

## Chapter 330 Department of Energy

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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 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 October 3, 2001.

[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; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03

#### 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 procedures for determining whether information submitted to the Department of Energy shall be entitled to confidential treatment.

#### 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 spaceheating, air conditioning, cooking, water heating and other domestic uses;

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

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

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

(f) Other: All other uses of energy.

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.030  
Hist.: DOE 3, f. & ef. 11-20-75; DOE 7, f. & ef. 1-11-77; DOE 2-1978, f. & ef. 3-3-78; DOE 1-1979, f. & ef. 3-20-79; DOE 2-1982, f. & ef. 1-29-82; DOE 1-1984, f. 1-16-84, ef. 2-1-84

### 330-020-0030

#### Forms — General

With the exception of the provisions of OAR 330-020-0065, all information required to be submitted by ORS 469.080(1), or by these rules shall be submitted on forms provided by the Department and described in these rules. The information required by each form shall be determined by the provisions of OAR 330-020-0035. The actual forms provided by the Department may vary as to format and phrasing from the descriptions provided in 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: Tables referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

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

### 330-025-0025

#### Supplemental Information

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

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

### 330-025-0030

#### Rejection of Deficient Submission

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.080

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

### 330-025-0035

#### Waiver of Certain Provision

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

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

## DIVISION 30

### CONFIDENTIAL TREATMENT OF SECURITY PROGRAM INFORMATION

### 330-030-0005

#### Purpose

The purpose of these rules is to protect the confidentiality of information submitted to the Energy Facility Siting Council and the

Oregon Office of Energy regarding security programs for nuclear-fueled power plants, nuclear installations, and the transportation of radioactive materials to and from such facilities, and, to the extent possible, maximize information available to the public regarding the nuclear fuel cycle.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.490  
Hist.: DOE 5, f. & ef. 12-23-75; DOE 2-1996, f. & cert. ef. 7-11-96

### 330-030-0010

#### Legislative Authority

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

### ENERGY CONSERVATION SERVICES

### 330-060-0005

#### Purpose

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

(2) These rules are effective November 1, 2004 or upon filing with the Secretary of State, whichever is later and shall apply to energy conservation measure rebate applications postmarked on or after the effective date of these rules.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.673  
Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-29-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-060-0010

#### Definitions

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

(1) "Administrator": The Administrator of the Energy Office.  
(2) "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.

(3) "ASHRAE": American Society of Heating, Refrigeration, and Air Conditioning Engineers.

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

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

(6) "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.

(7) "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.

(8) "Cost-Effective": The present value of energy saved over the life of an energy conservation measure is worth more than the measure's cost. However, the energy savings of a measure shall receive a ten percent "bonus."

(9) "Customer": A residential customer or dwelling owner.

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

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

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

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

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

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

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

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

(C) Insulation of outside walls to a nominal R-13 if achievable in areas where no insulation is present, of unfinished walls adjacent to unheated areas to R-21 if achievable in areas where no insulation is present, and of finished walls adjacent to unheated areas to R-11 if achievable in areas where no insulation is present;

(D) Insulation of floors over unheated spaces to at least R-25 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

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

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

(G) Vapor barrier materials;

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

(I) Storm doors covering uninsulated exterior doors;

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

(K) Insulated exterior doors with an U-value of at least 0.20.

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

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

(N) Programmable thermostats;

(O) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Energy Office's Residential Energy Tax Credit contractor certification program;

(P) Dehumidifiers; and

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

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

(A) Automatic energy control systems;

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

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

(D) Lighting system improvements.

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

(16) "Energy Office": The Office of Energy, of the State of Oregon.

(17) "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

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

### 330-060-0015

#### Description of Residential Energy Conservation Program

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

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

### 330-060-0020

#### Reliance on the Statewide Fuel Oil Audit Program

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

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

(a) Notify its customers about this program, including a toll-free number to request 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 Energy Office.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

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

### 330-060-0040

#### Low-Interest Loans Through Lenders

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

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

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

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

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

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

(f) Loans shall not finance the following:

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

(B) Space heating heat pumps;

(C) Water heating heat pumps;

(D) Wood-burning devices;

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

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

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

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

(F) Solar equipment;

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

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

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

(2) In order to qualify for a loan, the dwelling owner must submit to the Energy Office 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 Energy Office may require that contractors use bid forms provided by the Energy Office; and

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

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

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

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

(B) Give the lender a copy of:

(i) The results of the energy audit;

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.170

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

### 330-060-0060

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

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

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

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

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

### 330-060-0070

#### Oil Audit Standards: Calculation Procedures

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

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.675

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

**330-060-0075****Oil Audit Standards: Calculation of Cost Effectiveness**

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

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

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

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

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

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

**330-060-0090****Oil Audit Standards: Auditor Qualifications**

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

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

**330-060-0095****Post-Installation Inspections**

(1) The Energy Office may inspect energy conservation measures:

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

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

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

(d) The Energy Office may require an inspection before disbursing cash payments.

(2) The inspection shall verify that:

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

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

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

(a) The customer; and

(b) The Energy Office.

(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.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

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

**DIVISION 61****PROCEDURES FOR A REBATE FOR WEATHERIZATION****330-061-0005****Purpose**

(1) OAR 330-061-0005 through 330-061-0050 prescribe how the Energy Office shall run a program providing energy conservation measure rebates. This program shall be known as the energy conservation measure rebate, a part of the State Home Oil Weatherization Program,

run by the Energy Office. Operation of the oil energy conservation measure rebate depends on availability of funds.

(2) These rules are effective November 1, 2004 or upon filing with the Secretary of State, whichever is later and shall apply to energy conservation measure rebate applications postmarked on or after the effective date of these rules.

Stat. Auth.: ORS 469.040 & 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; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

**330-061-0010****Definitions**

As used in OAR 330-061-0005 through 330-061-0050, unless the context requires otherwise:

(1) "Administrator": The Administrator of the Energy Office.

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

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

(4) "Applicant": Any person applying for a rebate.

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

(6) "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.

(7) "Cost-Effective" has the meaning given in OAR 330-060-0010(8).

(8) "Dwelling" has the meaning given in OAR 330-060-0010(11).

(9) "Energy Audit" has the meaning given in OAR 330-060-0010(13).

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

(11) "Family": All persons living together in a dwelling unit.

(12) "Fuel Oil" has the meaning given in OAR 330-060-0010(18).

(13) "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;

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

(14) "Energy Office": The Office of Energy, of the State of Oregon.

(15) "Lighting System Improvements" has the meaning given in OAR 330-060-0010(21).

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

(17) "Rebate": A cash grant for energy conservation measures.

(18) "Recipient": A person receiving a rebate under the energy conservation measure rebate program.

(19) "Space Heating" has the meaning given in OAR 330-060-0010(23).

(20) "Tenant" has the meaning given in OAR 330-060-0010(25).

(21) "Wood Heating Resident" has the meaning given in OAR 330-060-0010(28).

Stat. Auth.: ORS 469.040 & 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

**330-061-0015****Description of Oil Weatherization Rebate Program**

The Energy Office offers rebates for cost-effective energy conservation measures. The rebates are subject to available funding on a first-come, first-served basis.

Stat. Auth.: ORS 469.040 & 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0020

#### 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) 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.

(3) 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.

(4) 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.

(5) 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 rebate for measures 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.

(6) Relationship to other publicly-subsidized loans. An applicant may apply for any other local, state or federal low-interest loan to cover costs of energy conservations measures not paid for by the rebate. However, an applicant may not receive a publicly-subsidized low-interest loan for energy conservation measure costs paid for by the rebate.

Stat. Auth.: ORS 469.040 & 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0025

#### Amount of Rebate

(1) The Energy Office shall annually allocate available rebate funding based on the following income categories and in the following dollar and percentage amounts:

(a) Households at or below eligibility levels for the U.S. Department of Energy's Low Income Weatherization Program may receive from a Community Action Agency administering the rebate program on behalf of the Energy Office a cash rebate for installing qualifying energy conservation measures, subject to the following limitations:

(A) A rebate for a fuel oil furnace or burner shall not exceed the lesser of 50% of the costs or \$150, unless the Office determines that rebate applications are likely to exceed the funding allocated in which case the Office may reduce the allowable rebate to not exceed \$100 for any applications received no sooner than 30 calendar days after that determination.

(B) A rebate for storm windows, storm doors, double pane windows, or double pane sliding doors shall not exceed the lesser of 50% of the costs or \$150, unless the Office determines that rebate applications are likely to exceed the funding allocated in which case the Office may reduce the allowable rebate to not exceed \$100 for any applications received no sooner than 30 calendar days after that determination.

(C) A rebate for insulated doors shall not exceed the lesser of 50% of the costs or \$150.

(D) A rebate for a blower-door test performed by a contractor certified by the Energy Office to assess the potential energy efficiency and other benefits from whole house air sealing and duct sealing shall not exceed the lesser of 100% of the costs or \$100.

(E) The rebate for all other energy conservation measures shall not exceed the lesser of 50% of the costs or \$1,000.

(F) The total rebate received by a household for energy conservation measures subject to these rules shall not exceed \$1,000.

(b) Any household may receive a cash rebate for installing qualifying energy conservation measures, subject to the following limitations:

(A) A rebate for a fuel oil furnace or burner shall not exceed the lesser of 25% of the costs or \$150, unless the Office determines that rebate applications are likely to exceed the funding allocated in which case the Office may reduce the allowable rebate to not exceed \$100 for any applications received no sooner than 30 calendar days after that determination.

(B) A rebate for storm windows, storm doors, double pane windows, or double pane sliding doors shall not exceed the lesser of 25% of the costs or \$150, unless the Office determines that rebate applications are likely to exceed the funding allocated in which case the Office may reduce the allowable rebate to not exceed \$100 for any applications received no sooner than 30 calendar days after that determination.

(C) A rebate for insulated doors shall not exceed the lesser of 25% of the costs or \$150.

(D) A rebate for a blower-door test performed by a contractor certified by the Energy Office to assess the potential energy efficiency and other benefits from whole house air sealing and duct sealing shall not exceed the lesser of 100% of the costs or \$100.

(E) The rebate for all other energy conservation measures shall not exceed the lesser of 25% of the costs or \$500.

(F) The total rebate received by a household for energy conservation measures subject to these rules shall not exceed \$500.

(2) The Energy Office may allocate additional funding for a pilot program to be used in lieu of a rebate to write-down the interest rate of a loan issued through or administered by a public agency to finance installation of qualifying energy conservation measures. The cost of the interest write-down may not exceed the rebate for which the household would otherwise have qualified.

(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 & 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0030

#### Application Procedure

(1) Energy audit required prior to rebate payment:

(a) An applicant for a rebate must submit to the Energy Office 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(10), subject to the limitations of OAR 330-061-0015 and 330-061-0025.

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

(3) 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.

(4) 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.

