insulation: if there is no insulation in most of the outside walls;

(f) Storm doors: if there are none on the dwelling;

(g) Storm windows: if any of the prime windows are not double-glazed and do not have storm windows; and

(h) Heating supply and return air duct and pipe sealing and insulation: if these are unwrapped, in unheated areas and can be reached.

(3) Observations and Measurements:

(a) Water Heating. The auditor shall determine:

(A) The amount of water heater insulation, if any; and whether there is enough space around an unwrapped water heater to install insulation;

(B) The temperature of hot water at the tap closest to the tank;

(C) The presence of insulation on hot water pipes for ten (10) feet from the tank; and

(D) If underfloor insulation is present or recommended, the presence of insulation on all water pipes in the crawl space;

(E) Energy savings for water heater and water pipe insulation need not be calculated.

(b) Heating Systems:

(A) The auditor shall conduct a test of fuel-oil fired heating equipment to determine if carbon monoxide is present due to a cracked heat exchanger and/or backdrafting. The auditor shall use the Bacharach Monoxer equipment or its equal. If the test shows levels of carbon monoxide, the auditor shall advise the customer not to operate the furnace. Also, the auditor shall advise the customer to contact a furnace technician. In that case, a default efficiency shall be used in the energy audit analysis;

(B) The auditor shall conduct a combustion efficiency test of fuel-oil fired heating equipment. The auditor shall use the Shell-Bacharach test for oil burner efficiency, or its equal (including digital read-out systems). Test data reported must include make, model and age of the equipment; Bacharach smoke number; net stack temperature; and the percentage of carbon dioxide in the stack atmosphere. These pre-modification measurements shall be taken at the lowest maintainable Bacharach smoke number. If smoke is #3 or more, the auditor shall note that maximum emissions standards are being violated, and shall advise the customer to have the furnace adjusted. In that case a default efficiency shall be used in the energy audit analysis. Estimated steady-state efficiency with a new burner shall be 80 percent, and with a new furnace or boiler, 82 percent.

(c) Ceiling and Attic Insulation. Attic insulation shall be checked to learn its type, condition and its ability to resist heat flow (R-value), and the area measured. If attic insulation is not uniform in type or depth, the type and depth in different areas shall be noted on the plan view sketch and the area of each calculated. The auditor shall check for a vapor barrier. A check shall be made for obvious structural problems in the attic or roof. Apparent moisture damage such as delaminated sheathing material or fungus growth shall be noted. Recessed lights shall be noted. The auditor shall note cracks and consider them in determining air infiltration for the dwelling. The auditor shall decide whether existing ventilation would meet the Oregon Uniform Building Code if insulation is added;

(d) Floor Insulation. Floor insulation, if reachable, shall be checked for type, condition and R-value. Area will be measured and noted. Floor insulation that is not uniform in type or R-value shall be noted on the plan view sketch and the area of each calculated. The auditor shall check for a vapor barrier and ground cover (6 mil polyethylene plastic). The auditor shall decide whether crawl space ventilation meets the Oregon Uniform Building Code. If the floor is slab-on-grade, the auditor shall check for perimeter insulation. A check shall be made for obvious moisture problems such as dry rot or standing water;

(e) Wall Insulation. Walls, including those in heated basements, shall be checked for insulation. Wall insulation shall be checked by removing electrical outlet plates and probing with a non-conductive tool. If wall insulation is present, type and R value shall be decided and noted. Net wall area shall be calculated. In

apartment buildings, common walls shall be treated as inside walls;

(f) Doors and Windows:

(A) Outside doors shall be checked to see whether they are standard doors or insulated doors (R-7 or greater). The presence of storm doors shall be noted. The auditor shall estimate the R-value of the doors. The total door area shall be noted;

(B) Windows shall be checked for type (single-glazed, thermal window, storm window).

(g) Caulking and Weatherstripping. To calculate infiltration, the auditor shall check for caulking and weatherstripping around windows and doors, fixed joints, fireplaces, pipes and wiring entering a building, dryer vents and exhaust fans in outside walls, and electrical plates. Areas of infiltration at openings to the basement, crawl space, garage, and all heated space will be noted.

(4) Solar Assessment. The auditor shall decide if there are good shade-free sites for solar passive space, water, or pool heating, if applicable. If so, a sunchart shall be prepared for the site. No sunchart is required if the site is not blocked or shaded. The sunchart shall be given to the customer. For specific measures, the procedure shall be:

(a) Passive solar space heating. First, suitable site: decide if the dwelling has a wall facing within 30 degrees of true south. Second, degree of shading: if there is a south wall, decide if the wall, or a major part of it is shade-free for at least four hours per day between 9 a.m. and 3 p.m. for at least 120 days between September 21 and March 20. Third, specific site: if a south wall is unshaded, the auditor shall decide if there is a site for an attached greenhouse. Any patio areas should be considered first. If a greenhouse site exists, its east-west length shall be measured;

(b) Solar domestic water heating. First, decide if the dwelling has a roof facing within 30 degrees of true south. Second, if there is a south-facing roof, decide if there is enough room for solar collectors. Third, if there is room, decide how many hours per day on a monthly basis that the site is unshaded. If the site is unshaded to at least one of the following standards, solar water heating may be feasible:

(A) Four hours each day between 9 a.m. and 3 p.m. from January 21 to November 20; or

(B) Five hours each day between 9 a.m. and 3 p.m. from February 21 to October 20; or

(C) Six hours each day between 8 a.m. and 4 p.m. from March 21 to September 20.

(c) Solar swimming pool water heating. If there is a heated pool and a large enough site nearby (see OAR 330-070-0060, Oregon Alternate Energy Device Tax Credit Program) which is unshaded for at least five hours per day between 8 a.m. and 4 p.m. from March 21 to September 20, pool heating may be feasible. Unshaded sites in order of choice, subject to site conditions, are: south roof, next to south wall; roof of a detached structure; and ground level next to the pool;

(d) Results of the preliminary solar assessment. The auditor shall tell the customer whether passive solar space heating, water heating and pool heating, may be feasible if there is a good shade-free site. The least shaded site shall be considered the best location. A sunchart for the chosen site, if any, with the skyline plotted on it shall be prepared. The sunchart and a summary sheet discussing types of solar space and water heating systems shall be given to the customer. The summary sheet shall show the costs and energy savings for each type of system.

(e) The auditor shall recommend that the customer check local land use regulations before installing solar devices.

Stat. Auth.: ORS 469.040 & ORS 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 6-1988, f. 12-21-88, cert. ef. 1-16-89; DOE 2-1991, f. & cert. ef. 10-14-91

330-060-0070

Oil Audit Standards: Calculation Procedures

(1) Calculations of energy savings from energy conservation measures shall be based on the **ASHRAE Handbook of Funda-**

mentals or on the **National Environmental Systems Contractors' Association Manual J** or other calculations approved by the Department. A base of 65 degrees F. shall be used.

(2) Calculations for renewable resource measures shall be based on the Solar Energy Research Institute (SERI) or Oak Ridge methods.

(3) Procedures shall be submitted to the Department for approval. Or a Residential Conservation Service (RCS) energy audit approved by the U.S. Department of Energy may be used.

(4) Degree day data for the most recent winter shall be used for the reporting station nearest to the customer's dwelling.

(5) The heating system combustion efficiency shall be used as a basis for energy savings calculations. If the heating system is defective and a combustion efficiency test cannot be done, the auditor shall use the estimated seasonal efficiency of like equipment. This information is on a default chart approved by the Department.

(6) The estimated costs of energy conservation measures shall be based on average recent local prices for materials and labor. The estimated energy cost savings shall be based on average recent local fuel prices. Such prices shall be updated from time to time by the Department.

(7) Estimated average temperature of a buffer space will be figured into the heat loss and heat gain calculation for the area next to a buffer space. Buffer spaces will be noted on the sketch.

(8) Dealers shall have set procedures for commercial energy audits for centrally-heated apartment buildings.

(9) In recommending improvements to the thermal envelope of a dwelling, the auditor shall follow the weatherization standards set by the Director under ORS 469.155.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.040 & ORS 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

330-060-0075

Oil Audit Standards: Calculation of Cost Effectiveness

The energy audit calculations shall determine whether energy conservation measures are cost effective. Those calculations shall include:

(1) The present value of the cost of fuel calculated from the retail price of No. 2 distillate fuel oil as reported in **USDOE/EIA-0013** or from other sources approved by the Department. The present value depends on the life of the measure and will be provided from time to time by the Department.

(2) The expected life of measures used to calculate present value shall be:

- (a) Attic, ceiling, wall, floor and duct insulation — 30 years;
- (b) Storm windows — 20 years;
- (c) Storm doors — 7 years;
- (d) Replacement oil burners — 10 years;
- (e) Replacement oil furnaces and boilers — 20 years.

(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.

[Publications: The publication(s) referred to or incorporated by reference in this rule 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

330-060-0080

Oil Audit Standards: No-Cost/Low-Cost Energy-Saving Practices

The auditor shall decide which no-cost/low-cost energy saving practices apply in the customer's dwelling, and explain them to the customer. The auditor shall recommend that they be a part of an overall energy saving program. Examples of these practices are:

(1) Oil furnace maintenance and adjustments: cleaning and combustion efficiency adjustment of furnaces, optimizing the burner's firing rate, scheduled cleaning or replacement of air filters on forced-air heating systems, and lowering the bonnet or plenum thermostats to 80 degrees F.;

(2) Night temperature setback: Manually lowering the thermostat setting for the furnace to 55 degrees F. or lower at night in the winter. The auditor shall stress that the energy used for warmup after a night setback never exceeds the energy saved by the setback;

(3) Reducing the day thermostat setting in winter to 65 degrees F. or lower;

(4) Installing water flow restrictors in showerheads and other hot water taps to limit the flow to 2.5 gallons per minute, or replacing showerheads with low-flow showerheads;

(5) Reducing hot water temperature by setting back the water heater thermostat to 120 degrees F. (or 140 degrees F. with a dishwasher) and reducing the use of heated water for clothes washing;

(6) Reducing the thermostat setting to 55 degrees F. or lower when the dwelling is unoccupied for four hours or longer in the winter, and turning the water heater off when a dwelling is unoccupied for two days or longer;

(7) Insulating an attic or basement door;

(8) Sealing leaks in pipes and ducts by caulking or taping any leak in a heating duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacing washers in leaking water faucets;

(9) Using shading wisely by closing shades or drapes in the summer to block sunlight, opening them in the winter to allow sunlight in, and covering windows tightly at night during the winter; and

(10) Changing habits which affect energy use, such as opening outside doors too often in the winter.

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

330-060-0085

Oil Audit Standards: Results of the Energy Audit

The auditor shall give the following information in writing to each energy audit customer. If the customer is not present or declines in-person presentation, or with written approval of the Director, the results may be mailed to the customer. Results of a commercial energy audit may also be mailed to the customer. The results of the energy audit shall include:

(1) An estimate of the total cost (materials and labor), of having a contractor install each energy conservation measure addressed in the energy audit;

(2) An estimate of the energy savings in gallons or in a percentage of fuel use and in dollars, which would occur during the first year after installing each measure addressed by the energy audit and a statement of whether that measure is cost-effective;

(3) Information on how customers can finance measures, including:

(a) Information on 6.5 percent interest home loans for measures through lenders, with the names of lenders who offer these;

(b) The weatherization rebate; and

(c) Other local or federal financing options. These include the Oregon Small Scale Energy Loan Program and the USDOE low-income weatherization program. Use of Department publications for this purpose will satisfy the requirements of this subsection.

(4) A warning, printed on the customer's copy of the energy audit results form, that the customer must present a copy of the form when applying for a 6.5 percent loan through a lender. The energy audit form shall state that only items found to be cost-effective qualify for the loan;

(5) A separate listing of items which are presumed to be cost-effective in all cases without an energy-savings analysis, and items which alone may not save energy, but which are needed to make recommended energy conservation measures work. Items on this list which are recommended by the auditor also qualify for the

6.5 percent loan. Such items include: caulking, weatherstripping, and other air leak sealers; insulation of water heaters, water pipes or steam pipes in unheated spaces; vapor barrier materials; ground cover in crawl spaces; automatic setback thermostats; attic and crawl space ventilation (excluding power ventilators); dehumidifiers; air-to-air heat exchangers; any tests recommended by the auditor to measure levels of indoor air pollutants; water flow restrictors. The auditor shall tell the customer that a free insulating wrap may be available for electric water heaters from his or her electric utility;

(6) Information on how to request bids from contractors for weatherization. This shall include the Construction Contractor's Board telephone number. The auditor shall explain that the number can be used to obtain consumer protection information about contractors, such as registration status and outstanding claims. The dwelling owner shall be told they have the right to do their own weatherization work and still qualify for the low-interest loan;

(7) Department publications about indoor air quality and how measures may affect it. The customer shall be told about the possible adverse effect of decreased air exchange rates on indoor air quality. The customer shall be encouraged to make an informed decision whether to install measures which may lower air infiltration rates. The energy audit form shall include a check-off blank to show that the customer has been given this information;

(8) Written information about asbestos, if the auditor has determined that asbestos may be present in the home. This information shall include asbestos uses in the home, possible hazards, and suggestions on how to minimize those hazards. It shall also include information on how to properly select a contractor trained to work with asbestos;

(9) A preliminary assessment of the potential to use solar energy for:

- (a) Space heating;
- (b) Domestic water heating; and
- (c) Swimming pool heating, if applicable.

(10) The possible economic benefits of state tax credits for installing solar measures;

(11) A clear statement to the customer that the total energy cost savings from doing more than one measure may be less than the sum of the energy cost savings for those measures; and

(12) This disclosure or one like it: **"The procedures used to make these estimates conform to the ODOE standards for residential energy audits. However, the actual costs you incur and energy savings you realize from installing these measures may be different from these estimates. Although the estimates are based on measurements of your house, they are also based on assumptions which may not apply to your household"**.

Stat. Auth.: ORS 469.040 & ORS 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

330-060-0090

Oil Audit Standards: Auditor Qualifications

(1) Each dealer shall assure that persons employed to do energy audits have:

(a) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer,

(b) A general understanding of terms and practices used in residential construction. The auditor must be able to recognize structural problems that would make installing energy conservation measures impractical or hazardous;

(c) A general knowledge of how residential heating systems operate;

(d) A general knowledge of energy conservation measures; of the advantages, drawbacks, and applications of each;

(e) A knowledge of the costs of various types of energy and the relative costs of heating a dwelling with different types of energy; and a general understanding of the energy supply system in the Northwest;

(f) Knowledge of state and federal energy conservation pro-

grams and incentives;

(g) The capability to do the energy audit as required in OAR 330-060-0065, including:

(A) A knowledge of the no-cost/low-cost energy saving practices to be discussed along with the audit;

(B) The ability to decide where energy conservation measures apply;

(C) The ability to decide when to recommend items which are needed to make recommended measures work; and

(D) Competency in the energy auditing procedures listed in OAR 330-060-0065 and 330-060-0070, for all measures that apply.

(h) The ability to calculate the steady state efficiency of the oil furnace or boiler as required in OAR 330-060-0065;

(i) An understanding of the factors affecting indoor air quality, how the installing measures may affect indoor air quality, and actions which may relieve adverse effects on indoor air quality;

(j) Communications and marketing skills;

(k) An ability to explain to the customer the concept of cost-effectiveness, as used to qualify measures for the low-interest loan;

(l) An understanding of the nature of solar energy and its use in dwellings, including:

(A) Insolation;

(B) Solar access;

(C) Heat capture and transport; and

(D) Heat transfer for water and space heating.

(m) Familiarity with printed materials required to be given the customer by the Department.

(2) The auditor shall have both classroom and practical training. Practical skills shall include:

(a) Discussion of measures with customers;

(b) Measuring hot water temperature;

(c) Measuring floor, window and door area;

(d) Checking for and measuring ceiling, floor and wall insulation;

(e) Checking for vapor barriers;

(f) Checking for pipe and duct insulation;

(g) Calculation of energy loss through floors, doors, windows, walls and ceilings;

(h) Calculation of the energy cost savings for each measure that applies;

(i) Calculation of combustion efficiency of oil furnaces;

(j) Hands-on installing of caulking, weatherstripping, duct wrap and shower flow restrictors;

(k) Making suncharts; and

(l) Review of energy audit results with customers.

(3) Training shall be designed to assess and certify the person's ability to act as an auditor.

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

330-060-0095

Post-Installation Inspections

(1) The Department may provide inspections of measures recommended in the energy audit and installed:

(a) An inspection shall be provided in at least ten percent of the dwellings which receive the 6.5 percent loan or other state incentive for recommended measures. The Department will draw a random sample of customers receiving the loan for inspections of installed measures;

(b) The Department may provide an inspection at the owner's request;

(c) An inspection of a replacement oil burner, furnace or boiler included in the loan shall be limited to a combustion efficiency test as specified in OAR 330-060-0065(3)(b), the results of which shall be recorded. Otherwise the inspections of replacement oil burners, furnaces and boilers required by ORS 479.510 to 479.580 and **Section 301** of the **Oregon State Mechanical Specialty Code** to be done by qualified inspectors shall meet inspection requirements for those items.

(2) The inspection shall verify that:

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

(b) All loan or other state subsidy funds have been used for energy conservation measures recommended in the energy audit;

(c) Installation has been done in a workman-like manner; and

(d) Workmanship and materials meet prevailing industry standards. Installation standards in **Appendix C of the Oregon Residential Conservation Service (RCS) Plan** or the **Inspector's Checklist** from the **RCS Model Inspection Guide** may be used as a guide. Local codes shall prevail in all cases.

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

(a) The dwelling owner; and

(b) The Department.

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

(5) An inspector shall be a qualified auditor and have at least one year of experience in doing home energy audits or the equivalent. An inspector shall also have a knowledge of **Chapter 53, Structural Specialty Code of the Oregon Uniform Building Code**.

[Publications: The publication(s) referred to or incorporated by reference in this rule 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

DIVISION 61

PROCEDURES FOR A REBATE FOR WEATHERIZATION

330-061-0005

Purpose

OAR 330-061-0005 through 330-061-0050 prescribe how the Department shall run a program providing weatherization rebates for moderate income fuel oil and wood heat customers. This program shall be known as the weatherization rebate, a part of the State Home Oil Weatherization Program, run by the Department. Operation of the oil weatherization rebate depends on availability of funds.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0010

Definitions

As used in OAR 330-061-0005 through 330-061-0055, unless the context requires otherwise:

(1) "AFUE" — Annual fuel utilization efficiency, as determined by the Gas Appliance and Manufacturers Association.

(2) "Annual Income" — The total expected gross income of a family from all sources for the 12-month period after applying to the Department. The method used to figure the annual income shall be set by the Department.

(3) "Applicant" — Any person applying for a rebate.

(4) "Community Action Agency" — An agency designated to receive federal low income weatherization funds on behalf of low income clients.

(5) "Contractor" — 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.

(6) "Cost-Effective" — As given in OAR 330-060-0010(6).

(7) "Department" — The Oregon Department of Energy.