(5) 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 if requested by the Energy Office 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 that a new flame retention burner or fuel oil furnace for which a rebate is requested meets or exceeds the required steady state efficiency;

(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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 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 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0035

#### Payment of Rebate

After receipt of all documents and certificates required by OAR 330-061-0030, the Energy Office shall issue a two-party check in the allowable rebate amount to the applicant and the applicant's designated contractor or supplier. The Energy Office 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 Energy Office may issue a single-party check to the applicant. The Energy Office may also, at its discretion, issue a single-party check to the contractor. The Energy Office may issue checks to Community Action Agencies administering the rebate program on behalf of the Energy Office.

Stat. Auth.: ORS 469.040 & 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0040

#### Post-Installation Inspections

The Energy Office may conduct post-installation inspections as provided in OAR 330-060-0095.

Stat. Auth.: ORS 469.040 & 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 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0045

#### 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 Energy Office 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 Energy Office and at a reasonable time shall constitute grounds for the Energy Office to recover the full rebate amount from the recipient.

(3) Penalties in these 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0050

#### 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; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04

### 330-061-0060

#### Applicability of Rules

These rules shall apply to all weatherization rebates.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

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

## 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, 469 & 470

Stats. Implemented: ORS 469

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

### 330-062-0010

#### Definitions

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

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

(2) "Dwelling" shall mean real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in 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, 469 & 470

Stats. Implemented: ORS 469

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

### 330-062-0015

#### Audit Recommendation

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

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

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

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469

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

### 330-062-0020

#### Recommendation Criteria

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

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

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

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

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469

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

### 330-062-0025

#### Advisory Energy Conservation Standards

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

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

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

(i) Caulking or other sealing material should be added to all gaps around ceiling penetrations<sup>6</sup>, 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<sup>13</sup>, 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<sup>13</sup>, 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 spaces<sup>5</sup>:

(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<sup>12</sup> 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<sup>12</sup> insulation should be added.

(c) For concrete floor slabs on grade to prevent heat loss due to thermal conduction: If no existing insulation: R-4<sup>1</sup> 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 penetrations<sup>6</sup>; and

(ii) Cover plate gaskets should be added to all electrical outlets in walls<sup>6</sup>; 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<sup>38</sup> insulation should be injected into wall cavity; or

(ii) If existing wall is an uninsulated knee wall adjacent to accessible unconditioned rafter space: R-11 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 frames<sup>6</sup>; and

(ii) Weatherstripping should be added around all operable sash<sup>6</sup>; 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 glass<sup>4</sup> 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 frame<sup>6</sup>; 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 added<sup>9</sup>.

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

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

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

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

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

(a) For a water heater tank in conditioned or unconditioned spaces to reduce heat loss due to thermal conduction: The water heater thermostat(s) should be set back to 120-140° F.<sup>6</sup>; 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 uncovered<sup>6</sup>; 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 floor<sup>7</sup>; 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 uncovered<sup>6</sup>.

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

**Footnotes:**

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 469.155

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

**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, 469 & 470

Stats. Implemented: ORS 470.080

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

**330-062-0035**

**Weatherization Standards for Small Scale Local Energy Project Loans**

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

Stat. Auth.: ORS 407, 469 & 470

Stats. Implemented: ORS 470.080

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

**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, 469 & 470

Stats. Implemented: ORS 407.055

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

**330-062-0045**

**Oregon Department of Veterans' Affairs Minimum Weatherization Standards**

(1) The Director of the Oregon Department of Energy finds that as of July 1, 1982, the current minimum weatherization standards for approval of a loan by the Oregon Department of Veterans' Affairs (Department of Commerce OAR 814-005-0005 through 814-005-0030) are compatible with the Advisory Energy Conservation Standards adopted July 1, 1982, under 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, 469 & 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 & 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 or shutters with a tight seal on all four sides, which have an R-value of at least 3, and if foam plastic, a maximum flame-spread rating of not more than 75.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

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

**330-065-0015****Qualifying Mobile Home Weatherization**

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

- (1) Caulking;
- (2) Weatherstripping;
- (3) Floor insulation and materials necessary to support the insulation;
- (4) Ground cover in crawl spaces;
- (5) Insulation of ceilings or attics, including insulating materials installed on the exterior of flat roofs (but excluding any fire- or weather-proofing or other material installed on the exterior of the insulating materials and serving as roofing material);
- (6) Timed thermostats;

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

(8) Storm or thermal windows;

(9) Storm or thermal doors;

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

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

**330-065-0020****Items Not Qualifying as Weatherization Materials**

- (1) Siding;
- (2) Roofing;
- (3) Carpeting;
- (4) Microwave ovens and other appliances;
- (5) Dimmer switches;
- (6) Heat pumps;
- (7) Wood- or sawdust-burning stoves, heaters, and furnaces;
- (8) Ceiling to floor air circulators;
- (9) Thermal draperies and awnings;
- (10) Radiator temperature control valves;
- (11) Furnace tune-up and cleaning;
- (12) Appliance electricity consumption meters;
- (13) New gasketing for refrigerators, freezers and ovens;
- (14) Automatic water heater schedulers;
- (15) Solar screens and solar control films;
- (16) Power ventilators;
- (17) Wall insulation for mobile homes;
- (18) Fireplace modifications including: outside air inlets, glass screens, heat exchangers, special grates, and permanent fireplace inserts manufactured specifically for fireplaces;
- (19) Transient voltage surge suppression devices;
- (20) Any materials installed in new construction, additions to existing structures, or remodeling which adds living space;
- (21) Flue heat recovery devices for use on wood-burning equipment; and
- (22) Any insulation, other than on a water heater, water pipe or heating duct, not installed between a conditioned area and an unconditioned area.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

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

**330-065-0025****Review of Proposed Weatherization Materials**

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

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

- (a) Cost;
- (b) Product literature;
- (c) Photos, schematic drawings and/or product samples;
- (d) Copy of listing certificate from UL, AGA, ICBO or other recognized standard-setting organization, where applicable; the certification shall be for the device as a whole and not simply for components;
- (e) Test data, including R-values where applicable, from an independent laboratory documenting and quantifying energy savings;
- (f) Name, address, and telephone number of the manufacturer; and
- (g) Name, address, and telephone number of the person(s) submitting the request for review.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

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

### 330-065-0030

#### Criteria for Review of Proposed Weatherization Materials

(1) In order to qualify as an addition to the list of weatherization items in OAR 330-065-0010 and 330-065-0015, the proposed item shall:

- (a) Be primarily designed to improve the efficiency of space heating and energy utilization of a dwelling;
  - (b) Where applicable, be listed by Underwriters Laboratory, American Gas Association, International Conference of Building Officials or other recognized standard-setting organization;
  - (c) Actually and substantially improve the efficiency of space heating and energy utilization. Independent laboratory test data or acceptable methods of calculation must be provided to demonstrate energy savings;
  - (d) Involve replacement of retrofit rather than maintenance or repair;
  - (e) Conserve more than nominal amounts of energy and/or be reasonably cost-effective; and
  - (f) Not involve substitution of one form of energy for another.
- (2) Review of an item shall also take into consideration whether the item will:
- (a) Be reasonably considered a fixture attached to the dwelling;
  - (b) Operate to save energy independent of activation by the homeowner; and
  - (c) Be consistent with the statutory list of qualifying weatherization materials.

Stat. Auth.: ORS 316 & 469

Stats. Implemented: ORS 316.088

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

## DIVISION 66

### COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAMS FOR PUBLICLY OWNED UTILITIES IN OREGON

### 330-066-0005

#### Purpose, Statutory Authorization, Policy

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 10-1982, f. & ef. 11-1-82

### 330-066-0010

#### Definitions

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

(1) "Automatic Control Systems" means devices which regulate lighting, heating, ventilating, air conditioning, or other energy loads automatically based on time, temperature, humidity, pressure and/or load limiting measures. Equipment associated with automatic control systems includes, but is not limited to: automatic dampers, wiring, relays, sensors, valves, microprocessors, and other equipment which produces a reduction in energy consumption or demand.

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

(a) Any building which provides facilities or shelter for public assembly, or which is used for educational, office or institutional purposes.

(b) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise.

(c) Any portion of an industrial plant building used primarily as office space.

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

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

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

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

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

(7) "Commercial Energy Specialist" (or "Level II Auditor") means a person who is qualified through training or experience and who has knowledge and abilities of a qualified commercial energy auditor and can perform calculations: Of energy use analysis; of energy efficiencies of HVAC, lighting, plumbing, water, steam, control or electrical systems; and can prepare technical reports of net energy savings for energy conservation measures.

(8) "Director" means the Director of the Oregon Department of Energy.

(9) "Energy Conservation Measure" means a measure primarily designed to improve the efficiency of energy use in a commercial building, "energy conservation measures" as further defined in these rules include, but are not limited to: Improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(10) "Energy Use Analysis" means an estimate of energy consumed by various systems and components of a commercial building including, but not limited to: the building envelope, lighting, HVAC and water heating system.

(11) "Envelope Weatherization" includes, but is not limited to: insulation for ceilings, walls, floors, ducts or pipes, and storm or thermal windows and doors.

(12) "Furnace and Boiler Efficiency Improvements" include, but are not limited to: Replacement burners, furnaces, or boilers of the same energy fuel type which because of their design reduce energy use due to an increase in combustion efficiency, improved heat generation or reduced heat losses; automatic vent dampers; automatic ignition devices; replacement filters; and cleaning and combustion efficiency adjustments.

(13) "Heat Recovery Devices" means those devices or equipment which recover heat energy from commercial applications by capturing, storing, transferring and using the heat content of liquid or gaseous streams to reduce the need for additional energy resources. Such heat recovery devices include, but are not limited to: Recuperators, heat wheels, regenerators, heat exchangers, and economizers.

(14) "Heating, Ventilating and Air Conditioning (HVAC) System Modifications" include, but are not limited to: Improving controls for utilization of outside air, adjusting temperature and humidity of supply

air, reducing energy use of reheat systems and exhaust hoods, replace-  
ment 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 switch-  
ing, 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 main-  
tenance 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 elec-  
tricity 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 commer-  
cial energy conservation services program which meets or exceeds the  
requirements of these rules is offered to all commercial building cus-  
tomers 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 com-  
mercial 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 obtain-  
ing 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 commer-  
cial energy auditors, specialists or engineers or architects available to  
provide energy audits for commercial building systems and compo-  
nents 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 mod-  
ifications, 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 exper-  
tise. 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 ana-  
lyzing energy use in commercial buildings and for calculating potential  
energy savings, and designing energy audit report forms for recom-  
mendations 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 en-  
ergy 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 peri-  
od of three years or less. Commercial energy audits described in sec-  
tion (7) of this rule shall include at least all energy conservation mea-  
sures 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 estimat-  
ed 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 conser-  
vation 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 pro-  
gram 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 commer-  
cial 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 pri-  
marily electricity or interacting with the electric system. As an alterna-  
tive, 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 renew-  
able 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 cus-  
tomer 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469.165  
Stats. Implemented: ORS 469  
Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0015

#### Grantees Must Comply with Other Rules and Laws

TAS in part paid for by the Institutional Conservation Program (ICP) must comply with all local, state and federal rules, regulations, ordinances, statutes, codes, and standards. These rules do not alter the duty of the grantee to comply with all other rules and laws that apply.

Stat. Auth.: ORS 469.040 & 469.165  
Stats. Implemented: ORS 469  
Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0020

#### Definitions

(1) "Act," as used in this rule, means the Energy Policy and Conservation Act, Public Law 94-163, 89 Stat. 871 (42 U.S.C. 6201) as amended by Title III of the National Energy Conservation Policy Act, Public Law 95-619, 92 Stat. 3238 (42 U.S.C. 6371) and the State Energy Efficiency Programs Improvement Act of 1990, Public Law 101-440, 104 Stat. 1011.

(2) "Building" means any structure, including a group of closely situated structural units that are centrally metered and are served by a central utility plant, or eligible portion thereof, which:

- (a) Was built on or before May 1, 1989;
- (b) Is owned and occupied by the eligible institution;
- (c) Includes a heating or cooling system or both.

(3) "Built" means the date an occupancy permit for a building was issued. It also means the date the building is ready to be occupied.

(4) "Civil Rights" means civil rights responsibilities of applicants and grantees as stated in 10 CFR 1040.

(5) "Complex" means a closely situated group of buildings on a contiguous site such as a school or college campus or multi-building hospital.

(6) "Coordinating Agency" means a state or any public or private nonprofit (PNP) organization legally set up to act as the agent for the institution.

(7) "DOE" or "US DOE" means the U.S. Department of Energy.

(8) "Eligible Institution" means a public or PNP school, hospital or coordinating agency, as defined in Subpart A, 10 CFR 455.2 in the February 19, 1993, Federal Register.

(9) "Energy Conservation Measure (ECM)" means to install or change an installation in a building and thereby reduce energy use or

allow the use of a renewable energy source. ECMs in this program are defined in **Subpart A, 10 CFR 455.2** in the **February 19, 1993, Federal Register**.

(10) "Energy Use Evaluation (EUE)" means the survey of a building or complex by a utility, a contractor, or an institution representative familiar with the building and its systems done in accord with **Subpart B of 10 CFR Part 455.20** in the **February 19, 1993, Federal Register** and ODOE requirements.

(11) "Grantee" means the grant recipient.

(12) "Hardship" or "Severe Hardship Funding" means a grant in excess of the 50 percent federal share, but not more than a 90 percent federal share for a TAS. To qualify for hardship funds, an institution must submit requested hardship information to ODOE. ODOE will notify the institution about hardship eligibility.

(13) "Heating or Cooling System" means any mechanical system for heating, cooling or ventilating areas of a building. This includes a system of through-the-wall air conditioning units.

(14) "Hospital" means a public or PNP hospital, other than one giving mainly care and housing to people who cannot care for themselves. It must be authorized to provide hospital services under the laws of the state.

(15) "Load Management System" means a device(s) which is designed to shift energy use to hours of low demand in order to reduce energy costs and which does not cause more energy to be used than was used before their installation.

(16) "Local Education Agency" means a public or PNP board of education or other authority legally set up within, or recognized by, the state to administer a group of schools.

(17) "Maintenance" means action taken in a building to assure that equipment and energy-using systems work properly and efficiently.

(18) "ODOE" means the Oregon Department of Energy.

(19) "On-Site Assessment" means to:

(a) Assess the building(s) energy-using systems and make recommendations to replace, upgrade, or repair the systems; and

(b) Assess the training needs of maintenance staff and make recommendations as to who should be trained and in what areas.

(20) "Operating and Maintenance Changes (O&Ms)" means changes in the maintenance and operation of a building and its equipment and energy using systems to reduce its energy use.

(21) "Owned" or "Owns" means a property interest, including a leasehold interest, which is or shall become, a fee simple title in a building or complex.

(22) "Program Assistance" means a program or activity managed by the state and designed to provide support to eligible institutions to help ensure the effectiveness of energy conservation programs carried out consistent with this part, including such relevant activities as:

(a) Evaluating the services of consulting engineers;

(b) Training school or hospital personnel to perform energy accounting;

(c) Monitoring the implementation and operation of energy conservation measures; and

(d) Aiding in the procurement of cost effective energy conservation projects.

(23) "Public or PNP Institution" means an institution owned and occupied by:

(a) The state, a political subdivision of the state or an agency of either; or

(b) A school or hospital which is exempt from income tax under Section 501(c)(3) of the **Internal Revenue Code of 1954**.

(24) "School" means a public or PNP institution which provides, and legally can provide, primary, secondary, post-secondary or vocational education on a day or residential basis as defined in **10 CFR 455.2** in the **February 19, 1993, Federal Register**.

(25) "State" means the State of Oregon.

(26) "State Hospital Facilities Agency" means the State Department of Human Resources, Office of Health Policy.

(27) "State Plan" means the current "State Plan for Implementing the ICP" as prepared by ODOE and approved by US DOE.

(28) "State School Facilities Agency" means the Oregon Department of Education or the Oregon State System of Higher Education.

(29) "TA Analyst (TAA)" means a registered engineer or engineer/architect team or other individuals with knowledge, experience, or expertise in conducting energy audits and studies of public buildings

and facilities. This includes, but is not limited to, an understanding of HVAC systems, lighting standards and equipment, weatherization, heat recovery, renewables, and HVAC systems.

(30) "Technical Assistance Study (TAS)" means a report based on an on-site analysis of the building which meets the requirements of ODOE's TAS format. This includes, but is not limited to, an identification of cost-effective operation and maintenance changes and energy conservation measures, their costs, and estimated energy savings.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0023

#### Program for Technical and Program Assistance

As allowed under **Subparts H and K, 10 CFR 455** in the **February 19, 1993, Federal Register**, ODOE will operate a program to provide technical and program assistance through the following services:

(1) Resources accounting program and training;

(2) On-site assessments;

(3) Building operator training, including trouble shooting and repair;

(4) Detailed energy studies;

(5) Assistance to secure financing of identified energy conservation measures; and

(6) Training on how to operate and maintain installed measures.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0025

#### Administration of Grants

(1) Technical Assistance (TA) grantees under this program shall comply with all laws, rules and procedures. These include, but are not limited to, the ICP rules in the **February 19, 1993, Federal Register**, **Subpart A, 10 CFR 455.3**.

(2) TA grantees shall comply with any new rules and laws that US DOE or ODOE prescribe.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0030

#### Recordkeeping

TA grantees that receive federal dollars under this program shall make and retain records required by US DOE and ODOE. These include records which fully disclose:

(1) The amount of the grant and how it was spent;

(2) The total cost of the activities done under the grant;

(3) The source and amount of any funds not supplied by US DOE;

(4) Three years of utility data after the TAS is completed; and

(5) Any information which US DOE and ODOE needs to protect the interest of the United States and the state. US DOE and ODOE shall have access to any documents or records which are related to any grant given under this program.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0035

#### Cancellation of Grants

ODOE may cancel a TA grant if the grantee fails to comply with the terms and conditions set forth in the application, ODOE Partnership Agreement, and in **10 CFR 455**, as amended in the **February 19, 1993, Federal Register**. ODOE may cancel a grant if the grantee fails to comply with civil rights requirements. A decision to cancel a grant may be appealed to US DOE.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0045****TA Programs for Schools and Hospitals**

(1) This section contains the rules under which ODOE shall give grants to schools and hospitals for TASs done in their buildings.

(2) To be eligible to receive TA grants, an applicant must:

(a) Be a school or hospital as defined in OAR 330-067-0020 and

**10 CFR 455.2 in the February 19, 1993, Federal Register;**

(b) Be in the state;

(c) Submit an EUE for the building for which a TA grant is requested. The EUE must have been done after the most recent construction, remodeling, or use change which changed energy use in the building. If the EUE is 12 months old or older when the request for TA is received by ODOE, ODOE may require an EUE update;

(d) Assure that it will do all O&Ms from the on-site assessment or request ODOE approval for a waiver;

(e) Assure that it will install all ECMs identified in the on-site assessment and the TAS with a combined simple payback of five years or provide in writing a good reason why a particular measure should not be installed;

(f) Submit an EUE that meets the rules set by ODOE.

(3) A TAS shall be done by an ODOE contractor or a TAA who is qualified under the State Plan and under OAR 330-067-0020. The TAA must consider all feasible O&Ms and feasible ECMs for a building. A TAS shall give the costs of, and the energy and cost savings likely to result from doing O&Ms. A TAS shall also give a detailed engineering analysis showing the cost of, and the energy and cost savings likely to result from installing each ECM that shows a good potential for saving energy.

(4) The TAA shall prepare and submit a report which conforms to ODOE's current TAS format and this rule.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0055****Requests for TA Grants**

Institutions shall submit a completed Request for Services Form. If ODOE determines the institution is eligible for a TA grant, the institution shall:

(1) Complete and submit an EUE for each building for which a TA grant is requested;

(2) Complete and submit an ODOE Partnership Agreement; and

(3) Any other information required by ODOE or which the applicant wants considered, such as a hardship request.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0060****Applicant Certifications**

TA grant applicants shall certify that they:

(1) Are eligible for TA.

(2) Have met the rules set forth in OAR 330-067-0055.

(3) Will do all O&Ms from the on-site assessment or TAS. If the institution does not intend to do all the Q&Ms, the applicant shall request ODOE approval in writing for a waiver.

(4) If an institution contracts with a TAA, it will obtain from the TAA, before the TAA does any work on a TAS, a signed statement that certifies that the TAA:

(a) Has no conflicting financial interests; and

(b) Is qualified to do the duties of TAA in accord with the rules set by US DOE and the State Plan.

(5) Will commit to doing projects.

(6) Will submit all required reports.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0067****Grant Applications for State Program for Technical and Program Assistance**

(1) ODOE will defray the costs of the administration of the special programs for technical and program assistance by requesting a grant

from US DOE. US DOE may make a grant award to a state for up to 100 percent of the funds allocated to the state for the grant program cycle provided the state meets the requirements described in **10 CFR 455.121 in the February 19, 1993, Federal Register.** Grants may:

(a) Not exceed more than 50 percent of the cost of the technical assistance programs;

(b) Be made for up to 100 percent of the program assistance expenses.

(2) This application shall conform to **Subpart K, 10 CFR 121 in the February 19, 1993, Federal Register.**

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

Stat.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0070****Grantee Records and Reports**

(1) Each grantee shall keep all the records and submit all reports required by **Subpart A, 10 CFR 455.4** and **Subpart J, 10 CFR 445.113, in the February 19, 1993, Federal Register.**

(2) ODOE shall forward on all grantee reports to US DOE.

(3) For state technical and program assistance grants, ODOE shall submit reports to US DOE as required in **Subpart K, 10 CFR 455.122 and 123, in the February 19, 1993, Federal Register.**

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0075****State Evaluation of TA Grant Requests**

EUEs received by ODOE are reviewed to determine eligibility. Those that comply with **Subparts E and L of 10 CFR 455**, as amended in the **February 19, 1993, Federal Register**, section (2) of this rule, the State Plan and other laws and rules, will be eligible for a TA grant.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0080****State Review of TA Grant Requests**

(1) All eligible TA requests received by ODOE will be reviewed in the manner stated in the State Plan.