(8) "Director" — The Director of the Oregon Department of Energy.

(9) "Dwelling" — Real or personal property in Oregon which

is 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.

(10) "Energy Audit" has the meaning given in OAR 330-060-0010(14).

(11) "Energy Conservation Measures" — Items that are primarily designed to improve the energy efficiency of a dwelling:

(a) In one to four unit dwellings these measures are limited to:

(A) Caulking;

(B) Weatherstripping and other materials which prevent infiltration;

(C) Insulation of ceilings or attics, including insulation installed on flat roofs (but excluding any fire- or weatherproofing or roofing materials installed over the insulation) and associated attic ventilation;

(D) Insulation of outside walls;

(E) Insulation of walls in heated basements;

(F) Insulation of floors over unheated spaces, materials to support the insulation, and needed ground cover and ventilation;

(G) Insulation and sealing of supply and return air ducts in unheated spaces;

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

(I) Vapor barrier materials;

(J) Replacement 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;

(K) Timed thermostats; and

(L) Attic ventilation, excluding electric ventilators.

(b) In the case of centrally-heated apartment buildings these measures shall be primarily designed to reduce fuel oil use. In addition to measures listed in subsection (9)(a) of this rule, the measures shall include but not be limited to:

(A) Automatic energy control systems;

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

(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;

(D) Lighting modifications and upgrades.

(12) "Family" — All persons living together in a dwelling unit.

(13) "Fuel Oil" — Any petroleum product sold by a petroleum supplier for use as a residential heating fuel. It includes propane, butane, and kerosene.

(14) "Improvement Costs":

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

(b) Any incidental cost necessary to ensure the quality of the energy conservation measure (for example, providing adequate ventilation in connection with attic insulation), but not including the cost of repairs; and

(c) If installed by contractor, the actual costs to the recipient of the labor for the installation as stated in the installation certificate required by OAR 330-061-0030(3)(c);

(d) "Improvement costs" — Does not include the applicant's own labor.

(15) "Median Income" — State median annual income as established by the Department.

(16) "Person" — An individual, corporation, partnership, joint venture or other entity.

(17) "Petroleum Violation Escrow Funds" — Funds available to the State of Oregon from settlements and litigation under the Emergency Petroleum Allocation Act of 1973.

(18) "Rebate" — A cash grant for energy conservation measures.

(19) "Recipient" — A person receiving a rebate under the weatherization rebate program.

(20) "Space Heating" — The heating of living space within a dwelling.

(21) "Tenant" — A tenant as defined in ORS 91.705 or any other tenant.

(22) "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 furnace or boiler, wood must provide at least 90 percent of the space heat; or

(b) In the case of a dwelling which has baseboard or space heaters, wood must provide at least 75 percent of the space heat.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0015

Description of Oil Weatherization Rebate Program

The Department offers 25 percent rebates for cost-effective energy conservation measures to households whose income is at or below state median income. The Department offers 50 percent rebates for households with incomes at or below eligibility levels for the U.S. Department of Energy's Low Income Weatherization Program. The maximum amount of the rebate is determined by the Department.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0020

Eligible Recipients

(1) An owner of, or tenant in, a dwelling who purchases and installs energy conservation measures in such building shall be eligible to receive a rebate. All buildings must be heated by fuel oil or wood as the primary source of space heat.

(2) Income limits. To receive a rebate, a recipient must be an individual whose family has an annual income at or below the state median income.

(3) An owner of a residential rental building with two or more units may also apply for a rebate. In that case, at least half of the tenant households in the building to be weatherized must have eligible incomes.

(4) Assistance on behalf of others. A third person may receive a rebate on behalf of any owner or tenant who would be eligible to receive a rebate, if such owner or tenant consents to the arrangement in writing. The third person shall comply with all requirements which would apply to the owner or tenant if he or she had received the rebate. The third person may receive the rebate in the form of a single grant in an amount equal to the sum of such grants which each owner or tenant could have received.

(5) Assistance through Community Action Agencies. Community Action Agencies may apply for a rebate on behalf of applicants who meet income guidelines for the U.S. Department of Energy's Low Income Weatherization Program.

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

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

EXAMPLE: 1,000 square feet is commercial, 2,000 square feet is residential — 2/3 of the cost could qualify for the rebate.

(7) Relationship to low-interest loan. An applicant may apply for a 6.5 percent weatherization loan under ORS 469.715 to cover that part of the weatherization job not paid for by the rebate. However, an applicant may not receive a 6.5 percent loan for the full amount of the weatherization job and a 50 percent rebate for mea-

asures covered by the loan. If a loan is received for the full amount of the weatherization job, the rebate must be used to pay down the loan balance.

(8) Relationship to other publicly-subsidized loans. An applicant may apply for any other local, state or federal low-interest loan to cover that part of the weatherization job not paid for by the rebate. However, an applicant may not receive a publicly-subsidized low-interest loan for the full amount of the weatherization job and a 50 percent rebate for measures covered by the loan.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0025

Amount of Rebate

(1) The maximum amount of the rebate shall be determined by the Department based on:

(a) Amount of funds available;

(b) Building type;

(c) Maximum limits set on the energy audit; or

(d) Maximum limits per measure set by Department based on review of average contractor pricing.

(2) The total improvement cost for energy conservation measures purchased and installed must be at least \$250 for the job to be eligible for a rebate.

(3) 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 rebate 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 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0030

Application Procedure

(1) Energy audit required:

(a) An applicant for a rebate must submit to the Department a copy of an energy audit for the building or dwelling unit for which a rebate is requested before the rebate is provided;

(b) A rebate will only be provided for energy conservation measures listed in OAR 330-061-0010(9). The measures must be shown as cost effective in the audit to qualify for the rebate.

(2) Any expenditures for energy conservation measures made prior to receiving an energy audit shall not be eligible for a rebate.

(3) An applicant for a rebate must apply to the Department and receive approval before work on the project begins. However, the Department may waive this requirement if it places an undue hardship on the applicant.

(4) An applicant for a rebate should request bids from three contractors on the work. The Department may require that contractors use bid forms provided by the Department.

(5) Applicant certification. The applicant shall certify to the Department that:

(a) Their family income or the family income of their tenants meets the income limits specified in OAR 330-061-0020(2);

(b) Financial resources are available to the applicant, which, when added to the rebate, will be sufficient to pay the full improvement cost of the energy conservation measures to be bought and installed;

(c) The rebate will be used to buy and install eligible energy conservation measures. This shall include a list of the measures installed, a statement that installation work is complete, the total costs of eligible measures installed, and shall be signed by the recipient and contractor(s), if any.

(6) A tenant must get prior written consent from the owner of

the building or dwelling unit to be eligible to apply for a rebate for the installation of energy conservation measures.

(7) A third party applying for assistance on behalf of any owner or tenant who would be eligible to receive a rebate must get written consent from the owner or tenant before receiving a rebate on the owner's or tenant's behalf.

(8) A resident of a housing cooperative must get prior written consent from the cooperative corporation to be eligible to apply for a rebate for the installation of energy conservation measures.

(9) To be eligible for the rebate, the applicant must submit to the Department written permission to inspect the job to verify that the measures have been installed.

(10) Contractor requirements:

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

(b) Contractors shall certify that neither they nor their suppliers (if any) are on the Consolidated List of debarred, suspended, and ineligible contractors prepared by the General Services Administration pursuant to the temporary rule published at 47 FR 43692 and any successor rule;

(c) Contractors shall certify the results of a combustion efficiency test for a new flame retention burner for which a rebate is requested. If the burner does not test at 80 percent steady state efficiency or greater, no rebate shall be given;

(d) 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 shall 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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0035

Payment of Rebate

After receipt of all documents and certificates required by OAR 330-061-0020 through 330-061-0030, the Department shall issue a two-party check in the allowable rebate 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. The Department may also, at its discretion, issue a single-party check to the contractor.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0040

Post-Installation Inspections

(1) A post-installation inspection complying with OAR 330-

060-0095 shall promptly be provided in at least ten percent of the dwellings which receive a rebate.

(2) A random sample of customers receiving the rebate shall be drawn by the Department for post-installation inspections.

(3) The Department may require that an inspection be completed before disbursing rebate funds.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

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

330-061-0045

Penalties and Remedies

(1) Any person who knowingly makes any false statement or misrepresents any material fact with respect to any rebate provided by the Department 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 rebate recipient to allow an inspection previously authorized in writing by the recipient, upon reasonable request by the department and at a reasonable time shall constitute grounds for the department to recover the full rebate amount from the recipient.

(3) Penalties in this sections are not exclusive. The penalties provided for in sections (1) and (2) of this rule shall be 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

Stats. Implemented: ORS 469

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

330-061-0050

Retention of Records by Recipients

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

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

330-061-0060

Applicability of Rules

These rules shall apply to all weatherization rebates.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469

Hist.: DOE 3-1987, f. & ef. 12-18-87; DOE 4-1993, f. & cert. ef. 10-22-93

DIVISION 62

ENERGY CONSERVATION STANDARD FOR EXISTING DWELLINGS

Advisory Residential Energy Conservation Standards for Existing Dwellings

330-062-0005

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, ORS 469 & ORS 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 ORS 488.705 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 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, ORS 469 & ORS 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, ORS 469 & ORS 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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 407, ORS 469 & ORS 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-38^{1,3} 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-30^{1,3} 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-19^{1,2} 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-11^{1,2} 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-11^{3,8} 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° F⁶; 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: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 407, ORS 469 & ORS 470

Stats. Implemented: ORS 469.155

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

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

330-062-0030

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, ORS 469 & ORS 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, ORS 469 & ORS 470

Stats. Implemented: ORS 470.080

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

Mandatory Weatherization Standards for Oregon Department of Veterans' Affairs Home Loans

330-062-0040

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, ORS 469 & ORS 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 OAR 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 OAR 814-005-0005 through 814-005-0030 are revised.

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

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 & ORS 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 & ORS 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 & ORS 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-

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 & ORS 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-

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 & ORS 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-

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 & ORS 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-

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, auditori-

ums, 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 contingency 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 OAR 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.
 Stat. Auth.: ORS 469.040 & ORS 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 & ORS 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 Conserva-

tion 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 man-

aged 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
 Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
 Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
 Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
 Stat. Auth.: ORS 469.040 & ORS 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; ODE 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
 Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.040 & ORS 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 & ORS 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 & ORS 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**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat.: ORS 469.040 & 469.165

Stats. Implemented: ORS Ch. 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**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.040 & ORS 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 & ORS 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**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 469.040 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 469.040 & ORS 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 sub-contracts with schools, hospitals, public care, government buildings and eligible facilities other than buildings.

Stat. Auth.: ORS 183 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 183 & ORS 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 & ORS 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 fix-

tures 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 & ORS 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 & ORS 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 & ORS 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 OAR 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 OAR 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 & ORS 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 & ORS 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 & ORS 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:

$$\frac{\text{Project Payment}}{E} = \text{Ranking Value}$$

(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 & ORS 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 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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 OAR 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:

$$\frac{\text{Project Payment}}{E} = \text{Ranking Value}$$

(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.

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 RESIDEN-

TIAL ALTERNATIVE ENERGY DEVICES

330-070-0010

Purpose

(1) ORS 469.160 through 469.180 offer tax credits for Alternate Energy Devices (AEDs).

(2) These rules are OAR 330-070-0010 through 330-070-0097. They govern the way tax credits for AEDs will be granted or denied. None of these rules replace any building code requirements.

(3) Effective Date: January 1, 1998. All decisions made by OOE regarding AED eligibility, issuance of dealer certification, complaints regarding performance of certified dealers, revocation of dealer certification 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) These rules apply to tax years beginning on or after January 1, 1998 and before December 31, 2001. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) The Oregon Office of Energy (OOE), a division of the Department of Consumer and Business Services (DCBS), grants or denies AED tax credits. By granting a tax credit, neither OOE nor the state implies that the AED will save more money than it costs. Meeting standards in these rules does not assure that an AED is safe or reliable.

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

330-070-0013

Definitions

As used in OAR 330-070-0010 through 330-070-0097:

(1) "Active" — A solar AED which uses mechanical parts to collect, store and move heat.

(2) "AED" — Alternative Energy Device.

(3) "Alternative Energy Device" — A system using solar energy, or a groundwater heat pump or ground loop AED to heat water or space, to cool space, or to make electricity that reduces the energy used by 10 percent or more. AED includes energy efficient appliances and alternative fuel devices.

(4) "Alternative Energy Device Systems Directory" — A reference that includes yield charts which define annual energy savings for all alternative energy devices. It also includes, but is not limited to, instructions on how to claim the credit and general information. It is updated as needed. (January 1998 edition).

(5) "Alternative Fuel" — Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director of OOE.

(6) "Alternative Fuel Vehicle" — An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(7) "Applicant" — A party who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section.

(8) "ARI" — Air-Conditioning and Refrigeration Institute.

(9) "ASHRAE" — American Society of Heating, Refrigerating and Air- Conditioning Engineers.

(10) "BTU" — British Thermal Unit.

(11) "Consumer Disclosure" — A form approved and provided by OOE describing the AED. The contractor fills this form out and gives it to the buyer of an AED. It shows estimated energy savings of the AED, required conservation items, required maintenance and freeze protection information and other data required

by OOE. Exclusions: energy efficient appliances and alternative fuel devices.

(12) "COP" — Coefficient of Performance. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(13) "Contractor" — A person who sells complete AED systems, AED installation, or AED design services.

(14) "Contractor Cert" — A contractor system certification issued by OOE to a contractor for a specific AED. It allows the contractor to install that device for the tax credit without getting a separate system certification for each job.

(15) "Department", "Energy Office", or "Office" — The Oregon Office of Energy.

(16) "Director" — Director of OOE or the Director's representative.

(17) "Domestic Water Heating" -- The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(18) "Dwelling" — means real or personal property inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(a) Principal residence means the dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in the calendar year for which the credit is claimed;

(b) Secondary residence — means vacation property owned by the applicant;

(c) Not qualifying — Primary or secondary residences do not include motor homes or recreational vehicles as defined in ORS 446.003.

(19) "Energy Efficient Appliance" — A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning unit, or any other major household appliance that has been certified by OOE to have premium energy efficiency characteristics. Certified energy efficient appliances are listed in the AED Systems Directory.

(20) "Energy Yield Chart" — Chart developed by OOE showing first year energy yield of an AED.

(21) "Electric Load" — Appliance and lighting exclusive of any water or space heating use.

(22) "FERC" — Federal Energy Regulatory Commission.

(23) "First Year Energy Yield" — Usable energy produced under average conditions by an AED in one year. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(24) "Groundwater heat pump" — A heating, ventilating and air-conditioning system, also known as an earth-coupled heat pump or ground loop AED, with a refrigerant compressor controlled for heating or cooling which utilizes a subsurface closed loop coil or heat exchanger to extract or reject heat to the earth.

(25) "Heating Season" — September 1 through March 31.

(26) "HUD" — U.S. Department of Housing and Urban Development.

(27) "Hybrid" — An AED that uses some active and some passive elements as part of the system.

(28) "IRCC" — Interstate Renewable Energy Council.

(29) "kWh" — kilowatt-hour; 1 kWh = 3413 BTUs for purposes of OOE calculations.

(30) "MM" — Million.

(31) "Net Cost" — What the applicant paid to design, acquire, build and install the AED. Net cost includes permit and inspection fees. Net cost may include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, discounts or refunds.

(32) "OOE" — Oregon Office of Energy.

(33) "OG" — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its

directory.

(34) "Owner-Built" — An AED that is assembled and installed on an owner's personal property and with an owner's labor only.

(35) "Parasitic power" — The electrical energy the system uses to operate.

(36) "Passive" — A solar AED which relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(37) "Placed in Service" — The date when an AED is ready and available to produce usable energy.

(38) "Solar Domestic Water Heating System" — A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.

(39) "SRCC" — Solar Rating and Certification Corporation.

(40) "Sunchart" — A chart or form issued or approved by OOE showing the plotted path of the sun and any objects which block the sun from the AED. This shall include plant life and structures. The viewpoint shall be from the center of the lower edge of the collector. It shall show whether the plant life is made up of evergreen or leafy trees. If there is no shading on the AED, contractors shall indicate this in writing on the chart and shall include their signature and the date of the analysis.

(41) "System Cert" — Certification that an AED as described in the application meets criteria for the tax credit—

(42) "Unheated Spaces" — Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below.

(43) "Used Equipment" — Any solar tank or collector which previously has been installed or any piece of equipment not under current manufacturers' warranty.

(44) "Verification Form" — Form filed with Department of Revenue (upon request) by applicant claiming eligibility for the tax credit. Verification that an AED has been installed and has met all the requirements. Contractor shall submit a copy of form to OOE.

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

330-070-0020

Who is Eligible

To receive an AED tax credit, a person must:

(1) Pay income taxes in Oregon; and

(2) Own, rent, or be the contract buyer of the dwelling(s) to be served by the AED. Such dwelling(s) must be in Oregon. Such dwelling(s) must be the main or secondary residence of the person who applies for the tax credit, or of a tenant; or

(3) Own, or be the contract buyer of the AED and pay all or part of the cost of the AED; or

(4) Be the contractor that owns the dwelling for speculative sale in which the alternative fuel fueling system is installed.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

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

330-070-0021

Eligible Devices

(1) To earn a tax credit, the AED shall:

(a) Be a complete system. That is, the system must be able to collect, store, convert, monitor, and distribute energy to the dwelling it serves. Exception: Additions to existing AED systems, that are not pool, spa, or hot tub systems, shall be eligible when they increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accord with ORS 469.160 through 469.180;

(c) Be a system with manufacturer's warranties against defects in products and materials;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems. (OAR 330-070-0020; 330-070-0040 through 330-070-0055; and 330-070-0060 through 330-070-0097); and be one of the following:

(A) A system that uses solar energy;

(B) A groundwater heat pump or ground loop AED;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy efficient appliance;

(E) An alternative fuel device.

(2) These devices cannot earn an AED tax credit:

(a) Standard furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood;

(d) Air-to-air and air-to-water heat pumps or any device that uses ambient air to make heat;

(e) Heat pump water heaters;

(f) Structures that cover or enclose a swimming pool and which are not attached to the dwelling;

(g) Swimming pools and hot tubs used to store heat;

(h) Photovoltaic systems installed on recreational vehicles;

(i) Additions to existing pool, spa and hot tub systems;

(j) Above ground, un-insulated swimming pools, spas and hot tubs;

(k) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(l) Used equipment; and

(m) Repairs and replacements of systems having received prior certification for an AED tax credit;

(n) Water source heat pump - A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(o) Hydro system;

(p) Wind system.

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 1-1989, 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

330-070-0022

Amount of Credit

(1) The amount of the AED tax credit is based on the first year energy yield of an eligible AED.

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) \$1,500 or the first year energy yield of the AED in kWh times 60 cents for AEDs used for solar or geothermal space heating, cooling, electrical energy production or domestic water heating for tax years beginning on or after January 1, 1998.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed shall be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, the credit allowed is 25 percent of the cost of the alternative fuel device, not to exceed \$750 for devices placed in service on or after January 1, 1998.

Individual credit may be claimed for both an alternative fuel vehicle and an alternative fuel fueling system.

(3) For an energy efficient appliance, the credit allowed under this section shall equal:

(a) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,200 for each tax year beginning on or after January 1, 1998 and before January 1, 1999. Total not to exceed 25 percent of the cost of the appliance; and

(b) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000 for each tax year on or after January 1, 1999. Total not to exceed 25 percent of the cost of the appliance.

(4) The amount of the tax credit shall not exceed the net cost of the AED to the applicant.

(5) For purposes of the tax credit, the cost of the AED shall:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system:

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost shall be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) OOE may find an AED to be too large for a dwelling. In such case net cost shall be prorated. Net cost shall be based on the largest useful size of an AED for the dwelling. OOE shall determine largest useful size based on the energy needs of the building;

(C) The amount of credit for the original system and an addition may not exceed the maximum eligible amount of tax credit available in the year the addition is installed.

(6) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and shall 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) Amounts from vendors of an AED that reduce its cost.

These include 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; and

(l) Any part of the purchase price which is optional, such as an extended warranty.

(m) Delivery fees.

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 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

330-070-0024

Year Credit Claimed

The tax credit is claimed for the tax year in which the alternative energy device is placed in service. However, the credit may be claimed for the tax year the AED is purchased if the system is placed in service by April 1 of the next following tax year.

(2) Proof of purchase shall be a contract or invoices dated in the year for which the applicant is claiming the credit.

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

330-070-0025

Application for System Cert

(1) Applicants for the tax credit must get a system cert from OOE, except if: The system is installed by a contractor holding a contractor cert issued by OOE.

(2) Applications for a system cert shall be made on a form

provided by OOE:

(a) All applications shall contain a statement that the system and contractor or owner-builder will meet all federal, state and local requirements;

(b) All applications shall state:

(A) The net cost of the AED;

(B) The location of the AED;

(C) Estimated first year energy yield of the AED by the contractor or from the OOE energy yield chart, (found in the OOE AED System Directory), if any;

(D) That the purchaser has received an operating manual for the AED. Exception: No operating manual is required for sunspaces or direct gain space heating systems.

(c) All applications shall state that the contractor agrees to make any changes required by OOE for the system to comply with ORS 469.160 through 469.180;

(d) All applications shall be signed by the purchaser and contractor, if any;

(e) A contractor or applicant shall not give OOE false or misleading information about an AED.

(3) System cert applications for solar water heating AEDs shall contain:

(a) The number of collectors;

(b) The manufacturer and/or supplier;

(c) The collector dimensions and/or the net area of the collectors;

(d) The amount of heat storage;

(e) The system type;

(f) Declaration of SRCC certification status: OG-100, or OG-300;

(g) A description of the freeze protection for the system;

(h) A description of the over heat protection for the system;

(i) The system model;

(j) Orientation and tilt of the device and a sunchart;

(k) A Consumer Disclosure signed by the applicant and contractor or supplier, if any;

(l) A statement that the purchaser has received a copy of consumer information supplied by OOE; and

(m) Any other data OOE requires.

(4) System cert applications for active solar space heating AEDs shall contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home; and

(c) Any other data OOE requires.

(5) System cert applications for passive solar space heating AEDs shall contain:

(a) A plan or sketch of the system;

(b) The collector area;

(c) The type and amount of storage;

(d) The method of heat distribution;

(e) Orientation and tilt of the device and a sunchart;

(f) A heat loss estimate for the home; and

(g) Any other data OOE requires.

(6) System cert applications for photovoltaic AEDs shall contain:

(a) The brand name of the module(s);

(b) The module(s) area;

(c) The rated output in watts of the module(s);

(d) A description of the storage provided if storage is a part of the system;

(e) Storage brand and model;

(f) Storage capacity;

(g) The brand name of the inverter if an inverter is part of the system;

(h) The capacity of the inverter;

(i) Calculations to show that the first year energy yield of the photovoltaic system will be at least 10 percent of the total annual energy requirement of the dwelling. For purposes of this rule, 10 percent of the total annual energy requirement is assumed to be equal to 50 percent of the electrical load;

(j) A list of appliances and expected energy use, except the water heater;

(k) Orientation and tilt of the device and a sunchart; and

(l) Any other data OOE requires.

(7) System cert applications for ground water heat pumps and ground loop AEDs shall contain:

(a) 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) Any other data OOE requires.

(b) 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 ARI under Standard 325-85 at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data OOE requires.

(c) For ground loop heat pump systems:

(A) All the information in subsection (7)(b) of this rule; and

(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) Any other data OOE requires.

(8) System cert applications for energy efficient appliances shall contain:

(a) Taxpayer's name and principal address;

(b) Installation location by street address;

(c) Taxpayer i.d. or social security number;

(d) The name of the dealer or licensed and bonded contractor;

(e) The dealer's business location;

(f) The brand name, make, model number, capacity and/or size of the appliance;

(g) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of purchaser's name and address; and

(B) Verification of model of appliance; and

(C) Verification of actual price paid for appliance.

(h) Certification of new equipment warranty;

(i) Any other data OOE requires.

(9) System cert applications for Alternative Fuel Devices shall contain:

(a) Taxpayer's name;

(b) Taxpayer i.d. or social security number;

(c) State of Oregon vehicle registration number;

(d) Installation location by street address;

(e) The name of the dealer or licensed and bonded contractor;

(f) The dealer's business location;

(g) The brand name, make, model number, or component list of the AFD;

(h) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of purchaser's name and address; and

(B) Verification of model of, or components used for AFD;

(C) Verification of actual price paid for the AFD.

(i) Certification of new equipment warranty;

(j) Any other data OOE requires.

(10) A system cert may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

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

330-070-0026

Contractor Cert

(1) When OOE finds that each sale and installation of an AED can meet the standards adopted under ORS 469.165 without requiring a system cert, OOE may issue a contractor cert to a contractor. A contractor cert may be required for tax credit eligibility of a specific AED if the Office determines that this will improve installation quality and program efficiency. A contractor cert applies only to the specific products, plans, specifications, and installation and operation procedures approved by OOE in the contractor cert.

(2) Any person who sells or installs more than 12 AEDs in one year shall apply for a contractor system certification.

(3) For the purpose of this rule, energy efficient appliances such as clothes washers, dishwashers, and refrigerators do not qualify as a system.

(4) Application for a contractor cert shall be made in writing on a form provided by OOE. The application shall contain:

(a) A statement that the contractor is registered with the Construction Contractors Board and has any license, bonding insurance and permit that is required by the Construction Contractors Board for the sale, construction, and installation of the AED;

(b) A description of the AED, including at least the material, equipment and mechanism used in the device, operating procedures, freeze protection method, method of indicating flow or temperature, sizing and siting method and installation procedure;

(c) The addresses of three installations of the system installed by the applicant that the Office may inspect;

(d) The range of installed costs of the device;

(e) Names and addresses of all retail outlets, partners and investors in the business, officers, licensed plumbers, licensed electricians and installation foremen employed by the contractor;

(f) Areas of the state where the contractor installs the AED;

(g) Sample copies of sales contracts. These should include any warranty provisions; and

(h) Groundwater heat pumps or ground loop AEDs may be considered for eligibility under the contractor certification if:

(A) The contractor shows proof that their installers have received training from the factory in both loop and mechanical installation; and

(B) The contractor provides an acceptable factory authorized annual heat load analysis of an Oregon home, giving minimum field sizing and computing the annual COP. Annual heat load calculations shall be completed using ASHRAE standard procedures.

(i) Any other information OOE determines is needed.

(3) The holder of a contractor cert shall notify OOE within ten days if changes are made in any of the information in the contractor cert application.

(4) The holder of a contractor cert shall provide the owner of the system with a copy of their contractor's cert, a copy of consumer information published by OOE, an operating manual and a statement of the reasonably expected annual energy savings of the AED. The contractor shall provide OOE with a copy of each signed verification form.

(5) OOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. OOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

(6) Any system which is not the same as the system(s) for which a contractor cert has been issued requires a system cert application.

(7) Contractor certificates must be renewed annually. Renewal forms are available through OOE upon request.

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 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

330-070-0027

Applications Review

(1) OOE shall review applications for system approval. Systems must comply with OAR 330-070-0010 through 330-070-0097. Specific guidelines for each type of AED are provided in OAR 330-070-0060 through 330-070-0095.

(2) OOE will return applications that are not complete. OOE shall identify the additional information needed.

(3) OOE shall act on a complete application within 60 days after it is received. OOE may require more details within 30 days of receipt of an initial application. In some cases another 60-day review period may be needed. If so, OOE will explain to the applicant why more time is needed:

(a) If OOE fails to meet these deadlines, the system is considered approved;

(b) If OOE requests additional data, the review period will be extended until required data is received;

(c) During review, OOE may ask for proof that the system complies with OAR 330-070-0010 through 330-070-0097. OOE may also ask for changes to make the system and application comply with these same OARs.

(4) To get the information needed to review an application or to verify eligibility and first year energy yield, OOE may, with the owner's consent, inspect an installed AED:

(a) OOE may deny a system cert or request DOR to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow OOE to inspect the AED;

(b) OOE may require corrections to make the AED comply with OAR 330-070-0010 through 330-070-0097 to be made within 30 days;

(c) If such changes are not made within this time limit, OOE may reject the application. OOE may use the results of utility inspections in lieu of its own.

(5) OOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. OOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

(6) If OOE rejects an application for system cert or contractor cert, an applicant may appeal the rejection. If OOE approves a system cert for lesser cost than claimed by the applicant, the applicant may also appeal the rejection of those costs. The appeal must be within 60 days of the mailing of the rejection notice by OOE. Appeals shall be conducted as per 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

330-070-0040

Other Rules and Regulations

(1) AEDs shall comply with all state, federal and local laws and rules which apply. These OARs change no one's responsibility to comply with such laws.

(2) The policy of the Office 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;

(c) To provide facts from tax credit files to such agencies when asked.

(3) Each applicant:

(a) Shall obtain each local, state, and federal permit and license that applies to a project;

(b) Shall agree to comply with the express terms and conditions of each permit and license;

(c) Shall agree to comply with all state rules and laws that apply to the project.

(4) System certs and contractor certs 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 OOE 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. Exception: This does not apply to residential DHW, pool, spa and hot tub systems.

(6) AED contractors shall install all systems to comply with manufacturers' published specifications.

(7) OOE shall assign a yield for all solar domestic water heating systems. For systems not SRCC OG-300 (Directory of SRCC Certified Solar Collector and Water Heating System Ratings, June 1997) certified, OOE shall assign a yield based on requirements determined comparable to SRCC OG-300.

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

330-070-0045

Enforcement

(1) Applicant's actions are cause for revocation of Residential Alternate Energy Tax Credit:

(a) A system cert may be revoked pursuant to ORS 469.180 if the Director finds that:

(A) The applicant obtained the system cert by fraud or misrepresentation;

(B) The verification form was fraudulent or misrepresented by the taxpayer;

(C) 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 HUD 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;

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(D) The applicant refuses to allow OOE to inspect the AED after a reasonable written request by the department. A reasonable request shall allow applicant to choose a day within three weeks of the request from the Department.

(b) Following revocation, the applicant shall forfeit the tax credit, and the Department of Revenue shall proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) Contractor's actions which are cause for revocation of contractor's certification:

(a) A contractor cert may be revoked pursuant to ORS 469.180 if the Director finds that the system or contractor cert was obtained by fraud or misrepresentation by the contractor. The director may find that fraud or misrepresentation occurred if the director finds false statements were made regarding the contractor's licenses held, products or warranties carried, range of product cost, personnel employed in the business, or any other statement made in application for contractor certification as defined in OAR 330-070-0026;

(b) A contractor cert may be revoked pursuant to ORS 469.180 if the Director finds that the contractor's performance regarding sales or installation of the alternative energy device for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards. The director may find that the contractor's performance does not meet industry standards under the following conditions:

(A) The contractor is not registered with the Construction Contractors Board or does not carry the required level of insurance or bonding; or

(B) The contractor fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040; or

(C) The contractor fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097; or

(D) The contractor fails to install the AED system in a workmanlike manner; or

(E) The contractor fails to install the AED system to comply with manufacturers' published specifications; or

(F) The contractor fails to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(G) The contractor fails to honor a warranty which the contractor is contractually obligated to perform; and

(H) The contractor fails to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by OOE within 30 days of written notification from OOE of the problem, unless a time extension is granted by OOE.

(I) A tax credit for an AED sold or installed under the contractor cert is ordered revoked under subsection (2)(a) of this rule; or

(J) New information indicates that the AEDs installed under the contractor cert do not meet eligibility requirements.

(c) A contractor cert may be revoked pursuant to ORS 469.180 if the Director finds that the contractor 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 contractor has misrepresented the tax credit program or the AED under the following conditions:

(A) The contractor 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 469.160 through 469.180; or

(B) The contractor has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to OOE to substantiate the yield. For geothermal heat pumps, the contractor has claimed savings higher than the next most efficient alternative; or

(C) The contractor has misrepresented the cost of a system. For example, the contractor omits costs in the contract for features necessary for basic installation and/or operation of the system and/or to comply with the AED eligibility under ORS 469.160 through 469.180; or

(D) The contractor has misrepresented a competitor's product or service; and

(E) The contractor fails to make corrections requested in writing by OOE to remedy violations of paragraph (A) - (D) of this subsection within 30 days unless more time is allowed by OOE, or the contractor fails to remedy the construction and/or warranty claim as directed by Order of the 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

330-070-0048

Administrative Process for Review and Revocation of Contractor Certification

OOE will use the process set out in this rule for monitoring and enforcement of contractor certificates:

(1) If OOE receives a complaint, it shall notify the contractor and give the contractor an opportunity to respond. If the complaint relates to issues which the Construction Contractors Board (CCB) has authority to resolve, the complaint shall be referred to the CCB for resolution. The CCB generally has authority to address construction, warrantee claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB shall be grounds for revocation of contractor certificate or

civil penalty.

(2) In all other cases, OOE shall evaluate the contractor's response and determine whether a violation occurred. OOE shall notify the contractor of its determination and if appropriate, the necessary remedy. OOE shall give the contractor 30 days to remedy a violation. OOE may grant the contractor additional time where appropriate. If the contractor does not take appropriate action within the time specified, OOE shall begin enforcement proceedings. An enforcement proceeding may be brought to revoke the contractor certification or to impose a civil penalty or both:

(a) OOE shall commence an enforcement proceeding by sending the contractor a notice of violation. The notice shall describe the violation(s) and notify the contractor of the proposed penalty (revocation and/or civil penalty). The contractor shall be given 21 days in which to request a hearing;

(b) If the contractor fails to request a hearing, the director shall issue a final order consistent with the notice of violation;

(c) If a hearing is requested, the director shall appoint a hearing officer who shall hold the hearing in accordance with the Attorney General's Uniform and Model Rules of Procedure, September 1997 edition;

(d) After the hearing, the hearing officer shall make a recommendation to the director;

(e) The director shall issue a final order which may uphold, deny or modify the violation or the proposed penalty;

(f) A contractor may reapply after the revocation of the contractor certificate if the contractor shall prove to the satisfaction of OOE that the problem causing revocation has been corrected. Revocation shall be in effect for at least one year before that contractor or any other firm with any of the same shareholders may reapply for certification.

(3) Civil Penalties: The contractor may be subject to a civil penalty if a system cert or contractor cert is revoked by the Director. Before the Director imposes a penalty, the contractor will be given an opportunity to request a hearing. The hearing will be to contest the revocation of a system or contractor cert based on actions listed under OAR 330-070-0045. The amount of the penalty shall be the total amount of tax relief estimated to have been provided to purchasers of the system for which a system or contractor cert is revoked under this rule.

(4) Re-application: To reapply after the revocation of a contractor cert, the contractor shall prove to the satisfaction of OOE that the problem causing revocation has been corrected. Revocation shall be in effect for at least one year before that contractor or any other firm with any of the same shareholders may reapply for certification.

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

330-070-0055

Guidelines for Consumer Information

(1) A contractor shall inform each buyer in simple terms:

(a) How to tell if the device is running right. Whom to call if it is not;

(b) How to tell if the freeze protection is in effect. Whom to call if it is not;

(c) What maintenance is needed, annually and long term;

(d) Who will honor warranties; and

(e) How to start and keep warranties in force.

(2) No later than when a contract is signed, a contractor shall give the buyer of a solar water heating AED, consumer information published by OOE.

(3) A contractor shall give a copy of a signed Consumer Disclosure to each buyer of a solar water heating AED. This includes domestic water heating, pool, spa and hot tub AEDs.

(4) A contractor shall give a copy of a signed Consumer Disclosure to each buyer of a solar space heating, photovoltaic, ground water heat pump and ground loop system. This section shall take effect if OOE determines this will improve installation

quality and consumer awareness.

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

330-070-0060

Guidelines for Solar Water Heating AEDs

(1) Installations shall be of professional quality. Installations shall comply with the HUD Intermediate Minimum Property Standards, Solar Heating and Domestic Systems, 4930.2, 1977 edition. They shall also comply with all applicable state, county, or local codes and regulations.

(2) Solar pool and spa heating system installations shall comply with the following additional requirements:

(a) Unglazed collectors and piping shall be securely mounted to withstand local wind loads;

(b) Piping and pump sizing shall 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;

(3) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions.

(4) Freeze protection shall be provided for systems where the heat transfer fluid may freeze. The freeze protection method shall follow these guidelines:

(a) The methods shall be clearly stated in the owners manual and on the Consumer Disclosure form;

(b) The method shall work without electric power;

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces shall be adequately protected from freezing;

(5) Piping containing pressurized water in attics 24 hours a day shall be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum amount of fittings shall be used in the attic, and the fittings shall be copper or brass. The piping shall be protected from high temperatures at the collector connection.

(a) For systems using pressurized anti-freeze fluids, a pressure gauge shall be installed to indicate pressure in the system;

(b) For draindown systems:

(A) The system shall have no tanks, vents, valves, or discharge piping in unheated spaces. Unheated spaces are as defined in 330-070-0013(35);

(B) The system shall have the proper fittings, pipe slope, and collector design to allow for manual gravity draining of the collector and piping as a backup freeze protection method;

(C) The system shall comply with subsection (c) of this rule.

(c) For manual drain systems: All equipment used in the manual drain procedure shall be marked (color-coded, numbered, tagged, etc.) for easy consumer recognition, including a clear indication of when the consumer should drain the system;

(d) Collector sensors and wiring shall be installed properly to sense freezing conditions early and accurately. The sensors and wiring shall be protected from the weather and high temperatures;

(e) Thermal bleed valves are acceptable as freeze protection when used with a manual drain system for backup. The contractor must tell the consumer how many gallons of fluid will dump during a typical period of freezing temperatures;

(f) Recirculation is not an acceptable freeze protection measure.