(2) Within the limits of available funds, applications will be funded on a first-come, first-served basis.

(3) Up to ten percent of the state's allocation in each cycle will be available for hardship grants. Hardship grants will be available to institutions based on their need or which cannot provide their 50 percent matching share. These funds will be available only to the extent needed to allow such institutions to do the project under the program:

(a) ODOE shall recommend funds for hardship grants in the manner stated in the State Plan;

(b) Applications for hardship funding shall be judged by ODOE to assess the relative need among applicants. The minimum amount of additional US DOE funds needed by the applicant to do the project under the ICP will be set by ODOE.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

**330-067-0090****State Liaison, Monitoring and Reporting**

ODOE shall:

(1) Notify institutions and coordinating agencies of any changes to the State Plan;

(2) Notify each applicant if its application will receive funding. If the application will not be funded, ODOE will tell the applicant why;

(3) Monitor projects funded by ICP grants. ODOE will notify US DOE of any failure by grantees to comply with ICP rules and laws; and

(4) Report as required by **Subparts J, K, and L of 10 CFR 455, in the February 19, 1993, Federal Register.**

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0100

#### TA Grant Awards

(1) ODOE may award grants to schools and hospitals for up to 50 percent of the cost of doing TASs for eligible buildings.

(2) ODOE may award up to ten percent of the state's total allocation to schools and hospitals in cases of severe hardship.

(3) TA grant awards will be made by ODOE in accord with **Subpart M, 10 CFR 455.144**, in the **February 19, 1993, Federal Register** and approved State Plan.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 2-1990, f. & cert. ef. 4-19-90 (and corrected 6-27-91); DOE 3-1993, f. & cert. ef. 8-23-93

### 330-067-0110

#### State Plan Amendments

(1) ODOE's State Plan for ICP includes all the contents set forth in **Subpart B, 10 CFR 455.20**, in the **February 19, 1993, Federal Register**.

(2) Any amendments to the State Plan must be submitted to US DOE for its review and approval. With US DOE's consent, ODOE may submit a new or amended plan at any time.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 4-1985, f. 4-19-85, ef. 4-22-85; DOE 8-1985, f. & ef. 12-30-85; DOE 3-1993, f. & cert. ef. 8-23-93

## DIVISION 68

### INSTITUTIONAL BUILDINGS PROGRAM

### 330-068-0005

#### Purpose

The purpose of these rules is to provide procedures, standards and criteria for administration by the Oregon Department of Energy of a contract agreement with the Bonneville Power Administration to acquire electricity energy savings through subcontracts with schools, hospitals, public care, government buildings and eligible facilities other than buildings.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0010

#### Definitions

(1) "Bonneville" means the Bonneville Power Administration, an agency of the U.S. Department of Energy.

(2) "Building" means any structure in which the efficiency of electric energy use can be improved through the installation of an energy conservation measure (ECM), and which was completed by October 28, 1982, and which is owned and operated by an Institution.

(3) "Care Institution" means:

(a) An institution for long-term care, a rehabilitation institution, or a health center, as described in Section 1633 of the Public Health Service Act (**42 U.S.C. 300s-3; 88 Stat. 2270**); or

(b) A residential child care center, other than a foster home, which is primarily intended to provide fulltime residential care with an average length of stay of at least 30 days for at least ten minor persons who are in the care of such institution as a result of a finding of abandonment or neglect, or of being persons in need of treatment or supervision.

(4) "Department" means the Oregon Department of Energy.

(5) "Administrative Costs" are those allowed under **OMB Circular A-87, "Cost Principles for State and Local Governments,"** as amended.

(6) "Effective Date" means October 28, 1982.

(7) "Energy Audit" (EA) means the survey of an Institution by an energy auditor, which is conducted according to standards established by Bonneville, and which provides a description of the energy-using characteristics of the buildings and identifies O&M activities.

(8) "Energy Auditor" means a representative of an institution or a licensed engineer or architect who is certified by the Department to perform energy audits under this program.

(9) "Energy Conservation Measure" (ECM) means an installation of material or equipment or the provision of services for weatherization, water heating, space heating or cooling, ventilation, lighting, food preparation, pumps and motors, automatic energy control, and energy recovery resulting in improved efficiency of electric energy use. An ECM is also a direct application renewable resource.

(10) "Facility Other Than Buildings" means an installation such as, but not limited to, a:

(a) Sewage treatment plant;

(b) Potable water treatment and pumping system;

(c) Fish hatchery;

(d) Parking structure; and

(e) Stadium or arena, which was completed by October 28, 1982 and which is owned and operated by an institution.

(11) "Hospital" means an institution which is a general or specialized hospital, other than a hospital furnishing primarily domiciliary care, and which is duly authorized to provide hospital services under the laws of the state in which it is located.

(12) "Initial Budget Year" means the period starting with the effective date and ending with the end of the federal fiscal year.

(13) "Institution" means a nonprofit institution or a public institution located within an operating area as listed in rule 330-068-0080.

(14) "Nonprofit Institution" means a hospital, care institution, or school owned and operated by an entity which is exempt from income tax under **Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954**, as amended.

(15) "Occupied Building" (for buildings located within facilities) means an enclosed structure in which people are located for more than seven hours per week, and which contains an operative heating and/or cooling system used for human comfort and/or for process environmental control.

(16) "Operation and Maintenance" (O&M) means the operation of, or scheduled maintenance, repair and adjustment of, equipment or components of buildings to assure improved energy efficiency.

(17) "Program" means the Institutional Buildings Program funded by Bonneville through an agreement with the Department as may be periodically amended.

(18) "Project" means one or more ECMs, defined by the TAS, which are submitted by an institution to the Department for funding.

(19) "Public Institution" means an institution owned and operated by:

(a) The federal government;

(b) A state;

(c) A political subdivision of a state empowered to levy taxes;

(d) A recognized governing body of an Indian tribe; or

(e) A body delegated general government functions under state or local legislative authority.

(20) "School" means an institution which provides, and is legally authorized to provide, elementary, secondary, post-secondary, or vocational education on a day or residential basis.

(21) "Technical Assistance Study" (TAS) means a study which is performed according to standards provided by Bonneville which analyzes the potential energy savings in a building and includes recommendations for accomplishing such energy savings through ECMs.

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

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0015

#### Availability

The program is available to institutions for buildings and facilities other than buildings located in the operating area as listed in OAR 330-068-0080.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0020

#### Program Procedures

(1) Energy auditor training: The Department shall provide to representatives of institutions (except for facilities other than buildings),

energy auditor training or orientation which meets guidelines and standards provided by Bonneville. The Department shall certify individuals as energy auditors in accordance with procedures approved by Bonneville.

(2) Energy audit: The Department shall provide, at no direct cost to an institution, a list of energy auditors and model forms for use in conducting energy audits (for buildings and occupied buildings only).

(3) Technical assistance studies (TAS):

(a) The Department shall solicit, evaluate, rank, and select for funding applications for TASs. Ranking shall be in accordance with OAR 330-068-0085(1). The Department shall notify applicants in writing whether or not they have been selected for funding;

(b) The Department shall ensure that the requirements in paragraphs (A), through (E) of this subsection, are met before disbursing funds for a TAS (for buildings and occupied buildings only):

(A) An energy audit has been completed by an ODOE certified energy auditor;

(B) All O&M activities identified in the energy audit have been implemented by the institution, except those which the Department determines, in accordance with guidelines and environmental restrictions provided by Bonneville, need not be implemented;

(C) The institution has solicited qualifications of licensed engineers or licensed architect-engineer teams for accomplishing the TAS before choosing a licensed engineer or licensed architect-engineer team, unless otherwise agreed to by the Department and such Institution;

(D) The TAS has been performed by a licensed engineer or licensed architect-engineer team, and has been reviewed and approved by the Department;

(E) The institution provides the Department with proof of payment to the licensed engineer or architect-engineer team of all agreed upon costs for performing the technical assistance study.

(c) The Department shall ensure that the requirements in paragraphs (A) through (D) of this subsection are met before disbursing funds for a TAS (for facilities other than buildings):

(A) All O&M activities identified in the facilities TAS have been implemented by the institution, except those which the Department determines, in accordance with guidelines and environmental restrictions provided by Bonneville, need not be implemented;

(B) The institution has solicited qualifications of licensed engineers or licensed architect-engineer teams, with at least one year of documented experience in the design or operation of the particular facility other than a building being studied, for accomplishing the TAS before choosing a licensed engineer or licensed architect-engineer team, unless otherwise agreed to by the Department and such institution;

(C) The TAS has been performed by a licensed engineer or licensed architect-engineer team and has been reviewed and approved by the Department;

(D) The Institution provides the Department with proof of payment to a licensed engineer or architect-engineer team of all agreed upon costs for performing the technical assistance study.

(d) The Department shall pay an Institution 50 percent of the amount determined in accordance with the TAS payment formula in rule 330-068-0090, upon completion of the TAS in accordance with the above requirements. The Department shall pay the institution the remaining 50 percent of the TAS amount when the conditions in either of paragraphs (A) or (B) of this subsection are met:

(A) The Institution installs, at its own expense, ECMs recommended in the TAS, the total cost of which is at least equal to the remaining 50 percent of the TAS amount;

(B) The institution agrees in writing to install, upon approval of funding, ECMs recommended in the TAS, the total cost of which is at least equal to the remaining 50 percent of the TAS amount. If an institution which has received the remaining 50 percent of the TAS amount, or any portion thereof, does not install such ECMs upon approval of funding, the Department shall require the institution to return the payment for the remaining 50 percent of such institution's TAS amount, or any portion thereof received, to the Department;

(C) The Department shall not pay the institution the total remaining 50 percent of its TAS if one of either condition in paragraph (A) or (B) of this subsection is not satisfied and if:

(i) The TAS does not recommend any eligible electrical ECMs even though its TAS does satisfy the requirements as stated in subsections (3)(b) and (c) of this rule;

(ii) The total cost of the recommended eligible electrical ECMs does not equal the remaining 50 percent of the TAS amount, even though the TAS does satisfy the requirements as stated in subsections (3)(b) and (c) of this rule.

(4) Energy conservation measures (ECMs):

(a) The Department shall solicit, evaluate, and select Projects for funding at least once but not more than four times annually. The Department shall notify applicants in writing whether or not they have been selected for funding;

(b) The Department shall comply with the procedures in paragraphs (A) through (E) of this subsection prior to approving a Project application for funding:

(A) The Department shall provide a licensed professional engineer, other than the engineer or architect-engineer team who performed the TAS, to review and certify that energy savings and project cost estimates of ECMs recommended in the TAS were calculated using standard engineering practices, and that only ECMs recommended in a TAS are included in a project;

(B) The Department shall rank and select for funding projects in accordance with the ranking formula for ECM's found in OAR 330-068-0085(2)(a), if requests for project funding exceed the portion of the approved budget approved for ECMs;

(C) The Department shall ensure that the following conditions will not occur as a result of project installation:

(i) Installation of low-pressure sodium vapor lights indoors;

(ii) Use of toxic transfer fluids in solar heating systems;

(iii) Use of high pressure sodium vapor lights indoors except for:

(I) General lighting in warehouses with low visual demand activities and short duration occupancies; and for

(II) High visual demand lighting in high bay areas, as defined by IES Lighting Handbook, where the mixture of HPS to incandescent, fluorescent, or metal halide fixtures is at least 1-to-1 with similar lumen output from both types of fixtures and the HPS fixtures are staggered on a multiple phase circuitry.