(6) A method to show that the system is running right shall be provided. Equipment meeting this requirement includes but is not limited to, thermometers, pressure gauges, flow meters, and sight gauges. It shall:

(a) Indicate flow or temperature;

(b) Be a permanent part of the system;

(c) Not require any special tools or equipment to monitor;

(d) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this

rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED;

(j) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) the annual energy requirement for domestic water heating must be reduced by using the following methods:

(a) low flow shower heads; and

(b) set thermostat to 120 degrees F.

(10) OOE will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems, and a selection of other "generic" system designs based on OG-100 or site built collectors. These annual energy savings will be determined by either the OOE or the Florida Solar Energy Center (FSEC) using TRNSYS computer simulations developed as part of the OG-300 standard. Yields must be developed for each of the three weather zones defined by OOE. The yield chart may be amended, if necessary, by either OOE or its contractor.

(11) Systems which are not among the list of OG-300 systems must have their yield determined by showing equivalence to one of the "generic" system designs. OOE reserves the right to assign yields based upon like comparison to OG-300 certified or "generic" systems.

(12) All systems must meet the standards established by the SRCC OG-300 system certification or equivalent requirements as determined by the director.

(13) System yields shown in the yield charts may be increased by a certified contractor providing they sign a statement of compliance provided by OOE and meet the following storage tank insulation levels:

(a) A one tank/aux. tanks adjustment of +250 kWh applies to the tank in a solar water heating system which have only one storage tank such as a thermally stratified active system or ICS systems or the auxiliary tank in two tank systems. Such tanks generally have the ability to heat water by means other than solar energy. To qualify for this yield adjustment the tank must meet the insulation requirements as specified in the directory

(b) A solar tank adjustment of +100 kWh applies to the solar storage tank in a solar water heating system. Such a tank does not have a means of heating water other than solar energy and is almost always located upstream of the auxiliary tank. Because of their size and that they are usually not part of the original home design they are generally located outside the un-conditioned space of the house. To qualify for this yield adjustment the tank must meet the insulation requirements as specified in the directory

(14) All contractor installed systems shall:

(a) Be covered by a two-year parts and labor written installation warranty;

(b) Include O&M manual which specifies: installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(c) Provide clear labeling of on/off/bypass controls and safety issues;

(d) Have a means of indicating proper operation of the solar

water heating system (flow indicators/meter or thermometers);

(e) Be installed to meet local building codes; and

(f) Have a tempering valve to prevent 120 degree F. water downstream of the valve.

(15) Contractors installing "generic" systems must submit documentation of the system design to, and receive written approval by the Office of Energy of the generic system classifications for which that system is eligible.

(16) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. OOE will evaluate the system design and assign it a yield most closely represented by one of the "generic" systems designs.

(17) Spas, hot tubs and pools must be equipped with insulative covers;

(a) Spa and hot tub covers must have an R value of no less than 5; and

(b) Pool covers must have an R value no less than 2.

(18) The addition of more energy producing capacity to an existing AED may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through OAR 330-070-0097.

(19) OOE will calculate first year energy yield of such a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition;

(a) OOE will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated;

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

(20) A tax credit for a system addition shall count as a tax credit for the tax year in which the addition is placed in service.

[Publications: The publication(s) referred to or incorporated by reference in this rule 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

330-070-0062

Guidelines for Solar Space Heating AEDs

(1) Installations shall be of professional quality. They shall comply with the **HUD Intermediate Minimum Property Standards, Solar Heating and Domestic Systems, 4930.2, 1977 edition**. They shall also comply with all applicable state, county or local codes and regulations.

(2) The first year energy yield of solar space heating AEDs must be at least 10 percent of the total annual energy requirements for the dwelling(s). The estimated first year energy yield shall be the net usable energy produced under average environmental conditions in one year:

(a) The total annual energy requirement includes space heating and cooling, domestic water heating, cooking, lighting and appliance use;

(b) The total annual energy requirement shall be calculated on a form provided by OOE;

(c) OOE will use data provided by the applicant to determine the first year energy yield. This shall be based on the heating or cooling energy load as determined by a heat loss or gain calculation. The calculation shall be based on ASHRAE methods;

(d) To find the first year energy yield:

(A) Subtract the total energy requirement with the solar space heating AED from;

(B) The total annual energy requirement before adding the AED.

(3) Active solar space heating systems shall comply with all the requirements of OAR 330-070-0060 except section (9).

- (4) Passive solar space heating systems shall:
 - (a) Have enough solar access;
 - (b) Provide usable heat for the heated space;
 - (c) Provide adequate thermal storage for solar heat gained;

and

(d) Prevent overheating of the heated space, in summer and winter;

- (e) In addition, sunspaces must:
 - (A) Have no backup heating device; and
 - (B) Be able to be isolated from the heated space.
- (5) Solar device costs eligible for the tax credit for active space heating systems include:

- (a) All applicable costs listed in OAR 330-070-0060(8);
- (b) The eligible cost of space heating heat pumps using a solar resource. This cost will be prorated based on the estimated fraction of energy supplied by the alternative energy component, as determined by OOE.

(6) Solar device costs eligible for passive space heating systems include:

- (a) All applicable costs listed in OAR 330-070-0060(8); and
- (b) The cost of sunspaces, if they meet the requirements of section (4) of this rule;

- (c) The cost of mass or water walls for thermal storage;
- (d) The cost of movable window insulation which 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;

(e) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and

(f) The cost of passive heat distribution components.

(7) OOE will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

[Publications: The publication(s) referred to or incorporated by reference in this rule 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

330-070-0063

Guidelines For Photovoltaic AEDs

(1) Installations shall be of professional quality. They shall comply with all applicable Oregon Codes. They shall comply with the requirements of the National Electric Code article 690.

(2) The first year energy yield of photovoltaic AEDs must be at least 10 percent of the total annual energy requirements for the dwelling. The estimated first year energy yield shall be the net usable electrical energy produced under average environmental conditions in one year:

(a) The first year energy yield of photovoltaic AEDs which make electricity shall be based on the electric load of the dwelling as determined by a procedure established by OOE. For purposes of this rule OOE assumes that 10 percent of the total annual energy requirement equals 50 percent of the annual electrical load excluding any electric energy used for water heating, space heating, ventilating or air-conditioning;

(b) OOE will use data supplied by the applicant to determine the first year energy yield;

(c) The applicant must provide enough data to estimate if the photovoltaic AED meets the energy contribution requirement of this rule.

(3) Photovoltaic AED costs eligible for the tax credit include the cost of:

- (a) Photovoltaic modules;
- (b) Inverters;
- (c) Storage systems, and regulators;
- (d) Monitors, meters and controls;
- (e) Wiring, and framing materials;
- (f) Reflectors or trackers;
- (g) Installation charges;
- (h) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be

submitted with an application.

[Publications: The publication(s) referred to or incorporated by reference in this rule 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

330-070-0070

Guidelines for Ground-Water Heat Pump and Ground Loop AEDs

(1) Only total systems will qualify for a tax credit. All systems must comply with OAR 330-070-0025 and 330-070-0040 and be of closed loop design and operation. See also OAR 330-070-0027.

(2) Systems shall limit waste of the resource.

(3) Systems shall not have adverse effects on:

(a) Other systems;

(b) Water quality according to the standards of the Department of Environmental Quality.

(4) Systems shall not create hazards such as:

- (a) Steam or water vapor;
- (b) Vapors or odors;
- (c) Noise;
- (d) Hazardous wellhead design.

(5) System parts must have adequate:

- (a) Structural strength;
- (b) Resistance to weather and fire;
- (c) Ease of upkeep;
- (d) Durability.

(6) No system shall cause harmful physical effects on people or unwanted tastes or odors.

(7) Some heat transfer fluids need special handling. These include toxic, corrosive, and explosive fluids. Such fluids shall only be used when the system is designed to safely handle them.

(8) Under normal operation, any part of a system which may be touched by people must be cooler than 141 degrees F. If this cannot be done, any part that reaches more than 140 degrees F. shall have warning labels. Each system must include a device to limit water for domestic use to 140 degrees F.

(9) Each system and nearby structures must be guarded against pressures, vacuums and temperatures.

(10) Systems shall fully protect drinking water as specified in the Oregon Plumbing Specialty Code.

(11) Systems shall use storage tanks built by accepted methods. Each tank shall be tested for leaks.

(12) Expansion and contraction due to changing heat levels shall not cause undue strain or distortion.

(13) Systems that use heat transfer fluids that may freeze shall have freeze protection.

(14) Systems shall use accepted methods to guard against the known corrosion/scaling level of the water.

(15) Systems must also be designed for the least effect on groundwater. The system COP must be at least three, including energy used by pumps. Any method used to dispose of water must be non-polluting. Such method must not burden any local waste disposal system. Return of water to the ground is required to meet the Oregon Department of Water Resource re-injection well standards. Ground loop systems must cover enough ground to meet total annual heating requirements, as required by manufacturers' recommended design standards. Ground loops used for cooling must restore soil moisture. Downhole heat exchangers will be reviewed on a case by case basis.

(16) COP shall be determined by the following methods:

(a) For water source heat pumps, the COP shall be determined in accordance with ARI Standard 325-85 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 shall 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.

(17) All other types of ground water heat pumps and ground loop AEDs shall be reviewed on their COP.

(18) Bermed or earth covered buildings will not qualify for the geothermal tax credit.

(19) All ground water heat pumps and ground loop water heating AEDs must include the hot water conservation measures specified by OOE.

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

330-070-0073

Guidelines for Energy Efficient Appliances and Alternative Fuel Devices

Energy efficient appliances shall meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be listed in the OOE Alternative Fuel Device Systems Directory.

(1) Where USDOE test procedures do not exist, OOE will designate a nationally recognized test procedure that will apply instead.

(2) Clothes washers shall have an energy factor of 2.5 cubic feet/kWh/cycle, a water factor (WF) of 11.0 gal/cubic feet/cycle, and a remaining moisture content (RMC) of 60% or better.

(3) Refrigerator/Freezers shall have at least 25 percent lower energy consumption than that allowed by the 1993 USDOE standard for refrigerator/freezers.

(4) Freezers shall have at least 25 percent lower energy consumption than that allowed by the 1993 USDOE standard for refrigerator/freezers.

(5) Dishwashers shall have an energy factor of .56 cycles/kWh or better.

(6) Water Heating Appliances must include the following:

(a) Storage water heaters:

(A) Electric units shall have an energy factor of 1.0 or greater;

(B) Natural gas, propane or oil fired units shall have an energy factor of .70 or greater;

(b) Instantaneous water heaters:

(A) Electric units shall have a rated efficiency of 98 percent, or energy factor of .98.

(B) Natural gas and propane fired units shall have an energy factor of the rated burner/heat transfer efficiency, minus 2 percent (or .02 EF) for warm up/cool down/piping losses.

(c) Combined space/water heating systems efficiency shall take into account stand-by losses from storage, and shall have the rated efficiency of the system when operating purely in a water heating mode.

(7) For premium efficiency space conditioning duct systems, all joints and seams in duct work outside the conditioned space will be sealed, when accessible, with mastics that meet NFPA class 1 requirements and shall be UL listed, and meet the following ASTM standards C557 and C919-79. All closure systems shall be applied according to the manufactures instructions or as specified by these standards. To qualify for the tax credit, duct leakage shall be tested using OOE approved, calibrated duct testing equipment and OOE approved testing protocols. Testing to verify that these standards have been achieved shall be conducted by contractors approved by Oregon Office of Energy (OOE) or its designated agent or representative. and shall meet the following standards:

(a) New Construction: Based on the Protocol for Total Leakage Testing, duct leakage in new construction shall not exceed 0.06 cfm50 x floor area served by the system in square feet, or 75 cfm50 whichever is greater. In addition, all the following conditions shall be met:

(A) Systems shall be continuously ducted. Building cavities

shall not be used to transport conditioned air to or from the air handler;

(B) Each part of the system shall be mechanically attached, as well as air sealed, to adjacent components;

(C) Return air shall be installed in each zone and on each level, except in bathrooms, kitchens and rooms of less than 75 square feet;

(D) Duct systems shall be designed, sized and installed using recommended industry standards so that calculated heating and/or cooling loads are delivered to each zone;

(E) Based on the Protocol for Testing Forced Air System Effects, forced air system operation shall not depressurize a combustion appliance zone by more than 3 Pascals.

(b) Retrofit: Based on the Protocol for Testing Leakage to the Outside, duct leakage in retrofit systems shall not exceed 0.10 cfm50 x the floor area in square feet; or

(A) Shall document a 50% reduction in leakage to the outside by comparing leakage before and after air sealing measures have been installed, whichever is greater; or

(B) Based on the Protocol for Pressure Pan Testing, the pressure pan measurements for each grill and register must be 1.0 Pascal or less.

(c) Following repairs, and based on the Protocol for Testing Forced Air System Effects, forced air system operation shall not de-pressure a combustion appliance zone by more than 3 Pascals.

(d) If the home being serviced by the efficient duct system is new or the building envelope is being altered, the house shall meet the energy conservation requirements of the Table 13-A or Table 13-B of the Oregon Structural Specialty Code (Table E401.1A and Table E401.1-B of the One and Two Family Dwelling Code).

(8) Alternative fuel vehicles shall have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion. Equipment may consist of original equipment manufacturer components; or

(a) Components for natural gas powered vehicles that meet EPA1-A requirements; or

(b) Other components as recognized by OOE as necessary for alternative fuel use.

(9) Alternative fuel fueling systems shall be installed to meet all state and local fire and life safety codes and be capable of refueling /recharging an alternative fuel vehicle within 14 hours.

(10) Any other standards adopted by OOE for energy efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director of the Oregon Office of Energy.

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; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98

330-070-0097

Guidelines for Electricity Producing AEDs

(1) Generating AEDs linked with an electric utility shall:

(a) Be installed in accordance with local utility interconnect guidelines; and

(b) Not be installed without 30 day advance written notification to the utility; and

(c) Have a manual disconnect switch that can be locked which:

(A) Is not inside a building;

(B) Has plainly marked on/off positions; and

(C) Doesn't expose people to live wiring.

(2) Applications for utility connected AEDs shall include:

(a) An estimate of the first-year's energy value. This is the estimated value, whether by displacement of load or sale of output to the utility, of the first year's net generation;

(b) Permission for OOE to get the utility's data for electric purchases and sales.

(3) All applications shall include the nominal rated electric capacity of the AED.

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

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 1983, Chapter 273. The information will be used to calculate annual assessments on energy resource suppliers.

Stat. Auth.: ORS 183 & ORS 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

330-075-0010

Statutory Authority and Procedure

These rules are authorized by and carry out Oregon Laws 1981, Chapter 778, Oregon Laws 1983, Chapter 273, and by ORS 469.080(1) and 469.421 and were adopted pursuant to ORS 469.040 and 183.335.

Stat. Auth.: ORS 183 & ORS 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

330-075-0015

Definitions

All terms in these rules have the same meaning as their common commercial usage unless the rules state a different meaning. In addition, the following specific definitions apply:

- (1) "Department" means the Oregon Department of Energy.
- (2) "Director" means the Director of the Oregon Department of Energy.
- (3) "Electric Utility" means a utility engaged in generation, transmission, or distribution of electric energy and which has an Oregon service area.
- (4) "Energy Resource Supplier" means an electric utility, natural gas utility or petroleum supplier that supplies electricity, natural gas or petroleum products in Oregon.
- (5) "Gross Operating Revenue" means gross receipts from sales or services made or provided in Oregon during the regular course of the energy supplier's business. The term includes all revenue derived from sale of product and all revenue from services provided by an energy resource supplier in Oregon in the regular course of its business, but does not include:
 - (a) Revenue derived from interutility sales within Oregon;
 - (b) Revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of Oregon Constitution Article IX, Section 3, ORS 319.020 or 319.530;
 - (c) Interest on investments;
 - (d) Revenue from sale, rental, or lease of real property; or
 - (e) The value of petroleum products exchanged between petroleum suppliers for petroleum products of equivalent monetary value.
- (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 utility that distributes natural gas and which has an Oregon service area.
- (8) "Petroleum Products" means those petroleum products subject to assessments under Section 3(4) and Section 5(4) of Ore-

gon 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" means a petroleum refiner in Oregon, or any person engaged in the wholesale distribution of crude petroleum or derivative thereof or propane in this state. "Person" includes 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.

(10) "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.

(11) "Retail Sales" means sales to the ultimate consumer.

(12) "Ultimate Consumer" means a customer who purchases energy for his own use and not for resale.

(13) "Utility" includes:

(a) An individual, a regulated electric company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to generate, transmit or distribute electricity;

(b) A person or public agency that generates electricity from an energy facility, as defined by ORS 469.021, for its own consumption; and

(c) A person who transmits or distributes natural or synthetic gas in Oregon.

(14) "Wholesale sales" means sales of electricity, natural gas or petroleum products for subsequent resale.

Stat. Auth.: ORS 183 & ORS 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

330-075-0025

Forms

Each energy resource supplier shall complete and submit to the Department the appropriate forms listed below. The forms shall be supplied by the Department. All information provided on the forms shall relate to the supplier's Oregon business for the calendar year preceding the year of submission unless the form specifies otherwise. The forms shall be prepared by the energy resource supplier accurately and completely:

(1) ODOE Form ESA-1, "Statement of Gross Operating Revenue", requires information relating to total gross operating revenue derived from the energy resource supplier's operations within Oregon during the most recently completed calendar year. Petroleum suppliers must also report, separately on this form, revenue from sales of products subject to Oregon Constitution Article IX, Section 3, ORS 319.020 or 319.530. This form is to be completed by each energy resource supplier.

(2) ODOE Form ESA-2, "Petroleum Supplier Statement of Resource Sales", requires information relating to wholesale and retail sales by the petroleum supplier of distillate fuel oil within Oregon during the most recently completed calendar year. This form is to be completed by each petroleum supplier.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 183 & ORS 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

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 OAR 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 OAR 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.

Stat. Auth.: ORS 183 & ORS 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

330-075-0035

Extension of Submission Deadline

(1) Any energy resource supplier which finds it cannot meet the deadline set forth in OAR 330-075-0030 may apply to the Director for an extension of time. The application shall be by petition setting forth:

(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 & ORS 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

330-075-0040

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 OAR 330-010-0005 to 330-010-0030. The Director's decision on the request will be made in accordance with OAR 330-010-0030.

Stat. Auth.: ORS 183 & ORS 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 & ORS 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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 por-

tion 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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

An Oregon business can receive a credit against owed Oregon income taxes if it receives a BETC. The credit is 35 percent of the cost of certain energy or conservation projects. The Oregon Office of Energy (Energy Office), a division of the Department of Consumer & Business Services must approve a credit or acknowledge receipt of a completed application before an applicant can begin the project for which the credit is granted. Waiver of this requirement is possible, but must be justified. A credit is an incentive for work to be done. It is not a reward for work that is done or underway. Oregon Administrative Rules Chapter 330, Division 90 apply to all applications for Business Energy Tax Credits submitted to the Energy Office on or after December 15, 1997 for projects starting on or after January 1, 1998.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 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

330-090-0110

Definitions

(1) "Alternative Fuel" A motor vehicle fuel that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, gasohol with at least 10 percent alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane, and other fuels the Director allows.

(2) "Alternative Fuel Fueling Station" A fueling 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)" A vehicle in a commercial fleet designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant" A party who applies for a business energy tax credit under this section.

(a) It includes a sole proprietor, partnership, subchapter S corporation, corporation, cooperative or non-profit corporation that files an Oregon tax return.

(b) It does not include utilities that sell electricity or natural gas to more than 100 retail users, except for energy or conservation projects for rental dwelling units and common use areas of multifamily complexes or for commercial property owned by an investor-owned utility (IOU), a subsidiary, or an affiliated interest. It includes an IOU for alternative fuel vehicle pass-through projects, alternative fuel vehicles for company use, alternative fuel fueling stations, transit pass contracts for company employee use, or pass-through used for solar and other direct application renewable resources. It does not include a business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, or gender.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(5) "Building Code" April 1, 1996, Chapter 13 of the Oregon Uniform Building Code.

(6) "Commercial Fleet" A privately owned fleet of three or more vehicles used for business purposes within Oregon.

(7) "Commercial New Construction" 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.

(8) "Commissioning" The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(9) "Commercial Process" An energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(10) "Completed Application" contains all of the information detailed in 330-090-0130(3). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-serve basis.

(11) "Completed Project" An energy or conservation project, other than a research, development and demonstration (RD&D) project, that is operating or which the Director decides the applicant has made all reasonable efforts to operate.

(a) Reasonable efforts include making changes suggested.

(b) For an RD&D project, the date a project is "completed" is any time within 6 months after the project begins to operate.

(12) "Cost" The capital costs and expenses the Director finds are needed to acquire, erect, build, or install an energy or conservation project under these rules. Cost for necessary features are not eligible.

(a) Cost can include payments for fees to finance, design or engineer the project. Costs can include title searches, escrow fees, government fees, and shipping. Costs can include all materials and supplies needed for the project.

(b) Cost does not include interest and warranty charges. It does not include legal fees and court costs. It does not include patent searches, application and filing fees. It does not include costs to maintain, operate, or repair a project, or other costs the Director excludes.

(c) If an energy or conservation project is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the project is the value paid for the project. 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 project is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future shall be discounted to present value.

(d) If an energy or conservation project 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 Energy Office may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar project without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards as specified in OAR 330-090-0110(39).

(B) In other projects, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(C) Eligible project costs are limited to a fifteen year simple

payback period for all projects except rental dwelling weatherization, which is limited to a 30 year simple payback. In both cases limiting would include pro-rating the eligible cost down to the highest amount that would result in the appropriate payback; transportation projects are exempt from this requirement.

(f) Costs for an RD&D project also include costs of instruments, controls, and other features needed to audit the project. These items do not need to save or produce energy.

(g) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs. Incremental costs 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (h) below.

(h) Costs for space and water heating equipment as defined in 330-090-0110(16)(c)(C) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(i) Eligible costs for Transportation Demand Management projects.

(A) Telecommuting eligible cost is for purchase and installation of new or used equipment at the telecommuting site. Telecommuting equipment may include computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director.

(B) Eligible cost for telecommuting projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telecommute site. Eligible cost for telecommuting equipment does not include fees for maintenance and operation of any equipment; cost for equipment other than a modem at the principal place of business; office furniture and office supplies; training costs.

(C) Maximum eligible cost for commuter pool vehicles is limited to \$25,000 per vehicle. It does not include operation and maintenance or insurance costs. Where vehicles are used for personal use or business use other than employee commuting, eligible cost shall be reduced. The eligible cost will be based on the estimated percent of vehicle miles traveled dedicated to reducing employee commuting vehicle miles traveled.

(13) "Energy Office" The Oregon Office of Energy, a division of the Department of Consumer & Business Services.

(14) "Development" Adding to, building or rebuilding, or improving land, a structure, building, installation, excavation, machine, equipment, or device that is acquired, erected, constructed, or installed for a energy or conservation project under these rules.

(15) "Director" The Director of the Energy Office.

(16) "Energy or Conservation Project" A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station or RD&D project. It must begin to be built before January 1, 2001 and be in Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for an RD&D, transportation or recycling market development or recycling project.

(a) An energy conservation measure (ECM), is an energy or conservation project if it results in substantial savings in the amount of purchased energy used at a site by a business. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Each unit or group of units of an energy or conservation project is an energy or conservation project by itself if:

(A) Each unit or group of units can save or produce a substantial amount of energy by itself, and;

(B) The application and all licenses and permits for the project show it will consist of smaller units or groups of units, and;

(C) The entire project complies with these rules, and;

(D) It is connected to a load or end use or it displaces a connected load.

(c) Costs for an energy or conservation project needed to obtain substantial energy savings for a new commercial or industrial building. Savings shall be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings shall 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.

(d) A space conditioning system(s) is an energy or conservation project if it provides substantial energy savings and meets the requirements below. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source.

(A) Gas and oil fired equipment must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating.

(B) Heat pumps installed with an energy input that is entirely electric and with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows:

(i) Air source heat pumps 15,000 Btuh and less — 7.3 HSPF;

(ii) Air source heat pumps over 15,000 Btuh — 7.5 HSPF;

(iii) Water source heat pumps — 4.0 COP.

(C) Individually metered heating equipment that replaces a central system in a rental dwelling where the applicant installs all weatherization measures described on an energy audit under ORS 469.633(2) or ORS 469.551(2) or ORS 469.675(2) with a payback of ten years or less.

(e) A new electric motor with an efficiency rating at or greater than Standard 12-10 as defined by the National Electrical Manufacturers' Association (NEMA) or controls that use 10 percent less energy than the old motor or controls. Variable speed motor drive controls are eligible only when used in variable torque applications (e.g. centrifugal fans and pumps).

(f) To qualify for a tax credit, a recycling project must be recycling market development, recycling projects serving communities with a 1992 Census population of 4,000 or less or unincorporated areas of the various wastesheds, or recycling of non-principal recyclable material for specific wastesheds. Non-principal recyclable materials are recyclable materials other than those designated in Oregon Administrative Rules 340-090-0070.

(g) Except as noted in 16(d) of this rule, an energy project does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Conventional space conditioning systems and back-up heating systems, including but not limited to:

(i) Air to air heat pumps for a new use or to replace an existing heating system. A waste heat recovery project that uses air to air heat pumps is an energy project.

(ii) Gas or oil-fired boilers, except that part of a boiler that improves its energy efficiency. Permitted improvements include oxygen trim controls, heat recovery devices, turbulators, and other devices approved by the Energy Office. Also permitted are small boilers or water heaters that allow a larger heating plant to shut down part of the year.

(D) Devices and substances whose use is common in the applicant's business, except and hog fuel boilers that replace fossil fuel boilers.

(E) 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.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(17) "Final Cert" Final certificate issued upon completion of an approved BETC project.

(18) "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.

(b) Steam and gases, hot water and brine caused by injecting substances into the earth.

(c) Heat or other related energy in the earth.

(d) By-products of (a) through (c).

(19) "Industrial Process Energy Project" Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit Standard Industrial Classification (SIC) codes 01 through 49, and:

(a) Provides substantial energy savings from conservation, or;

(b) Provides substantial energy savings through the use of renewable resources, or;

(c) Provides substantial energy savings by recovering waste heat from cogeneration systems, or;

(d) Prepares or conditions alternative fuels for distribution or dispensing, or;

(e) Increases industrial process efficiency through recycling market development, or;

(f) Provides emergency replacement inventory of electric motors as defined in 16(e) of this rule;

(g) Does not include space conditioning for human comfort or general illumination.

(20) "Lease Contract" A contract between a lessor and a lessee of an energy or conservation project.

(a) In a lease-purchase contract the lessee owns the project at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the project through the life of the contract and is eligible for the BETC.

(21) "Least Cost Plan" An IOU least cost plan acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(22) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6-1/2 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit shall be financed by a rate established by the OPUC. The combined interest rate shall not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate shall 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 shall accrue to the owner who receives the loan. The loan shall be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentive as an option to a loan. The present value of the tax credit may be added to this incentive as provided in 330-090-0140 of this rule.

(23) "Necessary Feature" A device or substance used to reduce the amount of purchased energy used in a new commercial building to comply with the Building Code or pollution control or recycling project equipment specifically required by state or federal statute. Recycling projects are necessary features except as noted in OAR 330-090-0110(16)(g).

(24) "Pass-Through Project" A rental weatherization, alternative fuel vehicle, alternative fuel fueling station approved under OAR 330-090-0140. Alternative fueled vehicles shall include vehicle monitoring results as specified in the Utility Pass-Through work plan.

(25) "Pre-Cert" Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(26) "Preferred Project" An energy or conservation project that complies with OAR 330-090-0110(16)(a) through (i), and

(a) The project is for rental dwelling weatherization; or

(b) The project is an energy conservation or renewable resource project; and

(c) The project has an expected life span of more than five years, more than the simple payback, and expected simple payback of between five and fifteen years; and

(d) The project will be started in the same year the pre-cert is issued; or

(e) Regardless of eligible project costs the maximum amount certified for a preferred BETC will be \$500,000 per project and per applicant; or

(f) The maximum amount certified for an IOU applicant for

preferred project pass-through shall be \$2.5 million with IOU rental dwelling pass-through projects being given the highest priority.

(27) "Project Operator" The person or people to whom the applicant gives authority to manage a project. Such person or people shall be the applicant's agent for all reasons related to the project once its development begins.

(28) "Project Start" The date the applicant chooses to write on the preliminary certificate application that meets one or more of the following criteria:

(a) A non-refundable deposit is placed on the energy or conservation project equipment; or

(b) A purchase order is placed for the energy or conservation project equipment; or

(c) A contract is executed for the design of the energy or conservation project; or

(d) A document is executed that obligates the applicant to proceed with an energy or conservation project.

(29) "Public Transit Service Provider" Transit service that has a designated route or service area, and designated stop(s) and is open to the general public.

(30) "Recycling" A process to change a waste product into a useable product or material. It includes refining used oil, chlorofluorocarbons, and halons. It does not include re-use in the same way the product or material first was used unless it changes the product or material.

(31) "Recycling Project" Equipment used in a business for recycling in communities with a 1992 Census population of 4000 or less or unincorporated areas of the various wastesheds, or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(16)(g). It does not include any projects which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute. It includes:

(a) Equipment used for re-refining used oil, chlorofluorocarbons (CFC), and halons.

(b) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(c) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(32) "Recycling Market Development Project" Projects that stimulate demand for recycled materials. It includes projects that meet one of the following criteria:

(a) The project 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 beneficiation equipment which yields a feedstock with new and changed characteristics for the production of new products.

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(33) "Renewable Energy Resource" Includes, but is not limited to straw, forest slash, wood waste or other wastes from forest land. It also includes industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery. It does not include a hydroelectric or geothermal project with more than one megawatt of installed capacity unless it is an RD&D project as defined in this section.

(34) "Renewable Resource Project" Development that uses a renewable energy resource in a business to make electricity, biogas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(35) "Research, Development, and Demonstration Project (RD&D)" A project that complies with (a) and (b) and at least two of the criteria in (c) through (f).

(a) A renewable resource or conservation project or a proto-

type or pilot scale use that would be a renewable resource, recycling market development or energy project if built to full scale.

(b) Devices, techniques, or applications that are not standard practice or that are not cost effective and are likely to produce substantial energy savings, or produce energy in Oregon now.

(c) Projects approved by an entity that cannot obtain a tax credit under ORS 469.185 to 469.225. These include projects approved by the Energy Facility Siting Council (EFSC) as Need-For-Power projects. They also include projects with the National Renewable Energy Laboratory (NREL), Bonneville Power Administration (BPA), or US DOE funding.

(d) Projects likely to resolve questions on how to apply new technology.

(e) Projects that inform the public about new or improved technology that can help meet energy needs of the State.

(f) Projects in the Director's determination are likely to achieve their goals.

(36) "Service Life" Equipment service life is as established in the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook - 1995 Edition or as determined by the Director for equipment not rated by ASHRAE.

(37) "Set Aside" Funds reserved by the Director for targeted or RD&D and preferred projects pursuant to ORS 330-090-0150(4).

(38) "Simple Payback" The total eligible cost of an energy or conservation project divided by the expected yearly energy cost savings, stated in years.

(39) "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 projects it may include but not be limited to propane powered lift trucks, electric golf carts or curb-side recycling bins.

(c) Any other equipment, material, or applications of equipment or material determined by the Director.

(40) "Substantial Energy Savings" The project that includes:

(a) At least 10 percent of the energy used in a given commercial system; or

(b) At least 10 percent of the energy used in a given industrial process; or

(c) A new building with proposed energy use at least 10 percent less than a similar building that complies with the Building Code; or

(d) At least 25% of the affected lighting system energy use in a lighting retrofit project; or

(e) Measures listed and warranted in an energy audit under ORS 469.633(2), 469.651(2), and 469.675(2); or

(f) Energy conservation measures recommended in utility energy audit based analysis for commercial/industrial facilities which are approved by the Director .

(41) "Targeted Projects" An energy project determined by the Director to need promotion in a given calendar year to encourage wider use of an emerging or under-used technology. Targeted projects are energy or conservation projects designated by the Director as having a targeted set aside on January 30 of each year, applying to project applications received in that calendar year. Criteria the Director may use to select targeted projects include:

(a) Projects that are specified in statute as high priority preferred projects or;

(b) Projects that need BETC available throughout the calendar year to sustain market activity or;

(c) Projects that are in new categories of legislated BETC eligibility in which market place momentum has not yet been estab-

lished or;

(d) Projects that provide measurable environmental benefits in addition to the energy savings from the project or;

(e) Projects that are leveraged by other financial or service resources which represent Department collaboration with other state or federal policies or initiatives or;

(f) Projects that demonstrate progress towards the achievement of Oregon Benchmarks as specified in the Oregon Progress Board Report to the 1995 Legislature, December 1994.

(42) "Transit Pass Contract" A written agreement between an applicant and a public transit service provider to pay for transit passes to be used by the applicant's employees.

(43) "Transportation Project" An energy or conservation project that reduces business transportation or employee commute energy use. It does not include home-based businesses or extension of the work day by working at home. A transportation project must meet one or more of the following criteria:

(a) Working from home or from an office near home instead of commuting longer distance to the principal place of employment (telecommuting). Telecommuting equipment must be installed to reduce employee vehicle miles traveled for commuting to and from the principal place of work a minimum of 45 working days per calendar year.

(b) Telecommuting for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent. Telecommuting to extend the work day is not eligible.

(c) Commuter pool equipment includes vehicles transporting three or more persons dedicated to reduce employee vehicle miles traveled for commuting to and from the principal place of work a minimum of 150 working days per calendar year.

(d) Transit passes used by an applicant's employee for purpose of reducing employee vehicle miles traveled for commuting to and from the principal place of work a minimum of 45 working days per calendar year. Exceptions may be granted on a case by case basis for group pass programs.

(44) "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.

(45) "Year" Calendar year

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 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

330-090-0120

What Qualifies for a BETC

Both the party asking for a BETC and an energy or conservation project must comply with these standards (except pass-through projects defined in OAR 330-090-0140);

(1) Standards for an Applicant: - An applicant must:

(a) Be an applicant as defined by these rules; and

(b) File an Oregon tax return; and

(c) Own or contract to buy an energy or conservation project;

or

(d) Own or contract to buy or lease an Oregon firm that shall use or lease the project or sell power from the project.

(2) Standards for an Energy or Conservation project: - An energy or conservation project must:

(a) Be an energy or conservation project as defined by these rules;

(b) Comply with or have a variance from the land use laws of the city or county where the project will be;

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy project that uses navigable waters or that sells electricity shall have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the project uses water from the Columbia River basin, it shall comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy project shall have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy project shall have an air contaminant, solid waste disposal, and other required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules. The credit shall not exceed budget limits in OAR 330-090-0150.

(e) Except for an RD&D, transportation demand management or recycling market development project, have a simple payback of more than one year and less than the expected life of the project.

(3) Standards for Leased Energy or Conservation projects:

(a) A BETC may be granted to the owner of an energy or conservation project which leases the project for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

(b) Where the energy or conservation project will be used in connection with a public building or activity, the total amount of BETCs for all such projects, during any one calendar year, shall be limited as provided in OAR 330-090-0150(3)(f).

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 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

330-090-0130

How the Energy Office Handles a BETC

(1) General:

(a) The Energy Office Director reviews a BETC application in two stages. The first stage is called preliminary certification (pre-cert). The second stage is called final certification (final cert).

(b) To begin the review process for each stage, or to change the project during the review process, an applicant files forms provided by the Energy Office.

(2) Pre-Cert Review Process: A completed application for pre-cert shall be filed before work on an energy or conservation project begins. Applications for pre-cert will not be accepted by the Department before December 15 for projects starting in the following calendar year.

(a) Within 60 days after an application 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 completed application.

(b) Within 120 days after a completed application is filed, the Director shall issue a written notice that explains the status of the application and whether it complies with OAR 330-090-0120 and 330-090-0150.

(A) If it complies, the Director shall approve the pre-cert. The pre-cert shall state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the pre-cert and based on these rules. Also, it shall state any conditions that must be met before development, final cert, or some other event can occur. The Director shall explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director shall deny the application.

(C) An applicant can re-submit an application that is denied if features of the project change, the applicant provides data the

absence of which resulted in the denial, or other changes warrant. An application for pre-cert can be amended or withdrawn by the applicant before the Director issues a final cert. If an application is amended, the time within which review occurs, starts over.

(D) If the Director does not issue a pre-cert within 120 days after a complete application is filed, the application is denied.

(3) A completed pre-cert application shall contain:

(a) The name, address, and phone number of the applicant and other parties involved in the project.

(b) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(c) Facts that show the proposed use is an energy or conservation project under these rules.

(d) Project start and finish dates.

(e) Facts that describe the project, its costs, its expected life, and its simple payback in the detail required by the Energy Office.

(f) The facts documenting substantial energy savings or a description of products that will result from the project.

(g) The applicant's signature on the application attesting that it is correct.

(h) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant shall list all actions that are needed. The applicant shall list what he or she has done or will do to achieve those actions.

(C) Pre-cert may be approved without such order, permit, license, or waiver. In that event, the pre-cert shall require the applicant to file a copy of such final action before project development begins. The Director may not grant final cert until all needed orders, permits, licenses or waivers are filed with the Energy Office.

(i) Evidence that it is reasonably certain the project start date will be before January 1, 2001, and that the project will be done by December 1, 2003.

(j) For a renewable resource project, proof the resource level is adequate for a feasible project. Such proof includes data listed in (A) through (F). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for R&D projects.

(A) For a solar energy project: A sun chart and solar insolation data for the site.

(B) For a wind energy project: The average monthly wind speed for 12 consecutive months. measure wind speed at the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or, measure wind speed at two heights, one at least 10 meters above ground.

(C) For a geothermal energy project (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power project: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy project: Data that show the resource is available in an amount that meets the project's energy needs.