(iv) Removal or disturbance of previously installed asbestos;

(v) Installation of Urea Formaldehyde Foam Insulation (UFFI).

(D) The Department shall ensure that Bonneville funds are not used to pay for ECM's which Bonneville has determined are environmentally restricted;

(E) The Department shall obtain from the institution a written agreement to indemnify Bonneville and hold it harmless from and against all claims and liability and expenses, including reasonable attorneys fees, arising from the negligent or other tortious acts or omissions of the Institution's officers, agents, or employees.

(c) The Department shall comply with the procedures in paragraphs (A) through (D) of this subsection, prior to disbursing funds to institutions for completed projects:

(A) For projects that require the preparation of design documents by, or have had design documents prepared by a licensed professional engineer, a licensed architect or licensed architect-engineer team, the Department shall provide a licensed professional engineer, other than the engineer, architect or architect-engineer team who prepared the design documents, to review and verify prior to bid release, that the project design has been prepared in accordance with standard engineering practice and can reasonably be expected to produce the energy savings identified for the project in the TAS;

(B) The Department shall ensure that the institution has solicited three competitive bids for ECM installations unless otherwise agreed to by the Department and the institution, and has chosen an installer on the basis of price and capability;

(C) The Department shall inspect each project for proper and complete installation of ECMs and confirm such installation in writing in accordance with the following:

(i) Projects that require the preparation of design documents by, or have had design documents prepared by a licensed professional engineer, a licensed architect or licensed architect-engineer team (except that projects involving the installation of insulation, windows, doors and lighting will not require inspection by a professional engineer), shall be inspected by a licensed professional engineer other than a licensed professional engineer, licensed architect or licensed architect-engineer team installing ECMs as part of such project; and

(ii) Projects that do not require professional design work, or any project involving the installation of insulation, windows, doors and lighting, shall be inspected by an inspector with qualifications approved by Bonneville.

(D) The Department shall obtain from the institution proof of final payment of all agreed upon costs for ECM installations.

(d) The Department shall pay an institution in accordance with OAR 330-068-0090 for installed ECMs.

(5) Performance bond. A performance bond shall be furnished and maintained in the amount of 100 percent of the project amount when the project amount exceeds \$10,000 and when the Department has authorized progress payments for such project.

(6) The Department may limit the amount of TAS or ECM funding any single institution may receive, so long as such limitations do not result in unreasonable discrimination. Eligible institutions shall be notified of funding limitations at the beginning of each program cycle.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0025

#### Obligated Measures

(1) The Department shall contract with an institution for TAS or ECM projects which meet the requirement of OAR 330-068-0020. The Department shall prepare and submit to Bonneville a request in the form of a table for each additional measure or group of measures for which obligations are created which extends past the end of the federal fiscal year. Each such table shall be prepared in accordance with procedures and format provided by Bonneville, and signed by the Department's authorized contracting officer. Upon execution by Bonneville's authorized contracting officer, such table shall become effective as of the date specified therein, provided such table is received by Bonneville on or before a date to be determined annually by Bonneville.

(2) Each table shall contain the following information, as appropriate:

(a) Name and address of:

(A) The building, or the facility other than a building, in which a measure or measures are being installed or completed; and

(B) The institution owning and operating the building or the facility other than a building;

(b) The estimated cost of ECMs comprising the project which are approved by the Department for funding;

(c) The estimated first year kilowatt hour savings;

(d) The estimated first year energy cost savings;

(e) Related Department administrative costs if applicable; and

(f) The date certain of installation or completion of such measure or measures and an estimated payment schedule for progress payments, if applicable.

(3) Upon execution by both parties of each table, the institution shall be obligated for the completion of the measure or measures in such table no later than the date certain established by such table, or an extension thereof in accordance with OAR 330-068-0065.

(4) Upon completion of such measure or measures, and the Department's findings of compliance with the procedures of OAR 330-068-0020, the Department shall pay the institution in accordance with OAR 330-068-0090 for such measure or measures not to exceed the amounts specified in such table.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0030

#### Payment Procedures

If a measure or measures recommended in the applicable TAS but not previously eligible for payment due to environmental restrictions become eligible for payment, the Department may:

(1) Pay retroactively for such measure or measures in accordance with the amounts established in OAR 330-068-0090, if such measure or measures were installed prior to the change in environmental restrictions; or

(2) Pay retroactively for the installation of such measure or measures in accordance with amounts established in OAR 330-068-0090 if such measure or measures are subsequently installed.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0035

#### Limitation of Program Funds

In the event of a notice from Bonneville to the Department that sufficient funds may not be available to continue this program, the Department shall pay, in accordance with amounts established in OAR 330-068-0090, for TASs and ECMs which are completed by the date of such notice, and ECMs which are contractually obligated for by the Department in accordance with 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 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0040

#### Other Sources of Payment

The Department shall not pay for measures funded by a cost sharing grant under the U.S. Department of Energy Institutional Buildings Grants Program.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0045

#### Retroactive Payment

(1) The Department may pay an institution, in accordance with amounts established in rule 330-068-0090, for technical assistance studies meeting the requirements in section (2) of this rule, and for installed energy conservation measures meeting the requirements of section (3) of this rule, the funds for which were contractually committed to on or after December 5, 1980, and prior to the date that the utility serving an institution's building, or facility other than a building, was included in OAR 330-068-0080 as provided.

(2) Technical assistance studies are eligible for retroactive payment if they:

(a) Are comparable in quality and scope to a TAS performed in accordance with these rules;

(b) Resulted in accomplishment of O&M activities; and

(c) Resulted in the installation of energy conservation measures recommended in the technical assistance study, the cost of which were at least equal to the portion of the technical assistance study to be paid for by the Department.

(3) Energy conservation measures are eligible for retroactive payments if they were installed based on a recommendation contained in a study which is comparable in scope and quality to a TAS performed in accordance with these rules:

(a) Conditions:

(A) A measure must be "similar" to a measure included in this program. "Similar" means that a measure accomplishes the same purpose as and is comparable to a measure included in this program in enough ways that its effectiveness can be evaluated to a reasonable degree of certainty;

(B) For measures installed or completed after the date of offering of this program, but before the Department has executed such program, retroactive payments shall be made only for those measures which achieve conservation to an equal or greater degree than would be achieved by measures under this program, and which otherwise substantially conformed to or exceeded the materials and installation specifications referenced in the most current version of this program offered at the time the measures were installed or completed;

(C) When Bonneville has provided funds for the installation or completion of measures under another agreement which meet the requirements of paragraph (A) or (B) of this subsection, no retroactive payments shall be made with respect to such measures under this program;

(D) Retroactive reimbursement shall be made for measures installed or completed prior to the date the measures were contained in the operating area to the extent such measures reduce the firm load obligations of Bonneville. The Department shall determine such reimbursement by applying a ratio to the payment levels contained in this

program for such measures, the numerator being the whole number of years remaining in the useful life of the measure on the date the measures are included in the operating area and the denominator being the total whole number of years in the useful life of the measure.

(b) Amounts: Retroactive reimbursement amounts for each measure installed or completed shall be those provided for in this program when the latter of the following occurred:

- (A) The effective date of this program; or
- (B) When the measure was accomplished.
- (c) Procedures:

(A) The Department shall request retroactive reimbursement using the same form or format as is used for prospective payments. Such request shall clearly indicate that it is a request for retroactive reimbursement. The Department shall also maintain supporting documents and records for verification of costs retroactively reimbursed in accordance with this subsection;

(B) The Department shall pay the amount owing to the institution under this subsection in a lump sum or in no more than six consecutive equal monthly installments, without interest, commencing after the date Bonneville advises the Department that its claims for retroactive reimbursement have been included in the Department's approved budget.

(4) The Department shall inspect all measures for which an Institution is applying for retroactive payment and verify in writing the proper completion or installation of such measures.

(5) Requests for retroactive payment shall be submitted in the initial budget year or within 6 months of the date the operating area is expanded to include buildings, or facilities other than buildings, not previously eligible for retroactive payment.

(6) Any environmental prohibitions or requirement for mitigation measures contained in these rules shall apply to measures which are paid for in whole or in part retroactively in accordance with these rules.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0050

#### Program Records

The institution shall maintain the following records concerning disbursement of Department funds:

- (1) For energy audits (for buildings and occupied buildings only):
  - (a) O&M activities implemented by the institution in a building;
  - (b) Reason for not implementing O&M activities in accordance with OAR 330-068-0020(3)(b)(B).
- (2) For TAS:
  - (a) Name and address of institution;
  - (b) Name and address of building, or facility other than a building;
  - (c) Purpose for which the building, or facility other than a building, is used;
  - (d) Name of utility serving building, or facility other than a building;
  - (e) Total electric energy use expressed in kWh/yr/sq ft;
  - (f) Building, or facility other than a building, size;
  - (g) Supporting documents and records necessary to verify actual TAS cost;
  - (h) Amount of Bonneville reimbursement;
  - (i) Copy of each completed energy audit for buildings and occupied buildings only;
  - (j) Copy of each completed TAS;
  - (k) Instances and reasons for not requiring solicitation of a qualification statement.
- (l) O&M activities implemented by the institution in a facility other than a building;
- (m) Reason for not implementing O&M activities in a facility other than a building, in accordance with OAR 330-068-0020(3)(c)(A).
- (3) For ECM:
  - (a) Name and address of institution and building, or facility other than a building;
  - (b) Purpose for which the building, or facility other than a building, is used;

- (c) Total building electric energy use expressed in kWh/yr/sq ft;
- (d) Total estimated annual kilowatt hour savings;
- (e) Building, or facility other than a building, size;
- (f) Copy of applicable table of obligated measures, if appropriate;
- (g) Date and amount of Bonneville reimbursement(s);
- (h) Total cost of ECM installation;
- (i) Supporting documents and records necessary to verify actual cost to the institution of all installed ECMs;
- (j) Name of utility serving building, or facility other than a building;
- (k) Local retail electricity rate at time of application for each building, or facility other than a building, funded;
- (l) Ranking results;
- (m) Data supporting kWh savings estimates;
- (n) Reason for exempting ECM installation from three bid requirement in OAR 330-068-0020(4)(c)(B);
- (o) Inspection report including dates of inspection and project completion.

(4) Records maintained by the institution in accordance with this program shall contain the information specified in these rules. The records shall be maintained by the institution in a form determined solely by the institution, so long as the requirements of section (5) of this rule are met. The institution shall keep all records required by these rules for three years after termination of the program. Further, the institution shall provide 90 days' written notice to the Department prior to destruction of any such records.

(5) Program records shall be established and maintained in accordance with generally accepted accounting principles consistently applied, and in conformance with applicable laws and federal regulations, including the provisions of the Privacy Act of 1974. A summary of the system of records developed by Bonneville to comply with the Privacy Act shall be supplied by Bonneville.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0055

#### Program Audits

The Department may, upon reasonable notice, conduct such audits, examinations, or inspections of the institution's program records, and of the institution's procedures under these rules as it deems appropriate. The number, timing, and extent of such audits shall be at the discretion of the Department, may be conducted by the Department staff or its designee, and shall be in accordance with audit standards established by the Comptroller General of the United States. The Department, at its expense, may:

- (1) Audit and examine program records and accounts maintained by the institution pursuant to the program records sections of these rules;
- (2) Request copies of such program records and accounts for audit purposes;
- (3) Conduct random inspections of installations made under these rules; all such inspections shall be arranged in advance with the institution; and
- (4) Review institution procedures employed in accomplishing the provisions of these rules.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0060

#### Indemnification

The institution shall be an independent contractor in the implementation of this Program.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0065

#### Extension of Time for Obligated Measures

The institution may, if needed, request an extension of the completion date of an obligated measure or measures contracted in accordance with these rules.

dance with OAR 330-068-0025. Such request must be submitted in writing, no later than 45 days prior to the approved completion date previously stated in the appropriate table, and shall contain the requested extension date and the reasons therefor. The Department shall notify the institution in writing, prior to the previous completion date, if the request has been granted, if a portion of the requested extension has been granted, or if the request has been denied.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0070

#### Termination of Obligated Measures

(1) The Department may, by written notice of default to the institution, terminate any obligations created in accordance with OAR 330-068-0025 of this agreement as they pertain to any measure if such measure is not completed within the time specified therein, or by the time specified in an extension of time for an obligated measure or measures in accordance with 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 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0075

#### Termination

If the Department has advanced progress payments for a project pursuant to OAR 330-068-0090, and such project is not completed by the institution in accordance with these rules, the institution shall be liable for excess costs incurred by the Department in contracting for the completion of such project.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0080

#### Operating Area

The Department may operate this agreement in the service areas (or portions thereof) of the following firm requirements power sales customers of Bonneville:

- (1) Ashland, City of;
- (2) Bandon, City of;
- (3) Blachly-Lane County Cooperative Electric Association;
- (4) Canby Utility Board;
- (5) Cascade Locks, City of;
- (6) Central Electric Cooperative;
- (7) Central Lincoln PUD;
- (8) Clatskanie PUD;
- (9) Columbia Basin Electric Cooperative;

- (10) Columbia Power Cooperative;
- (11) Columbia REA;
- (12) Columbia River PUD;
- (13) Consumers Power, Inc.;
- (14) Coos-Curry Electric Cooperative, Inc.;
- (15) Douglas Electric Cooperative, Inc.;
- (16) Drain, City of;
- (17) Emerald PUD;
- (18) Eugene Water and Electric Board;
- (19) Forest Grove, City of;
- (20) Harney Electric Cooperative;
- (21) Hood River Electric Cooperative;
- (22) Lane Electric Cooperative;
- (23) McMinnville, City of;
- (24) Midstate Electric Cooperative;
- (25) Milton-Freewater, City Light & Power;
- (26) Monmouth, City of;
- (27) Northern Wasco County People's Utility District;
- (28) Salem Electric;
- (29) Springfield Utility;
- (30) Surprise Valley Electrification Corporation;
- (31) Tillamook PUD;
- (32) U.S. Bureau of Mines;
- (33) Umatilla Electric Cooperative;
- (34) Wasco Electric Cooperative;
- (35) West Oregon Electric Cooperative, Inc.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0085

#### Project Ranking Formula

(1) TAS:

(a) The Department shall rank TAS applications for building or occupied building according to its potential for ECMs determined by a point system based on data presented in the energy audit submitted with the application;

(b) The Department shall fund TAS applications in rank order starting with the application with the highest ranking value.

(2) ECM:

(a) The Department shall rank ECM project applications using the following formula:

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

E

(A) Project Payment = Summation of allowable ECM costs where the allowable cost of each ECM is determined by OAR 330-068-0090(2)(a);

(B) E = The summation of electrical energy savings from all ECMs, savings are equal to the life of each ECM multiplied by its estimated annual kilowatt hour savings.

(b) If a project application contains a direct application renewable resource component, that component of the project estimated first year kilowatt hour savings shall be increased by ten percent for ranking purposes only;

(c) The Department shall fund ECM projects in rank order starting with the project with the lowest ranking value.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469  
Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

### 330-068-0090

#### Payment Levels

(1) TAS: The Department shall reimburse the institution for actual costs for a TAS not to exceed \$0.0108 multiplied by the institution's electric energy use expressed in kWh/yr, or not to exceed an amount equal to the total estimated cost of those ECMs recommended in the TAS and approved by the Department, whichever is smaller. The Department reserves the right to question and request adjustments of costs for a TAS which are judged to be unreasonable;

(2) ECM:

(a) The Department shall reimburse the institution actual costs for an ECM. Such costs shall not exceed \$0.292 multiplied by the estimated first year kWh savings, minus the estimated first year dollar

savings. These savings are those associated with the energy use reduction determined by multiplying the building's retail electric energy rate by its estimated annual kilowatt hour savings indicated by the TAS for such ECM;

(b) For ECM projects costing more than \$10,000 but less than \$200,000, progress payments may be made for ECMs upon 30 percent, 60 percent, and 100 percent completion, unless otherwise agreed to by Bonneville;

(c) For ECM projects costing more the \$200,000, progress payments may be made for ECMs upon 30 percent, 60 percent, 80 percent, and 100 percent completion, unless otherwise agreed to by Bonneville.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469

Hist.: DOE 11-1982, f. & ef. 12-17-82; DOE 5-1984, f. & ef. 4-3-84; DOE 3-1985, f. & ef. 3-20-85

## DIVISION 69

### INVESTOR OWNED UTILITY INSTITUTIONAL BUILDINGS PROGRAM

#### 330-069-0005

##### Purpose

These rules describe how the Oregon Department of Energy (ODOE) will run a two-year Institutional Buildings Program. The program will be funded by four investor-owned utilities. The program is to save electricity in schools, hospitals, public care and government buildings, and eligible facilities other than buildings.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 5-1985, f. & ef. 6-17-85

#### 330-069-0010

##### Compliance with Other Rules, Regulations, Codes and Standards

Projects in this program must comply with all applicable local, state and federal rules, regulations, ordinances, statutes, codes, and standards. These rules in no way alter the responsibility of the applicant for such compliance.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 5-1985, f. & ef. 6-17-85

#### 330-069-0015

##### Definitions

(1) "IOU" means the investor-owned utilities listed in OAR 330-069-0075.

(2) "Administrative Costs" are costs allowed under **OMB Circular A-87, "Cost Principles for State and Local Governments,"** as amended.

(3) "Building" means any structure in which the efficient use of electricity can be improved through an ECM. Such building(s) must have been completed by October 28, 1982. The building(s) must be owned and operated by an institution.

(4) "Building Owner" means an institution which is the fee owner, mortgagor, or contract vendor of a building; or an institution which is a lessee or other occupant of a building with a lease which ends not before September 30, 1992, and which is authorized to install ECMs.

(5) "Care Institution" means:

(a) An institution for long-term care or rehabilitation, or a health center, as described in Section 1633 of the Public Health Service Act (**42 U.S.C. 300s-3; 88 Stat. 2270**); or

(b) A residential child care center, other than a foster home, which primary use is for fulltime care. Such center must provide care for at least ten minor persons who have an average stay of at least 30 days. Such persons must be in the care of the center because of a finding of abandonment or neglect, or because they need treatment or supervision.

(6) "Effective Date" means February 22, 1985.

(7) "Energy Audit (EA)" means the survey of a building by an energy auditor. Such survey is in accord with standards set by ODOE. The survey describes how a building uses energy. The survey will also find and list low-cost and no-cost operation and maintenance actions (O&M).

(8) "Energy Auditor" means a person certified by ODOE to do EAs under this program.

(9) "Energy Conservation Measure (ECM)" means to install material or equipment or take action to weatherize; or, actions to improve energy efficiency in electric water heating, space heating or cooling, ventilation, lighting, food preparation, motors, automatic energy control, and energy recovery.

(10) "Facility Other Than Buildings" includes but is not limited to:

(a) Sewage treatment plants;

(b) Potable water treatment and pumping systems;

(c) Fish hatcheries;

(d) Parking structures;

(e) Stadia or arenas; and

(f) Outdoor swimming pools which were completed by October 28, 1982 and which are owned and operated by an institution.

(11) "Hospital" means an institution which provides hospital service under the laws of the State of Oregon. In these rules, the term excludes a hospital which main care is domiciliary.

(12) "Institution" means a nonprofit or a public institution in the service area of a utility listed in OAR 330-069-0075.

(13) "Licensed Professional (LP)" means a person who has an active engineer's license granted by the State of Oregon; or is an engineer-architect team. The main members of such teams have active professional licenses granted by the State of Oregon.

(14) "Licensed Professional Engineer (PE)" means a person who has an active engineer's license granted by the State of Oregon.

(15) "Nonprofit Institution" means a hospital, care institution, or a school which owner and operator is exempt from income tax under Section **501(c)(3)** or **501(c)(4)** of the **Internal Revenue Code**.

(16) "Occupied Building" (for buildings within facilities) means an enclosed structure that persons occupy for more than seven hours per week. Such building has a working heating and/or cooling system used for human comfort and/or for process environmental control.

(17) "Operation and Maintenance (O&M)" means to operate, maintain, repair and adjust equipment or components of buildings to improve energy efficiency.

(18) "OPUC" means the Oregon Public Utility Commissioner.

(19) "Owner" means the persons authorized to apply and accept funds for the building or facility and be in accord with section (4) of this rule.

(20) "Program" means the Institutional Buildings Program (IBP) funded by the investor owned utilities through an agreement with ODOE. The program is in effect from February 22, 1985, through October 30, 1987. All program projects must be complete and final payment authorized by October 30, 1987.

(21) "Project" means one or more ECMs, defined by a TAS, for which a building owner seeks ODOE funding approval.

(22) "Public Institution" means an institution owned and operated by:

(a) The federal government;

(b) The State of Oregon;

(c) A political subdivision of the state and which can levy taxes;

(d) A recognized governing body of an Indian tribe in the state;

or

(e) A body that can perform general government functions under state or local authority.

(23) "School" means an institution which legally provides elementary, secondary, post-secondary, or vocational education on a day or residential basis.

(24) "Technical Assistance Analyst (TAA)" means a person(s) who:

(a) Has experience in energy conservation; and

(b) Is a LP as defined in section (13) of this rule.

(25) "Technical assistance study (TAS)" means a study done by a TAA which meets ODOE standards. A TAS analyzes the potential energy savings in a building or facility. It recommends ECMs that will achieve such savings.