(F) For a waste heat recovery project: A table showing how much waste heat is available and from what sources.

(k) The fee required by OAR 330-090-0150(6).

(l) For wind projects with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report shall be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicles: the number of vehicles in the applicants' fleet, proof that the vehicle or conversion equipment is on DEQ's approved list, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicles: the 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.

(o) For alternative fuel fueling stations: description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) Other data the Director requires to assure a project complies with these rules.

(4) Pre-cert after start of an energy or conservation project:

(a) If an energy or conservation project has been started an applicant may file a written request with the Director for pre-cert after project start. Such a request shall contain information in accord with OAR 330-090-0130(3) and (4)(c).

(b) Within 60 days after such a request is filed, the Director shall approve, deny, or postpone pre-cert.

(c) The Director may approve pre-cert after project start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for pre-cert before project start up a hardship. such circumstances include process delays beyond the applicant's control, project funding and energy supplies or markets. Special circumstances do not include that the BETC \$40 million limit has been allotted or that a project fails to meet preferred project or targeted project criteria in the calendar year that work on the project began.

(C) The waiver request is received by the Director within 90 days of project start date.

(5) How pre-cert can be revoked: The Director may revoke a pre-cert for a reason listed in subsection (a) through (c) of this section. The Director shall use ORS 183.310 to 183.550.

(a) A project is not started before January 1, 2002.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Energy Office before project development starts.

(c) The project undergoes changes without being approved under OAR 330-090-0130(6).

(6) Changes between pre-cert and final cert: To change a project that has a pre-cert, the applicant shall file a written request with the Director. The Director must approve the change.

(a) The request shall describe the change and reasons for it. It shall include changes in cost, tax credit amount, project design, and materials. The change also shall include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director shall decide if the changed project complies with OAR 330-090-0120 and 330-090-0150. The Director shall provide written reasons for the decision.

(A) If it complies, the Director shall issue an amended pre-cert.

(B) If it does not comply, the Director shall issue a notice that denies the change.

(c) The applicant shall inform the Director in writing if it does not proceed with the project or proceeds without the tax credit. In that case, the Director shall revoke the pre-cert.

(d) Only preferred projects may be amended for project cost increases after the first \$20 million of pre-certs have been issued.

(7) Final cert review process and application: An application for final cert shall be filed after the project is complete, but not after December 1, 2004. The Director shall not approve any final certs received after December 1, 2004.

(a) Within 30 days after a final cert application is filed, the Director shall decide if it is complete. If it is not complete, the Director shall inform the applicant in writing what is needed to make it complete. If it is complete, the Director shall process the application.

(b) Within 60 days after a completed final cert application is filed, the Director shall issue an order that explains how the application does or does not comply with subsection (7)(c) of this rule.

(A) If it complies, the Director shall approve final cert. Final cert shall state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the pre-cert. For a

RD&D project, final cert may be up to 10 percent more than the amount approved in the pre-cert if those costs were made within 6 months after the project begins to operate; and, if needed to make the project work better.

(B) If it does not comply, the Director shall deny the final cert.

(C) A final cert application that is denied can be submitted again. A final cert application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final cert review occurs starts over.

(D) If the Director does not issue a final cert within 60 days after an application is filed, the application is denied.

(c) A final cert application shall include:

(A) A statement that the project complies with conditions of the pre-cert. Also, a statement that the project remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the project costs, including prorated costs.

(i) If project costs are less than \$50,000, the account may be records of project costs, such as canceled checks, invoices, and receipts unless required by the Director to supply verification from a certified public accountant. If the owner works on a project, he or she shall submit a log of hours spent and tasks done.

(ii) A compilation of costs account for a project with costs of \$50,000 or more shall be made by a certified public accountant who is not otherwise employed by the applicant.

(C) Proof the project is completed.

(D) If the project is leased, a copy of the lease.

(E) For Alternative Fuel Vehicles, proof of conversion shall include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a project complies with these rules.

(8) Changes after final cert:

(a) The applicant shall inform the Director in writing if a project that has a final cert is sold, traded, or disposed in some other way, or if the term of a leased project has ended. In that case, the Director shall revoke the final cert.

(b) The new owner or new or renewed lessee of a project may apply for final cert. The request shall comply with OAR 330-090-0130(7). If it complies, the Director shall issue a new final cert that credits the amount approved in the old final cert not already claimed by the former owner or lessee.

(9) How final cert can be revoked: The Director may revoke final cert for a reason listed in (9)(a) through (9)(d). The Director shall use ORS 183.310 to 183.550.

(a) The applicant does not send the Director written notice that:

(A) The project has been moved;

(B) Title to the project has been conveyed;

(C) The project is not operating; or

(D) The term of a leased project has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the project in a reasonable time after the Director requests it.

(d) Other changes in the project or its owner or lessor that violate these rules in the years for which the credit is claimed.

(10) How to appeal a decision by the director: The applicant may appeal a decision under these rules by notifying the Director in writing:

(a) Within 60 days after a decision is made by the Director.

(b) Within more than 120 days but less than 180 days after a complete application for pre-cert is filed but the Director has not acted on it.

(c) Within more than 60 days but less than 120 days after a complete application for final cert is filed but the Director has not acted on it.

(11) Inspections: After an application is filed or a tax credit is claimed under these rules, the Energy Office staff may inspect the project. the Energy Office staff shall give the project operator oral notice of an intent to inspect at least 24 hours before a visit. Visits

shall be during normal working hours.

(12) Public access to program records:

(a) The Energy Office shall not disclose data about a project, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) The Director shall provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) The Energy Office may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photo copies of requested records.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 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

330-090-0140

How to Obtain a Credit for Pass-Through Projects

(1) An applicant must be:

(a) An applicant as defined in OAR 330-090-0110(4)(a). Such an applicant shall comply with OAR 330-090-0120 and 330-090-0130, and 330-090-0140(4) and (5); or

(b) An investor-owned utility (IOU) that complies with OAR 330-090-0140(2) and 330-090-0140(3).

(2) IOU pre-cert standards and process:

(a) The application shall include an estimate of the total installation cost of rental dwelling weatherization alternative fuel vehicle, or alternative fuel fueling station for which the IOU expects to make payments under OAR 330-090-0140 for that year.

(b) Within 30 days of receipt of a complete application the Director shall grant pre-cert for each IOU that applies under subsection (2)(a) of this rule.

(c) The amount of the pre-cert credit shall be in accord with OAR 330-090-0150(3)(d).

(d) The IOU pass-through pre-cert application shall include a supplemental work plan which includes 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. The work plan and program must be mutually agreed upon by the IOU and the Department.

(3) IOU final cert standards and process:

(a) By the last working day of each month but not more than once per month, an IOU may apply to the Director for final cert. An application shall contain:

(A) An itemized list of costs for each rental dwelling unit weatherized, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station and the total project costs made that period for which the IOU is applying for credit.

(B) The nominal value of credits for which the IOU applies.

(C) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in subsection (3)(a)(A) of this section.

(D) Certification that each rental dwelling unit energy conservation measure (ECM) is listed in and is warranted under the energy audit required by ORS 469.633(2).

(E) Certification the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(F) Certification the ECMs paid for were installed and inspected in accordance with the IOU's Model Conservation Standards tariff or equivalent program as approved by the Energy Office.

(G) Verification that energy or conservation project costs which exceed \$50,000 are accounted for in a compilation of costs by a certified public accountant who is not an employee of the applicant. The Director may also require aforementioned verification of energy project cost for special cases.

(H) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under 330-090-0130(3) of this rule and the site at which the fueling station is installed.

(I) The last final cert application filed each year must include complete evaluation(s) as defined in the IOU's approved pre-cert(s).

(b) Within 30 days after a final cert application is filed, the Director shall approve or deny final cert, with reasons for the action. The Director shall deny the final cert if the IOU has not complied with the requirements of this rule. The Director shall approve final cert if:

(A) The IOU provides the owners of existing rental dwelling units listed in (3)(a)(A) with:

(i) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in subsection (3)(a)(D) of this rule; or

(ii) cash payment for ECMs included in subsection (3)(a)(D) of this rule. The payment shall be the lesser of 25 percent of the cost-effective portion of the energy conservation measures, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; or \$350 per rental dwelling unit, plus the present value of the tax credit accrued 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 present value of the tax credit that exceeds the amount of the low-interest loan. This payment shall apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(B) The amount paid under (3)(a)(A) is not more than the credit allowed for that IOU under OAR 330-090-0150(2)(a).

(C) The amount of the credit is the sum of payments and loans listed in (3)(a)(A) of this rule for ECMs that were installed and inspected.

(4) Non-IOU applicant for pass-through pre-cert standards and process:

(a) The application shall include an estimate of the total installation cost of rental dwelling weatherization for which the applicant expects to make payments under OAR 330-090-0140 for that year. The applicant shall include a work plan with the application.

(A) The work plan shall describe how energy conservation measures will be identified in compliance with the standards of an energy audit required by ORS 469.633, 469.651, or 469.675 as applicable. The work plan shall also include a description of energy audit procedures, heat loss analysis methodology, information presented to the rental dwelling owner and tenant, and measure installation verification methods.

(B) The applicant shall describe how they will deliver the net present value of the credit, accrued to the applicant, to the rental dwelling weatherization project owner.

(C) The application shall also include a description of the services to be provided, customer selection processes and any agreements with customers' space heating servicing utility. Data demonstrating that an equitable customer service selection process is used shall be included.

(D) The work plan and pass-through project must be mutually agreed upon by the Applicant and the Energy Office.

(b) Within 60 days of receipt of a complete application the Director shall grant pre-cert for each applicant that applies under subsection (4)(a) of this rule.

(c) The amount of the pre-cert credit shall be in accord with OAR 330-090-0150(3)(d).

(d) The applicant provides the owners of existing rental dwelling units listed with the net present value of the tax credit accrued the applicant.

(A) The net present value shall be the amount approved for use by IOU applicants under this rule by the Oregon Public Utilities Commission (OPUC); or

(B) An alternative minimum net present value may be allowed by the Department. An alternative minimum net present value of the credit shall be calculated by methods approved for

use by the OPUC in determining the IOU pass-through net present value. Under no conditions will a discount rate exceeding 12 percent be allowed (See September 1, 1987 letter from OPUC to Pacific Power & Light available from the Energy Office).

(5) Non-IOU applicant final cert standards and process:

(a) Application for final certification shall include an itemized list of costs for each rental dwelling unit weatherized and the total project costs made that month for which the applicant is applying for credit.

(b) The nominal value of credits for which the applicant applies.

(c) The name, address, and phone number of the owner of each rental unit listed.

(d) Certification that each rental dwelling unit energy conservation measure (ECM) is listed in and is warranted under the energy audit required by ORS 469.633, 469.651, or 469.675.

(e) Verification that energy or conservation project costs which exceed \$50,000 are accounted for in a compilation of costs by a certified public accountant who is not an employee of the applicant. The Director may also require aforementioned verification of energy or conservation project cost for special cases.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 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 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

330-090-0150

Budget Limits, Rankings, and Fees for BETC

(1) Total amount of credits allowed for program: The Director may not grant pre-cert for costs of more than \$40 million per year.

(2) Amount of credits allowed:

(a) A BETC preliminary or final certificate for an energy or conservation project shall not be issued for more than \$2 million. One applicant may not receive more than \$3 million in BETC per year. A single IOU may not receive certification for more than \$4 million in BETC per year.

(b) The limits in (2)(a) may be exceeded as follows:

(A) The Director shall determine if the sum of pre-cert credits approved by November 1 of each year exceeds \$32 million. Available program funds include the amount released under subsection (3)(b) and (c) of this rule.

(B) If total credits do not exceed \$32 million, the Director shall mail written notice to each applicant that has a pre-cert, for less than the amount requested, under subsection (2)(a), but not final cert. The notice shall explain how applicants may request that pre-certs be amended to exceed the limits of (2)(a). To apply for more credit, an applicant must send the Director a written request and the additional processing fee for such amendment by December 1.

(C) By the last working day of each year, the Director shall approve or deny requests filed under (2)(b)(B) of this rule. The Director shall approve requests in the order in which pre-cert applications were filed.

(D) An applicant with more than one project may request that credits be granted in excess of the limit for one applicant. In that case, the date the pre-cert was filed for the last such project by that applicant shall be the date used for ranking that request.

(3) Allocation of funds for special projects: Funds may be set aside by the Director for targeted and preferred projects. If the amount set aside for targeted and preferred projects is not allotted by November 15, it may be used for other projects.

(a) The Director may reserve up to \$5 million for targeted projects.

(b) The Director may set aside up to \$2 million per year for RD&D projects.

(c) The Director shall set aside funds each calendar year for pass-through projects as provided in OAR 330-090-0140. An IOU that complies with OAR 330-090-0140 may receive a credit for

their portion of the set-aside. The portion allowed for each IOU shall be the amount approved by the Director.

(d) The director shall not grant pre-certs for more than \$1 million, during any one calendar year, to private businesses for qualifying public sector energy or conservation projects.

(e) The director may set aside up to \$2 million per year for transit passes.

(4) Rankings when credits asked for exceed funds: The Director shall determine the date that the sum of pre-cert credits, excluding set aside amounts for targeted and RD&D projects, granted exceeds \$20 million. On or after that date, the director may require that all pre-certs issued be awarded in the following order:

(a) First to targeted or RD&D projects for which a set aside has been established;

(b) Second to preferred projects;

(c) Third, after November 15 of each year to other projects in the order received with eligible costs limited to applications under \$500,000 or the first 500,000 dollars of higher cost applications;

(d) Fourth, all funds not allocated on December 28 of each year may be issued to targeted projects previously limited to \$500,000 in eligible costs.

(e) Finally, all funds not allocated on December 28 of each year to targeted projects may be issued to preferred projects previously issued pre-certs limited to \$500,000 in eligible costs. Amended pre-certs may be issued for the total eligible cost in the order in which the applications were received until all funds are allotted.

(5) Fund allotment rules:

(a) If an application is withdrawn, the amount of credit approved does not count toward the \$40 million. The same is true if pre-cert is granted and canceled in the same year.

(b) A pre-cert may be amended in a later calendar year than it was issued. The original credit amount approved in the original pre-cert shall be counted the year that pre-cert was issued. Any excess shall also count the year the original pre-cert was issued, if allocation to that year would not result in exceeding the amount allowed for that year.

(6) Fees:

(a) Included with an application for pre-cert shall be two fees paid to the Energy Office.

(A) The first is a non-refundable filing fee of:

(i) \$25 for project costs up to \$10,000.

(ii) \$50 for project costs of \$10,000 and up to but less than \$250,000.

(iii) \$250 for project costs of \$250,000 and up to but less than \$1 million .

(iv) \$500 for projects costing \$1 million or greater.

(B) The second is a processing fee of 0.5 percent of the amount requested in the pre-cert application.

(b) If an application is denied or withdrawn at a later date, the Energy Office may refund the second fee. Refunds of fees may not be granted after 365 days have elapsed from the project start date specified in the pre-cert application.

(c) IOU applications for pre-cert under OAR 330-090-0140 shall not be exempt from these fee requirements.

(d) These fees shall apply to all pre-certs granted on or after January 1, 1994.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

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

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 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 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

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 September 15, 1997.

[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

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 form and its supporting papers.

(2) "Adverse Decision" means a decision to deny a loan 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 shall be an employee chosen by the Administrator.

(5) The definitions contained in OAR 330 Division 110 and ORS 470.050, as amended, shall apply to these rules.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.050 - 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 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98

330-105-0007

Committee Officers and Their Powers

The Committee shall elect a Chair and Vice-Chair each year. The Chair or Vice-Chair may serve until successors are elected. They may be removed by a unanimous vote of the other members. A vacant office shall be filled by vote at the next Committee meeting.

(1) The Chair shall preside over all Committee meetings. He or she shall set with the Secretary, the date, time, and place of meetings. He or she shall sign all documents of the Committee. The Vice-Chair shall fill the role of the Chair when the Chair is absent.

(2) The Chair may appoint members to sub-committees. Sub-committee members shall not be 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 Com-

mittee unless a member or the Secretary is allowed by vote to do so. All letters of the Committee shall be prepared and filed by the Secretary. The Committee must approve in advance any letters.

Stat. Auth.: ORS 469 & ORS 470

Stats. Implemented: ORS 470.070

Hist.: DOE 2-1986, f. & ef. 3-4-86

330-105-0008

Committee Meetings

(1) The Committee shall hold meetings on the call of the Chair. Four or more members may also call a meeting. Meetings may be run informally by the Chair. 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. It shall 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 most members concur:

(a) New matters may be added to the agenda;

(b) Debate may be limited on any matter;

(c) The agenda may be revised.

(3) The rules in OAR 330-105-0007 through 330-105-0045 provide for the orderly conduct of the Committee. A failure to comply literally shall not invalidate any action taken by the Committee, or keep it from taking action on a matter.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.070 - ORS 470.080

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98

Procedure for Review

330-105-0015

Committee Review

(1) The Office will process each loan request and recommend loan denial or loan amount, mailing to the Committee members notice of its recommendations.

(2) The Office shall mail to the Committee members the loan request, supporting material and the staff recommendation for the Committee's hearing on:

(a) Any loan request, 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% 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 Office within 14 days from the date of mailing to hear the loan request will mean concurrence with staff recommendations. Should all Committee members contact the Office declining to hear the loan request before the 14 days have passed, the Office will proceed with its recommendation.

(4) The Secretary shall inform the Committee members, in writing, of each loan amount or loan denial recommended to the Administrator.

Stat. Auth.: ORS 469 & ORS 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

330-105-0020

Oral Comments

(1) The Committee may choose whether to hear comment on any matter before it.

(2) The Office will tell applicants, in writing, the date, time, and place of any Committee meeting set to hear their request.

(3) The Committee may set time limits on comments.

Stat. Auth.: ORS 469 & ORS 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

330-105-0025

Committee's Advice to the Administrator

After its review, the Committee will tell the Administrator in writing:

- (1) Whether the project complies with OAR 330-110; and
(2) The amount in which any loan should be made.

Stat. Auth.: ORS 469 & ORS 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

Procedure for Appeal

330-105-0030

Introduction

The Administrator shall decide the amount, if any, of each loan. If the decision is adverse, the Committee may appeal to the Governor.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.090 - ORS 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

330-105-0035

Notice of Adverse Decision

The Secretary shall give prompt notice of any adverse decision. Notice shall be mailed to the applicant and Committee members.

Stat. Auth.: ORS 469 & ORS 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 4-1988, f. & cert. ef. 7-26-88

330-105-0040

Appeal to the Committee

An applicant may, within 10 working days after notice, ask the Committee to review an adverse decision. The request shall be made in writing to the Secretary. It must give the grounds for review in detail. The Secretary shall mail the request promptly to the Committee.

Stat. Auth.: ORS 469 & ORS 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

330-105-0045

Appeal to the Governor

(1) The Committee may decide by vote to appeal any adverse decision to the Governor. Its appeal must be made within the time allowed by law. The appeal shall include a copy of the application, findings, recommendations, decision, and appeal. It may also include transcripts or recordings of comments made to the Committee during its reviews.

(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 shall tell the applicant and the Committee in writing of the Governor's decision.

Stat. Auth.: ORS 469 & ORS 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

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 Small Scale Local Energy Project Loan Program procedures and standards and criteria for projects to be met by applicants. The Loan Program implements Chapter 672, Oregon Laws 1979. These rules are authorized by ORS 470.080, 470.140, 469.040, and ORS Chapter 183.

(2) It is the policy of the Office and the Committee that these rules and the Loan Program:

- (a) Encourage diversity in projects;
(b) Give all the preference that is practical to individual and small business applicants;
(c) Avoid lending so much to one project type that another type must be denied; and
(d) Fund conservation projects without regard to conventional fuel type.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.050 - ORS 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

330-110-0010

Definitions

As used in ORS Chapter 470 and in these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Adequate Security" means the pledge of real or personal property of value to secure the loan against default.

(2) "Administrator" means the Administrator of the Office of Energy. It also means the Administrator's designee.

(3)(a) "Alternative Fuel Project" means a fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, ethanol, gasohol with at least ten percent denatured alcohol content, hydrogen, methane, methanol, natural gas, propane or any other fuel approved by the Administrator; and

(B) Produce lower or equivalent exhaust emissions or are more energy efficient than vehicles fueled by gasoline.

(b) "Alternative Fuel Project" may include a facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.

(4) "Applicant" means a loan program applicant or borrower.

(5) "Biomass" means waste plant and animal matter, not fossil fuels.

(6) "Cogeneration" means the sequential production of electrical or mechanical energy and useful thermal energy from a primary source such as oil, natural gas, or biomass. To be considered "useful" the thermal energy component used for purposes other than electrical generation shall be greater than 15 percent of the total thermal energy.

(7) "Committee" means the Small Scale Local Energy Project Advisory Committee.

(8) "Conservation Measure" means a system, component of a system, mechanism or series of mechanisms, support service, or combination thereof which:

(a) Reduces the use of energy at the project site; or
(b) Directly avoids the loss of energy in the transmission of energy; or

(c) Conserves energy used in transportation;

(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 this subsection, including but not limited to restarting a dormant project.

(9) "Conventional Fuels" means purchased electricity or fossil fuels.

(10) "Creditworthy" means an applicant has income and debt history showing an ability to repay the loan.

(11) "Demonstration Project" is a project that will showcase new and/or improved technologies or designs which promise cost-effective production and/or conservation of energy if adopted by the marketplace, including elements unrelated to energy produc-

tion or conservation, but which are practically inseparable from the project, which would not receive adequate financing unless the unrelated elements are also eligible for Office loan financing.

(12) "Eligible Federal Agency" means a federal agency or public corporation created by the Federal Government that proposes to use a loan for a small scale energy project. "Eligible federal agency" does not include a federal agency or public corporation created by the Federal Government that proposes to use a loan for a small scale energy project to generate electricity for sale.

(13) "Energy Need" means any of the energy demand forecasted by the Office under ORS 469.070. It also means the need to save energy to cut costs.

(14) "Equitable" means the Office will receive half the savings and the affected Borrower(s) will receive or split half the savings, net of costs, from a bond refunding. In certain cases, the federal tax code or other law may limit the amount of refunding savings the Office may retain or provide to Borrowers. In such cases, the Office may receive less or more than half the savings, and the Borrowers will receive the remainder. Where multiple loans are funded from the refunded bond series, Borrower's will share their savings in proportion to their share of the bond series adjusted for the term to maturity of their loan.

(15) "Feasible" means that a project saves or produces reasonable amounts of energy compared to the project's cost and type. "Feasible" does not mean that a project must return its owner's money or make a profit.

(16) "Financial Statement" means any report of a person's or entity's financial operations or status. The term "Financial Statement" shall include but not be 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, and any accounting reports, audits, tax returns, or other financial information submitted as, or as a part of, a financial statement.

(17) "Fleet" means three or more vehicles used for commercial or governmental purposes within Oregon.

(18) "Individual" means a person whose project serves his or her dwelling, not his or her business.

(19) "Interim Loan" means a disbursement of part of a larger loan. An interim loan is meant to pay costs before construction.

(20) "Loan Contract" means that agreement shown by all the legal papers required by the Administrator to make a loan or change its terms and details.

(21) "Local Community or Region" means one or more energy users in Oregon.

(22) "Marketing Plan" means a plan that considers to whom the loan program can best lend and how best to tell them about the loans.

(23) "Office" means the Office of Energy.

(24) "Preference" means that in any choice between projects or applicants, the loan will be approved for the one given "preference" under ORS 470.080 and these rules. It does not mean that any loan will be approved that does not conform to the law and these rules.

(25) "Qualified" means one is able and eligible under the law to apply for a loan and enter into the loan contract.

(26) "Regulated Financial Institution" means any bank, savings and loan or credit union. It must be chartered to do business in the State of Oregon. Its deposits must be federally insured.

(27) "Recycling Project" means a facility or equipment that converts solid waste, as defined in ORS 459.005, into a new and usable product. Materials excluded from solid waste in ORS 459.005 which can be used for fertilizer, other productive purposes or are salvageable shall not be excluded here if such materials exist in excess of what the market can use for these other purposes.

(28) "Renewable Resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(29) "Responsible" means private and business history and

circumstances, which indicate an applicant can be relied upon. For a business, it also means the owners of the firm will, if asked, pledge to repay the loan.

(30) "Revolving Loan" means a loan made from funds moved to the loan fund from the sinking fund.

(31) "Security Value" means the value assigned by the Office to the project or other security.

(32) "Small Business" has the meaning given in ORS 470.050. The phrases "retail or service" and "industrial or manufacturing" as used therein include all types of business. "Small Business" does not include a business formed mostly to build, own, or run projects.

(33) "Small Scale Local Energy Project" or "Project" has the meaning given in ORS 470.050; which includes systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in this state, or are recycling or alternative fuel projects. For purposes of this rule, "Small" shall also mean the capacity of a generating project may not exceed 25 megawatts. The project may produce heat, electricity, mechanical action, and fuels. A project may also be an improvement that increases the production or efficiency of or extends operating life of a system or project otherwise described in this subsection, including but not limited to restarting a dormant project. No improvement that is a hydro-electric project shall exceed five megawatts of electric generating capacity.

(34) "Space Heating Project" means a project meant mostly to provide or conserve heat for the living space in a dwelling.

(35) "Subsidiary" means a business, which is owned by another, economically controlled by another, or owned in common with another.

(36) "Substitute Fuel" means organic matter which can be burned to produce power. The fuel must come from mostly waste matters, not fossil fuels.

(37) "Usable Life" of a project means the number of years that a project can likely function without major repair or replacement.

(38) "Waste Heat Recovery" means produced, but unused, heat which is applied to an energy need or is stopped from being produced.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.050 - ORS 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

330-110-0015

Eligible Costs

Subject to these rules, a loan may be approved to pay:

- (1) The costs of buying, building, and installing a project;
- (2) Costs of obtaining a loan;
- (3) Audit, study, commissioning, design, and license costs;
- (4) Reserves, starting funds, interest, staff training, and site costs; and
- (5) Grant matching funds and other costs or funds needed for the project.

Stat. Auth.: ORS 469 & ORS 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

330-110-0016

Ineligible Costs

- (1) Except for loans to governments, and loans funded from the sale of taxable bonds, a loan may not pay costs incurred before a loan approval.
- (2) A loan may not pay for parts of a project not consistent

with energy production or conservation or that do not qualify as an alternative fuel project or recycling project, unless the project is found by the Administrator to be a demonstration project where the technology or design may be used at other sites.

(3) A loan may not pay for any project or component of a project the cost of which is equaled or exceeded by the projected value of its energy costs savings in its first year. "Component" means a part of a project that ordinarily saves energy by itself and that costs more than ten percent of total, estimated project costs.

(4) Except for loans for alternative fuel projects, a loan may not pay for any portion of the purchase price of a vehicle.

Stat. Auth.: ORS 469 & ORS 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

330-110-0020

Preferences

(1) Preference to the extent practical will be given to projects of individuals and small businesses with the least preference given to projects proposed by an Eligible Federal Agency.

(2) To obtain diversity, preference will be given to practical kinds of projects seldom financed by the Office or which are not common.

(3) The Administrator may deny a loan because other sources of funding are adequate. The Administrator may limit the size or number of loans to anyone to carry out these rules.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.080 - 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 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98

330-110-0025

Application

(1) If asked, the Office may give advice on a loan before an application is filed. The Office will advise whether the project appears to comply with these rules, whether funds are available, and which costs may be eligible. The Office's advice, however, is not a loan approval or any other binding commitment.

(2) Application shall be made on forms and in a manner set by the Office.

(3) For this rule and ORS 470.060, "application" shall include papers given to comply with a conditional commitment of loan.

(4) The Office may request the borrower's social security number in accordance with provisions of the Privacy Act of 1974.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.060 & 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 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98

330-110-0030

Application Review Process

(1) The Office will review all applications. It may require further papers, reports, proofs, and the like to find whether a loan should be made. Upon failure to receive any items asked for within fourteen days after the Office requests them in writing, the loan request may be cancelled. A new application and fee would be required to again request the loan.

(2) Application review and appeal shall conform to ORS 470.080 and OAR 330-105.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.080 - ORS 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

330-110-0035

Findings by the Administrator

(1) To approve an application for loan funds the Administrator must find as required by ORS 470.090 and as follows:

(a) The project will preserve and enhance the environment. By that it is meant that the project must save conventional fuel and make efficient use of the resource. An alternative fuel project may either save gasoline or reduce emissions. It also means the applicant must agree to comply with any lawful environmental requirement of each federal, state, and local agency;

(b) The plan for the project assures its timely finish, quality, and funding. "Funding" includes working capital; and

(c) That a loan will not preclude individuals and small businesses access to loan funds. Preclude does not mean a delay in funding waiting for good bond sale conditions.

(d) The project meets the goals of the Office of Energy.

(2) The Administrator may deny a loan to any applicant that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin or gender.

(3) Findings under this rule and ORS 470.090 are for lending purposes only. They do not endorse the project, its design, or its parts. They offer no assurance of any kind for any other purpose.

Stat. Auth.: ORS 469 & ORS 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

330-110-0036

Public Health, Safety, and Environmental Issues

(1) The policy of the Office 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 loan files to such agencies when asked.

(2) Each applicant:

(a) Shall obtain each local, state, and federal permit and license that applies to a project. The applicant shall obtain all applicable permits and licenses before any loan funds are used to build the project;

(b) Shall agree to comply with the express terms and conditions of each permit and license; and

(c) Shall agree to comply with all state rules and laws that apply to the project.

(3) Loan commitments are based on the applicant's promise that each license and permit has been or will be obtained. Failure to obtain them as required by these rules will allow the Office to revoke the loan or commitment.

(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 of a kind already so confirmed.

(5) Waterpower developers must comply with at least the following:

(a) Projects 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;

(c) A land use permit or variance must be obtained from the city or county where the project will be built; and

(d) The loan commitment shall be revoked if, within 30 days of its issuance, the Northwest Power Planning Council tells the Office that the project violates the Columbia Basin Fish and Wildlife Program.

(6) Geothermal developers must comply with at least the following:

(a) A geothermal well permit must be obtained from the Department of Geology and Mineral Industries, or, a permit to use ground water must be obtained from the Water Resources Commission; and

(b) A land use permit or variance must be obtained from the

city or county where the project will be built.

(7) Wind developers must comply with at least the following: A land use permit or variance must be obtained from the city or county where the project will be built.

(8) Biomass cogeneration developers must comply with at least the following:

(a) Obtain an air contaminant discharge permit, a waste discharge permit and a solid waste disposal permit from the Department of Environmental Quality; and

(b) Obtain a land use permit or variance from the city or county where the project will be built.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.090 & ORS 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

330-110-0040

Loan Limits, Security, and Conditions

(1) The Administrator may limit the term and amount of any loan or loan commitment. He or she may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds.

(2) Loans secured by homes shall not exceed 90 percent of security value for first liens or 85 percent for second liens.

(3) Loans to municipal corporations which will be repaid from project income may be secured by project income. That income must be expected to equal at least 125 percent of debt service and operation and maintenance costs. Loans to municipal corporations for conservation measures, alternative fuel projects or recycling projects may be secured by the project items. Total cost savings are expected to equal loan payments.

(4) Loans to state agencies, eligible federal agencies and public corporations may be secured by project income, by the project items and other income or security deemed sufficient by the Administrator.

(5) The Administrator may include savings in operation and maintenance costs in estimating the annual energy cost savings. The Administrator may also include the estimated savings in fuel costs from reasonably expected increases in the cost of fuel.

(6) Projects which mostly produce energy for sale:

(a) Must have secure, sure sources of supply and contracts for the sale of output;

(b) Must have income enough in excess of total debt service plus operation and maintenance costs to assure loan payment;

(c) A hydro project must have expected project income in the first full year equal to at least 125 percent of total debt service plus operation and maintenance costs; and

(d) Must have a secure source of repayment apart from the project income when the project is not similar to one that has been proven successful.

(7) Unless the Administrator finds financial factors warrant otherwise, a loan to a business for a project which saves or produces energy for use on site, is an alternative fuel project, or is a recycling project may be made only:

(a) For less than 80 percent of security value for first liens or 70 percent for second liens;

(b) To a firm which has made a profit after taxes for at least the two years before loan application; and

(c) To a firm which has a ratio of current assets to current debt of at least 1.75 to 1. It must also have a ratio of total debt to owner's equity of no more than 2 to 1. The Administrator may exempt a firm from this rule if it shows that sound firms of the same type and size do not normally meet these standards.

(8) Loans shall include no more than the following amounts:

(a) To obtain a site: Ten percent of the project's capital cost budget;

(b) Capital for start-up: Three percent of the project's capital cost budget;

(c) Reserves: Fifteen percent of the loan amount;

(d) Interim loan for pre-construction costs: Five percent of the project's capital cost budget;

(e) Interim loan for starting construction costs: Ten percent of the project's capital cost budget;

(9) Alternative fuel project loan limits:

(a) Loans for alternative fuel projects are limited to the incremental costs of the project. Incremental costs, as used here, means the added costs beyond a reasonable minimum expected to construct or install a similar project without alternative fuel features. Incremental costs do not include equipment or devices which are standard industry practice for dispensing gasoline or, in the case of vehicles, equipment or devices which allow use of gasoline without modification to use an alternative fuel;

(b) Funding of alternative fuel vehicles is limited to products and installations approved by and meeting or exceeding the emission standards of the Department of Environmental Quality;

(c) Alternative fueling stations with underground fuel tanks do not qualify for funding.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.080, ORS 470.120, ORS 470.150 - ORS 470.155, ORS 470.170 & ORS 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

330-110-0042

Bond Refunding

(1) The Office shall pursue opportunities for refunding bonds to reduce interest sums paid by the office. When the office refunds a bond with tax-exempt bonds, the office shall share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Administrator 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.

(2) Savings from refunding of bonds accrue over the remaining term of the bonds. The Office will provide savings to affected borrowers by reducing the amount of each loan payment over the remaining term of the loan. Exceptions may be made for loans with accumulated savings over the remaining loan term of less than \$15,000. In such cases, the Office will reduce the principal amount of the loan by the net present value of the savings, using a discount rate of the maximum arbitrage yield as defined in Section 148 of the Internal Revenue Code.

(3) The Office shall not refund tax-exempt bonds with taxable bonds, unless the Office 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 Office intends to issue refunding bonds, the Office shall notify each borrower whose loan was made from the proceeds of the bonds proposed for refunding and shall offer the borrower the opportunity to prepay the borrower's loan. The "date on which the Office intends to issue" shall mean 20 days after the tentative bond sale date entered on the State Treasurer's bond calendar.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.270

Hist.: DOE 2-1998, f. & cert. ef. 9-30-98

330-110-0045

Waiver, Authority of Administrator

The Administrator:

(1) May, in writing, waive any of these rules. The waiver must serve the aims of, 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 contracts. A partial release of lien may be granted by the Administrator upon written request of the applicant if the remaining security value is adequate to secure the loan and meet the security requirements of 330-110-0040. The Administrator shall consider the creditworthiness and repayment history of the applicant in considering such a request.

(5) May contract with a utility to operate a project in the event of any default which results in the Office taking and running the project.

(6) May settle, modify or release any loan debt so long as it does not damage the loan 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 & ORS 470.140

Stats. Implemented: ORS 470.080 & ORS 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

330-110-0050

Confidential Records

(1) Upon written request and within a reasonable time, the Administrator shall provide non-exempt loan program records for inspection in accord with ORS Chapter 192.

(2) The person asking to inspect the records may be charged in advance. Those charges shall be for the Office's cost to locate, compile, copy, and mail the records. Such costs shall include but not be limited to costs incurred in separating exempt and non-exempt records, having a custodian present during the inspection, preparing lists of data, and telefaxing materials. Such charges shall be estimated or itemized for the person making the request before they are incurred.

(3) The following records shall be exempt from disclosure if the person providing these records so requests:

- (a) Financial statements;
- (b) Customer lists;
- (c) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded and nothing in this subsection shall limit any right or opportunity granted by discovery of deposition statutes to a party to litigation or potential litigation;
- (d) Production, sales or cost data; and
- (e) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.065

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 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98

330-110-0055

Fees and Charges

The applicant pursuant to ORS 470.060 and 470.150 shall pay the Office for costs to review, process, and service a request or loan. Applicants shall pay the following charges:

(1) An application fee as fixed by statute. It may not be refunded. "Application", as used here, shall include requests to assume or transfer or increase existing loans but shall not include interim loan requests made with a project loan request.

(2) An underwriting fee of \$500 or one-half of one percent of the loan request, whichever is greater, not to exceed \$5,000. All but \$500 of the underwriting fee may be applied toward the loan fee upon completion of the loan. The fee may not be refunded.

(3) A loan fee of one percent of the loan amount required at loan closing for all loans.

(4) Charges which may be made for credit reports, for expert advice, for legal fees, for construction inspections, for disbursement fees, for loan servicing requests and for appraisals, if the costs do not help with other requests as well. Such charges shall be estimated or itemized for the applicant before they are incurred.

(5) Charges for managing construction fund investments for an applicant shall be one-half of one percent of the earnings.

(6) A charge of \$500 for requests to release or modify security. Additional charges may be made for credit reports, for expert advice, for legal fees, for site inspections and for appraisals, if the costs do not help with other requests as well. Such charges shall be estimated or itemized for the applicant before they are incurred.

(7) Office costs in excess of any fees and charges shall be collected through interest and any other charges specified in the loan contract executed by the applicant and the Office.

(8) The interest rate on a loan shall be that rate in effect for the type or size of loan on the date of the note or other evidence of indebtedness. However, an interest rate set in an executed loan commitment shall not be increased without the applicant's consent. The interest rate for projects proposed by an eligible federal agency shall be set in accordance with ORS 470.150(2). Revolving loan contracts may provide for rates to be changed upon issue of permanent bonds.