[Publications: Publications referenced 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:

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

(A) Project Payment = The sum of allowable ECM costs where the allowable cost of each ECM is determined by OAR 330-069-0025(2)(a);

(B) E = The sum of electricity savings from all ECMs; savings are equal to the life of each ECM times its estimated yearly kilowatt hour savings.

(b) Any direct application renewable resource part of a project shall not be ranked or funded;

(c) ODOE shall approve for funding qualified ECM project applications in rank order starting with the lowest ranked.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469  
Hist.: DOE 5-1985, f. & ef. 6-17-85

### 330-069-0085

#### Program Procedures

ODOE shall run the program for the IOUs listed in OAR 330-069-0075. ODOE will provide information and monitor the program to insure the program is in accord with these rules:

(1) Energy audit (EA). ODOE shall give owners a list of ODOE certified energy auditors and forms for energy audits for buildings and occupied buildings only.

(2) Technical Assistance Studies (TAS):

(a) ODOE shall ask for, judge, rank, and select for funding applications for TAS. Ranking shall be in accord with OAR 330-069-0080(1). ODOE shall inform applicants in writing whether or not they have been chosen for funding;

(b) ODOE shall ensure that the requirements in paragraphs (A) through (E) of this subsection are met before authorizing payment for a TAS (for buildings and occupied buildings only):

(A) An EA has been done by an ODOE certified energy auditor;

(B) All O&M actions listed in the EA have been taken by the owner, except those which ODOE judges need not be done;

(C) The owner has sought TAA qualifications of doing the TAS before choosing a TAA, unless otherwise agreed to by ODOE and the owner;

(D) The TAS has been done by a qualified TAA and has been reviewed and approved by ODOE;

(E) The owner has given ODOE proof of payment to the TAA of all agreed upon costs for the TAS.

(c) ODOE shall ensure that the requirements in paragraphs (A) through (D) of this subsection are met before authorizing payment for a TAS (for facilities other than buildings):

(A) All O&M actions listed in the facilities TAS have been taken by the owner, except those which ODOE judges need not be done;

(B) The owner has sought qualifications of TAAs. The TAAs chosen must have at least one year of proven experience in the design or operation of the particular type facility under study unless otherwise agreed to by ODOE and the owner;

(C) The TAS has been done by a qualified TAA and has been reviewed and approved by ODOE;

(D) The owner gives ODOE proof of payment to the TAA of all agreed upon costs for doing the TAS.

(d) ODOE shall authorize payment to an owner an amount not more than that which is in accord with OAR 330-069-0025(1). Such payment shall be authorized when the TAS is done in accord with the above requirements and when conditions in either of paragraph (A) or (B) of this subsection are met:

(A) The owner has installed or agrees in writing to install, at the owner's own expense, approved ECMs recommended in the TAS. The total cost of these ECMs shall be at least equal to 50 percent of the TAS amount;

(B) The owner agrees in writing to install, upon approval of funding, approved ECMs recommended in the TAS. The total cost of these ECMs shall be at least equal to 50 percent of the TAS amount. If an owner has received any part of the TAS amount and does not install such ECMs, ODOE shall require the owner to pay back the funding IOU any part of the payment which exceeds 50 percent of the TAS amount;

(C) ODOE shall not authorize payment to the owner the total of its TAS amount if one of either paragraph (A) or (B) of this subsection is not satisfied and if:

(i) The TAS does not recommend any eligible electricity ECMs even if the TAS does meet the requirements in subsection (2)(b) or (c) of this rule. In this case, ODOE will authorize payment of an amount equal to 50 percent of the TAS amount only; or if

(ii) The total estimated cost of doing the recommended eligible ECMs is less than 50 percent of the TAS amount, even if the TAS meets requirements in subsection (2)(b) or (c) of this rule. In this case, the payment to the owner authorized by ODOE will be reduced by an

amount equal to the difference between 50 percent of the TAS amount and the total estimated implementation cost.

(3) Energy Conservation measures (ECMs):

(a) ODOE shall ask for, judge, and select projects for funding. ODOE shall inform applicants in writing whether or not they have been chosen for funding;

(b) ODOE shall comply with paragraphs (A) through (F) of this subsection before approving a project application for funding:

(A) ODOE shall provide a PE, other than the TAA who did the TAS, to review and certify that energy savings and project cost calculations of ECMs recommended in the TAS were done by standard engineering methods. The PE will also certify that only ECMs recommended in a TAS are included in a project;

(B) ODOE shall rank and select for funding projects in accord with the ranking formula for ECMs in OAR 330-069-0080(2)(a), if requests for project funding exceed the funds available from the funding IOU;

(C) ODOE shall ensure that these things will not occur as a result of a funded ECM:

(i) Installation of low-pressure sodium (LPS) vapor lights indoors;

(ii) Use of high pressure sodium (HPS) vapor lights indoors, except for:

(I) General lighting in warehouses with low visual demand activities and short duration occupancies, with warning signs and danger signals that have an independent lightsource, where HPS fixtures or rows of fixtures are staggered on a multiple phase circuitry; and for

(II) High visual demand lighting in high bay areas, as defined by the **Illuminating Engineering Society Lighting Handbook**, where the mixture of HPS to incandescent, fluorescent, or metal halide fixtures is at least 1-to-1 with similar lumen output from both types of fixtures and the HPS fixtures are staggered on a multiple phase circuitry.

(iii) Removal or disturbance of previously installed asbestos;

(iv) Installation of Urea Formaldehyde Foam Insulation (UFFI).

(D) ODOE shall ensure that program funds are not used for ECMs which are environmentally restricted, and/or for projects which affect indoor air quality;

(E) ODOE shall not approve funding for any ECM based on a direct application renewable resource;

(F) ODOE shall obtain from the owner a written agreement to indemnify the funding IOU and hold it harmless from and against all claims and liability and expenses, including reasonable attorneys fees, arising from the negligent or other tortious acts or omissions of the owner's officers, agents, or employees.

(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 RESIDENTIAL 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, 2006. All decisions made by the Oregon Department of Energy (ODOE) regarding AED eligibility, issuance of tax-credit technician certification, complaints regarding performance of tax-credit certified technician, revocation of technician tax-credit 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, 2006. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) ODOE grants or denies AED tax credits. By granting a tax credit, neither ODOE nor the state implies that the AED will save more money than it will cost. 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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

#### 330-070-0013

##### Definitions

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

(1) "AED" — Alternative Energy Device.

(2) Active Solar Heating" — A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(3) "AFUE" (Annual Fuel Utilization Efficiency) — The efficiency rating for furnaces and boilers expressed as the ratio of the energy output to the energy (fuel) input, including part load and cycling effects, but not including fan or pump electrical energy use.

(4) "Alternative Energy Device" ("AED") — A device or system that reduces the amount of conventional energy used by a dwelling. AEDs include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy efficient appliances, energy efficient heating, ventilating and air conditioning systems; fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

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

(6) "Alternative Fuel Device" — 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 person who applies for a residential alternative energy device tax credit under this section.

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in ORS 757.015 that is designated by an applicant under OAR 330-070-0013(9)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant.

(c) Any other entity qualified to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant, as determined by ODOE.

(d) An individual or business that provides the tax credit pass-through amount to the eligible AED owner, and is assigned the tax credit by the AED owner.

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

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

(10) "AWEA" — American Wind Energy Association.

(11) "Btu" — British Thermal Unit.

(12) "CEF" — Energy Factor for Combined Systems. A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (space heating efficiency and combined efficiency being the other two) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(13) "CAFUE" — Annual Fuel Utilization Efficiency for Combined Systems. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (water heating efficiency and combined efficiency being the other two) does not count any standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(14) "Consumer Disclosure" — A form approved and provided by ODOE describing some AEDs. The technician 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, freeze protection information and other data required by ODOE. Exclusions: energy efficient appliances and alternative fuel devices.

(15) "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.

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

(17) "Director" — Director of ODOE or the Director's representative.

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

(19) "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 — 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 trust or 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 — Vacation property owned by the applicant; and

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

(20) "EER" (Energy Efficiency Ratio) — A measure of a cooling system's instantaneous efficiency (cooling capacity divided by the power consumption), at DOE "A" test conditions, expressed in Btu/hr per watt.

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

(22) "Energy Efficient Appliance" — A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by ODOE to have premium energy efficiency characteristics. Lists of certified energy efficient appliances are available from ODOE.

(23) "Energy Factor" (EF) — The non-dimensional efficiency rating for water heaters. It can be loosely translated as a percentage (e.g. EF 0.93 = 93 percent). A higher energy factor denotes better efficiency.

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

(25) "Energy Recovery Ventilator" (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(26) "EUI(FURNACE)" — The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Gas Appliance Manufacturers Association (GAMA) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment:  $3.412 \times \text{EAE} / (3.412 \times \text{EAE} + 1,000 \times \text{EF}) \# 2.0$  percent.

(27) "EUI(HERV)" — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

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

(29) "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.

(30) "Fuel Cell Stack" — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(31) "Fuel Cell System" — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy. Systems using reformed fossil fuels will also produce carbon dioxide.

(32) "Ground Source Heat Pump" — A heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

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

(34) "Heat Recovery Ventilator" (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(35) "HSPF" (Heating Season Performance Factor) - A measure of the heating efficiency of a heat pump system over the entire heating season (heating accomplished divided by power used), expressed as a ratio of Btu per watt-hour.

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

(37) "Hybrid Vehicle" — An alternative fuel vehicle which draws propulsion energy from on-board sources of stored energy which include both an internal combustion or heat engine and a rechargeable energy storage system.

(38) "Hydronic Space Heating System" — A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(39) "IREC" — Interstate Renewable Energy Council.

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

(41) "Latent Recovery Moisture Transfer" (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(42) "MCFC" — Molten carbonate fuel cell.

(43) "Modified Energy Factor" (MEF) — The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(44) "MM" — Million.

(45) “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.

(46) “Net Generation” — The gross kWh produced minus internal losses and parasitic loads. The net generation is the amount available to serve dwelling loads, to provide to the utility, or both.

(47) “OG” — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.

(48) “ODOE” — Oregon Department of Energy.

(49) “Owner-Built” — An AED that is assembled and installed on an owner’s personal property and with an owner’s labor only.

(50) “Parasitic Power” — The electrical energy the system uses to operate.

(51) “Passive” — A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices. (52) “Passive Solar Space Heating” — This refers to a system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun’s energy using only convection, radiation and conduction of energy. See section 330-070-0062 for details.

(53) “Pass-Through Amount” — The minimum amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined on an annual basis by the Director.

(54) “Pass-Through Provider” — An individual or business that pays the pass-through amount to an eligible system owner and applies for the tax credit in place of the system owner.

(55) “Pass-Through Verification” — Information collected by ODOE verifying that the approved pass-through amount has been provided, that the AED owner has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.