Stat. Auth.: ORS 469 & ORS 470.140

Stats. Implemented: ORS 470.060 & ORS 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

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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 ORS 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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.752 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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.**

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.752 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 procurement 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 representa-

tive(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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 469.756

Hist.: DOE 2-1994, f. & cert. ef. 12-12-94

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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 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 - ORS 469.756

Stats. Implemented: ORS 469.752 - ORS 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

DIVISION 120

SCREENING AND SELECTION PROCEDURES FOR PERSONAL SERVICE CONTRACTS ENTERED INTO BY THE OREGON DEPARTMENT OF ENERGY

330-120-0005

Purpose

The Oregon Department of Energy (ODOE) occasionally requires the services of an outside party to accomplish all or part of a project. The purpose of these rules is to specify the screening and selection procedures which will be used for personal service contracts.

Stat. Auth.: ORS 127, ORS 279 & ORS 469

Stats. Implemented: ORS 345, ORS 469 & ORS 470

Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0010

Basic Policy

(1) ODOE will contract for services when the specialized skills, knowledge, or resources are not available within the Department; when the work cannot be done in a reasonable time with the Department's own work force; when it will be less expensive to contract for the work; when an independent and impartial evaluation of a situation by a recognized professional is required; or when the Department is directed by statute to contract for services. Contracts will be let only after the approval of the Director or his/her designee.

(2) Agreements for the services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public agency usually will be by interagency agreement. Exceptions may be granted by the Director or his/her designee when such an agreement is impractical and when the work will be done on the contractor's own time. Such exceptions will be processed as a regular agreement.

(3) Throughout the contractor selection process, the Department will encourage Minority Business Enterprise (MBEs) to submit proposals and thus have an equal opportunity to be selected.

(4) The Department shall seek to ensure competition to the maximum extent practicable when awarding personal service contracts.

(5) In selecting between two or more equally qualified bidders when awarding contracts, preference shall be given to individuals shall residing in Oregon and businesses which have their home office or headquarters in Oregon.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0015

Definitions

(1) "Competitive Negotiation" (formal bidding) is a procurement method whereby proposals are requested from a number of sources and the Request for Proposal is publicized.

(2) "Noncompetitive Negotiation" (sole source) is procurement through solicitation of a proposal from only one source.

(3) "Small Purchase Procedures" (informal bidding) are those relatively simple and informal procurement methods whereby price or rate quotations are obtained from a number of sources and selection made on the basis of cost and other applicable criteria.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0020

Procurement Method

(1) Small purchase procedures may be used for the procurement of services costing not more than \$10,000. Price or rate quotations shall be obtained from at least three qualified sources.

(2) Competitive negotiation shall be used for personal service contracts in excess of \$10,000 per agreement per fiscal year and may be used for contracts of less than \$10,000. Exceptions may be granted to accommodate one or more of the conditions described in section (3) of this rule with the approval of the Administrator of Administrative Services or his/her designee.

- (3) Non-competitive negotiation may be used for contracts if:
- (a) The item or service is available only from a single source, or the sole source has special skills that are only available based upon his/her expertise or situation;
 - (b) Public need or emergency advises against a delay incident to competitive solicitation;
 - (c) After solicitation of a number of sources, competition is determined inadequate;
 - (d) The contract is a renewal of an existing contract, subject to approval by all required parties.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0025

Maintenance of RFP Mailing List

The Department shall maintain a Request for Proposals (RFP) Mailing List consisting of persons, businesses, organizations and other entities which have indicated the desire to be notified of contracting opportunities that are available. A Department form will be used to place persons on the list. The RFP Mailing List will be updated at least annually with notification to all contractors on the list.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0030

Competitive Negotiation Procedures

(1) A Request for Proposals (RFP) shall be prepared for contracts for which competitive negotiation procedures will be used. The RFP shall include, at a minimum, the following information:

- (a) Date and hour by which proposals must be received;
- (b) Description of work;
- (c) Evaluation criteria;
- (d) ODOE contact person.

(2) Notification of the availability of the RFP shall be mailed to entities on the Department's RFP Mailing List that have indicated expertise in the subject area, appropriate minority firms listed in the current **Minority Business Directory**, and to any other individuals or organizations deemed necessary.

(3) The availability of the RFP shall be advertised in the **Oregon Daily Journal of Commerce**. It may also be advertised in other appropriate periodicals.

(4) Proposals shall be evaluated in a manner consistent with the evaluation criteria included in the RFP by an impartial person or panel of persons. An objective scoring or rating system shall be used in the evaluation and records of the scoring shall be maintained in the Department's files. These are public records and may be reviewed upon request.

(5) Exceptions to the notification procedures in sections (2) and (3) of this rule may be granted by the Contracts Manager if warranted by time or cost considerations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
 Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0035

Small Purchase Procedures

(1) A Statement of Work shall be developed and submitted to qualified sources and a price or rate quotation requested.

(2) At least three price or rate quotations shall be obtained from qualified sources unless there are fewer than three qualified sources.

(3) Contractor selection shall be made on the basis of the cost estimate and other pertinent information such as qualifications and results of reference checks.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

330-120-0040

Contracting Procedure and Responsibility

The following procedure shall be used for all contracting activities:

(1) Staff person determines that work on a project requires the services of a consultant and notifies Contracts Manager:

- (a) Prepares cost estimate for contract;
- (b) Determines type of selection and screening process to be used to select a contractor and obtains approval of Administrative Services for process;
- (c) Obtains written approval of Supervisor and/or Division Administrator to contract for consultant services;

- (d) Completes screening and selection procedure and selects a contractor;
- (e) Forwards draft of contract to Supervisor and/or Division Administrator for approval;
- (f) Forwards draft of contract to Contracts Manager for approval.
- (2) Contracts Manager reviews contract and selection process for compliance with this rule, and applicable state and federal rules and regulations, approves contract, and, if necessary, obtains the approval of the Attorney General.
- (3) Contractor signs contract.
- (4) Contract is signed by Department and, if total contract amount exceeds \$1,000, is forwarded to Budget and Management Division, Department of Administrative Services for approval.
- (5) One copy of final approved contract is forwarded to Contractor. One copy with original signatures is retained in Department files. One copy of contract is sent to the ODOE Project Officer.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 345, ORS 469 & ORS 470
 Hist.: DOE 7-1983, f. & ef. 12-16-83

DIVISION 125

RESIDENTIAL STANDARDS DEMONSTRATION PROGRAM SELECTION RULES

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: The publication(s) referred to or incorporated by reference in this rule 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: The publication(s) referred to or incorporated by reference in this rule 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 FOR STATE AGENCY FACILITIES

330-130-0010

Purpose

The Oregon Office of Energy, a division of the State of Oregon Department of Consumer and Business Services, has developed OAR 330-130-0010 through OAR 330-130-0060. These rules prescribe procedures to minimize energy use in new and renovated facilities designed and constructed by state agencies in compliance with ORS 276.900 through ORS 276.915.

Stat. Auth.: ORS 276.900 – ORS 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

330-130-0020

Definitions

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

(2) "Baseline Building" means the basic building conceived by the Design Team. The Baseline Building shall meet or exceed the Energy Code.

(3) "Benefit-to-Cost Ratio (BCR)" means the Present Value of ECM benefits divided by the Present Value of incremental ECM costs.

(a) The ECM 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 ECM added.

(b) The incremental ECM 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 ECM added.

(4) "Biennial Report" means the report, which evaluates the compliance of Agencies with the objectives of ORS 276.900 through ORS 276.915.

(5) Facility and Building Class:

(a) "Facility" as used in ORS 276.900 through ORS 276.915 means a building for the purposes of these rules;

(b) "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: heating, ventilating, and air conditioning system, interior lighting, building envelope, domestic hot water, or special equipment.

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

(c) "Class 2 Building" means all new buildings or renovations of less than 10,000 square feet of heated or cooled floor area except:

(A) Those described in Class 1 Buildings; and

(B) New buildings, structures, or facilities of any size which have no energy using systems.

(6) "Building Model" means a computer model, which calculates annual building energy use. The Oregon Office of Energy shall approve hourly Building Models and bin Building Models. The Building Model for all Class 1 Buildings following the Design Review method shall be an hourly Building Model, except for the following examples where bin Building Modeling may be used:

(a) Heated-only warehouses of any size;

(b) Theaters and assembly buildings smaller than 35,000 square feet;

(c) Office buildings smaller than 35,000 square feet;

(d) Other Class 1 Buildings for which a bin Building Model or other calculation is appropriate as approved by the Oregon Office of Energy.

(7) "Capital 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.

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

(9) "Energy Analysis Report" means a report prepared by an Energy Analyst recommending an Optimum ECM Package for a Class 1 building. The final report shall be stamped and signed by the professional engineer or licensed architect under whose direction the report is prepared. The report shall include:

(a) Oregon Office of Energy State Energy Efficiency Design (SEED) forms;

(b) A summary of recommendations;

(c) A Baseline Building description;

(d) ECM descriptions with analysis results;

(e) ECM savings calculations; and

(f) ECM cost estimates.

(10) "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. The Energy Analyst shall be approved or jointly agreed upon by the Agency and the Oregon Office of Energy.

(11) "Energy Code" means Chapter 13 of the 1996 **State of Oregon Structural Specialty Code**.

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

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

(14) "Net Present Value Savings (NPV)" 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.

(15) "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.

(16) "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 NPV of the analyzed ECM packages.

(17) "Present Value" means the value of a financial cost or benefit, discounted to current dollars using discounting factors and methods approved by the Oregon Office of Energy.

(18) "Simple Payback" means the estimated ECM cost divided by the estimated first year ECM energy, operating, and maintenance savings.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 276.900 – ORS 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

330-130-0030

Notification

Before a building project proceeds into the schematic design phase the Agency shall determine the building class and provide written notification and preliminary building information to the Oregon Office of Energy.

(1) Class 1 Buildings. To be eligible for Design Assistance or Expanded Services, the Agency may need to notify the Office of Energy before the design team is selected.

(2) Class 2 Buildings. The Agency shall contact the Oregon Office of Energy for consultation and request a list of recommended ECMs and services applicable to the building. The Agency shall have no further requirements beyond notification of the reason for classification and project reporting of installed ECMs.

Stat. Auth.: ORS 276.900 – ORS 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

330-130-0040

Procedures for Class 1 Buildings

The Agency may choose one of two methods to meet the requirements of Class 1 Buildings: (1) Design Assistance or (2) Design Review. The Agency and the Office of Energy shall enter into an interagency agreement which outlines the method to be used, the hourly rates to be charged by the Office of Energy, and the related statement of work. The interagency agreement may include Expanded Services, which are beyond the scope of this rule. See section (3) below.

(1) Design Assistance. The purpose of this method is to ensure early involvement so energy efficiency is an integral part of the building design and to mitigate requirements for hourly simulation modeling.

(a) Notification. To meet the intent of the Design Assistance procedure, it is strongly recommended that the Agency submit the project notification to the Oregon Office of Energy before the Agency's design team has been selected.

(b) Initial Meeting. The Agency and the Oregon Office of Energy shall meet to:

(A) Discuss the scope of the project;

(B) Define the role of the Oregon Office of Energy, including but not limited to the level of involvement, decision authority on behalf of the owner, and relationship with contractors; and

(C) If applicable, develop language the Agency may use to include energy efficient design in the request for proposals and the contract for architectural and engineering services.

(c) Design Team Meetings. The Agency will notify the Oregon Office of Energy of all design team meetings. The Office of

Energy will participate in all meetings that impact energy design.

(d) ECM Selection. During schematic design and design development, the Office of Energy and the Agency shall agree upon the ECMs that will be included in the final building design.

Under Design Assistance, staff from the Oregon Office of Energy will work with the Agency's design team during the design process. Based on this early involvement, ECMs that are deemed to be cost-effective are incorporated into the design without the need for further analysis or modeling. Where cost-effectiveness is difficult to determine, it may be necessary for the Agency to contract with an Energy Analyst to perform limited modeling.

(e) Implementation of Cost-Effective Measures. The Agency shall incorporate the agreed upon ECMs or package of ECMs into the final building design.

(f) Submittal of Construction Documents. The Agency shall provide the Oregon Office of Energy with construction documents at 50 percent design completion or when there is significant detail to verify that the ECMs will be included in the final construction documents and specifications.

(g) Contractor Submittals and Substitutions. The design firm shall ensure that contractor equipment submittals and requests for substitutions adhere to the ECM design intent. If requested, the Oregon Office of Energy will be available to review such documents.

(h) Site Inspections. To verify that ECMs are installed correctly and operating efficiently, the Oregon Office of Energy or its representative may make walk-through site inspections, at the following stages:

(A) During installation of ECMs; and

(B) Within the first six to nine months of occupancy and prior to the expiration of any one-year warranties.

(i) Project Reporting. The Agency shall provide the Oregon Office of Energy with a report that verifies the installation of agreed upon ECMs or package of ECMs. This information shall be used in preparation of the biennial report to the legislature.

(2) Design Review.

(a) Meetings and Submittals. The Agency and the Oregon Office of Energy shall establish a schedule for meetings and submittals required to comply with these administrative rules.

(b) Preliminary Investigation. The Agency, the Design Team, and the Energy Analyst shall prepare a comprehensive list of ECMs to capture significant opportunities for building energy savings. The list shall include ECMs in the Baseline Building and additional ECMs. Two weeks before the Scoping Meeting the Agency shall deliver to the Oregon Office of Energy the following items:

(A) List of proposed ECMs;

(B) Schematic plans;

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

(D) Design intent; and

(E) Description of operating criteria.

(c) Scoping Meeting. The Oregon Office of Energy, the Agency, the Design Team, and the Energy Analyst shall meet and select the ECMs for analysis.

(d) 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.

(e) Interim Submittal. Two weeks before the ECM Review Meeting, the Agency shall submit to the Oregon Office of Energy the following items 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) The Baseline Building Model input and output;

(D) A list of eliminated ECMs and calculations; and

(E) Analysis results for individual ECMs.

(f) ECM Review Meeting. The Oregon Office of Energy, the Agency, the Design Team, and the Energy Analyst shall meet to review and agree on the results in the preliminary Energy Analysis Report.

(g) Final Report Submittal. The Agency shall deliver the final Energy Analysis Report containing the Optimum ECM Package to the Oregon Office of Energy for review.

(h) Delivery of the Oregon Office of Energy Findings. The Oregon Office of Energy shall review the report and forward its written findings and recommendations to the Agency within ten working days after receiving the report, if practicable.

(i) Implementation of Cost-Effective Measures. The Agency shall incorporate the Optimum ECM Package into the final building design.

(j) Submittal of Construction Documents. The Agency shall ensure that contractor equipment submittals and requests for substitutions adhere to the ECM design intent. If requested, the Oregon Office of Energy will be available to review such documents.

(k) Contractor Submittals and Substitutions. The design firm shall ensure that contractor equipment submittals and requests for substitutions adhere to the ECM design intent. If requested, the Oregon Office of Energy will be available to review such documents.

(l) Site Inspections. To verify that ECMs are installed correctly and operating efficiently, the Oregon Office of Energy or its representative may make walk-through site inspections at the following stages:

(A) During installation of ECMs; and

(B) Within the first six to nine months of occupancy and prior to the expiration of any one-year warranties.

(m) Project Reporting. Within six months after project completion, the Agency shall provide the Oregon Office of Energy with a report that verifies the installation of measures identified in the Optimum ECM package. This information shall be used in preparation of the Biennial Report to the legislature.

(3) Expanded Services. Expanded services are services provided by the Oregon Office of Energy that are outside the scope of OAR 330-130-0010 through 0070. Such services may include but are not limited to acting as the owner's agent on energy issues, building commissioning, and providing resource conservation management assistance. The Agency may include Expanded Services as part of the interagency agreement with the Oregon Office of Energy for work required under these Administrative Rules.

Stat. Auth.: ORS 276.900 – ORS 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

330-130-0050

Procedures for Class 2 Buildings

The following procedures shall apply to every Class 2 project.

(1) Role of the Agency. The Agency shall determine that the design incorporates 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 Oregon Office of Energy. The Oregon Office of Energy shall be available to the Agency to advise or suggest potential energy saving measures.

(3) Project Reporting. The Agency shall provide the Oregon Office of Energy with the list of cost-effective ECMs that were installed in the building. This information will be used in preparation of the biennial report to the legislature.

Stat. Auth.: ORS 276.900 – ORS 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

330-130-0060

Fees

Fees charged to the Agency by the Oregon Office of Energy for services shall be as follows:

(1) Class 1 Buildings:

(a) The fee charged by the Oregon Office of Energy to the Agency will be based on an hourly rate for the actual hours worked on the project. Hourly rates charged by the Oregon Office of Energy and invoiced to the Agency will include salary, other payroll expenses, the federally allowed indirect rate for the Oregon Office of Energy, staff travel expenses, other service or supply costs, and administrative costs. Invoices may be submitted to the Agency by the Oregon Office of Energy monthly commencing one month after notification. Invoices will provide the hours of service and the hourly rate. Fees will be limited to the following maximum amounts:

(A) Less than \$3,000,000 in actual capital construction cost, the maximum fee shall be calculated at \$0.002 for each dollar of construction cost; or

(B) More than \$3,000,000 in actual capital construction cost, the maximum fee shall be \$6,000 plus \$0.0005 for each dollar of construction cost greater than \$3,000,000.

(b) The Oregon Office of Energy will invoice the Agency for all final fees within sixty (60) days following the completion of its work as described in 330-130-0040. To ensure the Agency receives the final invoice prior to closing their construction accounts, the Office of Energy may invoice in advance for final building inspections.

(2) Class 2 Buildings. No fee unless the Agency chooses to enter into an interagency agreement with the Oregon Office of Energy.

(3) Fee Scope. Fees charged do not include Design Team or Energy Analyst services. The Agency shall obtain these services directly. Fees include all services provided by the Oregon Office of Energy or their representative in fulfilling the requirements described in 330-130-0040. Fees do not include Expanded Services provided by the Oregon Office of Energy.

(4) Fees may be waived for special circumstances including but not limited to demonstration or pilot projects.

(5) All fees are subject to review and adjustment by the Administrator of the Oregon Office of Energy.

Stat. Auth.: ORS 276.900 – ORS 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

330-130-0070

Oregon Office of Energy Administrative Procedures

The Oregon Office of Energy shall provide information and administer the program to ensure the program is in accordance with these rules.

(1) Under special circumstances, the Administrator may waive certain requirements under these rules, provided the intent of the program is maintained.

(2) The Oregon Office of Energy has developed guidelines, which contain recommended procedures, instructions, and information relating to these rules. The Oregon Office of Energy shall solicit Agency comments on the guidelines on a biennial basis and revise the guidelines as appropriate.

(3) The Oregon Office of Energy shall compile information about Agency participation and ECM implementation into a database. The Oregon Office of Energy 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.

(4) The Oregon Office of Energy shall complete and submit a biennial report to the legislature on January 1 of every odd-numbered year.

Stat. Auth.: ORS 276.900 – ORS 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