(56) “Peak Power Ratio” — In the case of a hybrid vehicle, the maximum power available from the electric motor providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(57) “Performance Checked Duct System” — A forced air duct system whose premium efficiency characteristics are that it has been tested for duct leakage by a tax credit certified technician using ODOE-approved testing procedures, and that it has been repaired or constructed using ODOE-approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked ducts are considered energy efficient appliances.

(58) “Performance Checked Heat Pumps and Air Conditioners” — A heat pump or air conditioner whose premium efficiency characteristics are that it has been tested using approved procedures and repaired or refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy efficient appliances.

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

(60) “PV System” — A complete solar electric power system capable of delivering power to either the main or sub-panel in a residence. Necessary components include: solar electric modules, inverter, mounting system, and disconnection equipment.

(61) “SEER” (Seasonal Energy Efficiency Ratio) — a measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(62) “Solar Attic Fan” — A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(63) “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 collec-

tor 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.

(64) “Solar Electric AC Module” — A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(65) “SRCC” — Solar Rating and Certification Corporation.

(66) “Sensible Recovery Efficiency” (SRE) — In an HRV or ERV, the sensible (measurable) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(67) “STC” — Standard Test Conditions, which are 25 degrees Celsius cell temperature and 1000 watts per square meter.

(68) “Sunchart” — A chart or form issued or approved by ODOE 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, technicians shall indicate this in writing on the chart and shall include their signature and the date of the analysis.

(69) “System Certification” — Certification that an AED as described in the application meets criteria for the tax credit.

(70) “System Owner” — A person who owns the AED.

(71) “Tax-Credit Certified Technician” — A technician who has been approved by ODOE as sufficiently knowledgeable about the tax credit program. A tax-credit certified technician is responsible for assuring that the system installed is according to ODOE rules and verifying system installation quality and performance. A tax-credit certified technician must ensure that the applicant or system owner is knowledgeable about ODOE’s AED rules.

(72) “Tax-Credit Listed Company” — A company that employs at least one tax-credit certified technician.

(73) “Total Solar Resource Fraction” — the fraction of usable solar energy that is received by the solar panel/collector throughout the year. This accounts for impacts due to external shading, collector tilt and collector orientation.

(74) “Unheated Spaces” — Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below during the heating season.

(75) “Used Equipment” — Any solar tank or collector which previously has been installed or any piece of equipment not under current manufacturers’ warranty.

(76) “Wastewater Heat Recovery Device” — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling’s hot water supply system.

(77) “Water Factor” (WF) — The measure of water efficiency in clothes washers. Measured in gallons per cubic foot of tub capacity, per cycle (gal/ft<sup>3</sup>/cycle).

(78) “Wind AED” — A wind alternative energy device. A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy. This includes turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0014 Pass-Through

(1) Any person or business that provides the approved tax credit pass-through amount to the person who owns the eligible energy device is entitled to claim the tax credit associated with that device in

place of the system owner. Any person or business that provides the approved tax credit pass-through amount to the person who owns or constructs an eligible alternative fuel station is entitled to claim the tax credit associated with that device in place of the system owner or contractor.

(2) The pass-through amount shall be determined and published at least each year and may be periodically revised by the Director.

(3) In addition to other required information, verification information for tax credits obtained by pass-through providers shall include verification that the approved pass-through amount has been provided, and acknowledgement that the person originally eligible to receive a tax credit has relinquished his or her claim to the credit and has assigned the credit to the pass-through provider.

Stat. Auth.: ORS 469.040, 469.160 - 180 & 469.710 - 720

Stats. Implemented: ORS 469.040, 469.160 - 180 & 469.710 - 720

Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0020

#### Who Is Eligible

(1) To qualify for a credit, a person must:

(a) Have an income tax liability in Oregon; and

(b) Purchase, construct, install and certify an AED in accordance with these rules (OAR 330-070-0010 – 330-070-0097); and

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(2) If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the owner.

(4) A tax credit may be transferred. Any person that pays the present value of the tax credit for a qualified alternative energy device to the person who originally purchases the device shall be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by lessor during period of first new use, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 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 ground water 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 including a wastewater heat recovery device;

(E) An alternative fuel device; vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device are eligible for the tax credit.

(F) A fuel cell system; and

(G) Heat pump water heaters.

(2) These devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

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

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

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

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

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

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

(j) 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;

(k) Used equipment;

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

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

(n) Hydro systems; and

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water.

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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 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. The energy yield basis for a solar tax credit may be adjusted by ODOE to account for less than optimal solar access.

(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 multiplied by 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. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must 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 eligible 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.

(A) Eligible cost is the difference in the cost between the conventional fueled vehicles of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(B) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference which are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(C) Low-speed alternative fuel vehicles for which no conventional fueled vehicle is available for comparison (seating cap/size/features) must use a minimum of \$1,500 to determine cost difference for the alternative fueled vehicle.

(d) For fuel cell systems, \$1,500 or the first year energy yield of the AED in kWh multiplied by 60 cents, for systems placed in service on or after January 1, 2000.

(e) For photovoltaic systems installed on or after November 4, 2005, \$6,000 for four years (\$1,500 per year) not to exceed 50 percent of the cost of the system.

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

(a) 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) For photovoltaic systems installed on or after November 4, 2005, the credit allowed under this section shall equal: \$3 per watt of the installed capacity measure in watts of direct current at industry standard test conditions. The credit shall be issued for the year in which it was installed in annual increments up to \$1,500 over a four-year period. The amount of credit per year shall not exceed \$1,500 and the total credit shall not exceed 50 percent of the cost of the system.

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

(6) For purposes of the tax credit, the cost of the AED must:

(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 must be based on that part of the AED's energy output or savings that is due to the alternative source;

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

(C) The amount of credit for the original system and an addition may not exceed \$1,500 per year.

(7) 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 must 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;

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

(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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0024

#### Year Credit Claimed

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

(2) The tax credit may not exceed a person's tax liability. Unused credit may be carried forward for a maximum of 5 years.

(3) Proof of purchase must 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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

### 330-070-0025

#### Application for System Certification

(1) Applicants for the tax credit must get a system certification from ODOE.

(2) Applications for a system certification must be made in a form developed by ODOE:

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

(b) All applications will request purchasers to provide social security numbers for use as an identification number in maintaining internal records. The purchaser's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) All applications must 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 technician or from the ODOE energy yield chart, (found in the ODOE AED System Directory), if any; and

(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.

(d) All applications must state that the technician agrees to make any changes required by ODOE for the system to comply with ORS 469.160 through 469.180;

(e) All applications must be signed by the purchaser and technician, if any, or, a form of electronic signature acceptable to ODOE shall be provided; and

(f) A technician or applicant must not give ODOE false or misleading information about an AED.

(3) System certification applications for solar water heating AEDs must 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 or equivalence as determined by ODOE;

(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 collector;

(k) A sunchart for the collector location;

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

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

(n) Any other data ODOE requires.

(4) System certification applications for active solar space heating AEDs must contain:

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

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A sunchart for the collector location; and

(e) Any other data ODOE requires.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) A copy of the building permit plans;

(b) A copy of the window specifications used;

(c) The type and amount of thermal storage;

(d) A sunchart taken at the center of the solar glazing; and

(e) Any other data ODOE requires.

(6) System certification applications for photovoltaic AEDs must contain:

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

(b) The module(s) area;

(c) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

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

(e) Storage brand and model;

(f) Storage capacity in kWh;

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

(h) The capacity of the inverter;

(i) Orientation and tilt of the array;

(j) A sunchart of the array location; and

(k) Any other data ODOE requires.

(7) System certification applications for ground water heat pumps and ground loop AEDs must contain:

(a) For all systems connected to a well, data on the well including:

- Depth;
- Diameter (cased);
- Temperature;
- Static water level below grade;
- A copy of the well driller's log, if available; and
- Any other data ODOE requires.

(b) For systems connected to a heat pump:

- Brand name and model number of the heat pump;
- Rated output at the entering water temperature;
- Estimated system COP rated by ARI under Standard 325 -

85 at an entering water temperature of 50 degrees Fahrenheit; and

- Any other data ODOE requires.

(c) For ground loop heat pump systems:

- All the information in subsection (7)(b) of this rule; and
- Brand name, rated output, estimated COP;
- Length and depth of the loop;
- Materials and spacing used;
- Type of heat transfer fluid; and
- Any other data ODOE requires.

(8) System certification applications for energy efficient appliances must contain:

- Taxpayer's name and principal address;
- Installation location by street address;
- The name of the dealer or licensed and bonded technician;
- The dealer's business location;
- The brand name, make, model number, capacity and/or size of the appliance;
- A signed copy of the sales agreement, which will include all of the following:
  - Verification of purchaser's name and address; and
  - Verification of model of appliance; and
  - Verification of actual price paid for appliance.
- Certification of new equipment warranty; and
- Any other data ODOE requires.

(9) System certification applications for alternative fuel devices must contain:

- Taxpayer's name;
- Taxpayer i.d. or social security number;
- State of Oregon vehicle registration number;
- Installation location by street address;
- The name of the licensed and bonded company employing the technician;
- The company's business location;
- The brand name, make, model number, or component list of the AFD;
- A signed copy of the sales agreement, which will include all of the following:
  - Verification of purchaser's name and address; and
  - Verification of model of, or components used for AFD; and
  - Verification of actual price paid for the AFD.
- Certification of new equipment warranty;
- An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:
  - Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and
  - Signature, or form of electronic signature acceptable to ODOE, of an authorized representative of the IOU or other designated qualifying party stating willingness to accept the tax credit certificate; and
  - Any other data ODOE requires.

(10) System certification applications for fuel cells shall provide information regarding:

- The rated fuel cell stack peak capacity, in kW;
- The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);
- Whether or not the system is grid connected;
- The fuel used by the system;
- The type of fuel stack (PEM, PAFC, SOFC, etc.);
- An estimate of the average load, in kW, expected to be placed on the system;
- The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;
- Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and
- Any other data ODOE requires.

(11) A system certification 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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0026

#### Technician Tax Credit Certification

(1) Technicians may on a voluntary basis apply for ODOE tax-credit certification for a particular technology on an annual basis. Certification is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to ODOE rules, and verify system installation quality and performance.

(2) A tax-credit certified technician applies only to the following products:

- Solar water heating systems;
- Ground source heat pumps (geothermal);
- Photovoltaic systems;
- Performance-tested ducts; and
- Air source heat pumps/air conditioning systems.

(3) The tax-credit certified technician's status is based on the following:

- Knowledge and understanding of the tax credit program requirements and expectations;
- Ability to provide systems that are designed and installed with a focus on performance and longevity; and
- Ability to deal with both ODOE and consumers in a professional manner. Failure to meet any of these criteria are grounds from removal from being certified. (See Section 330-070-0045 (2).)

(4) Tax-credit certified technician status entitles a technician to:

- Inform the owner that he or she has attended an ODOE-required training class and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.
- Verify that installation of tax-credit qualified equipment and systems meet ODOE standards for performance and longevity.

(5) Tax-credit certified technician status requires that the technicians must follow ODOE requirements including:

- Duct and air-source heat pump/air conditioning technicians must acquire training required by the Director for providing the services necessary for that technology and pass a competency test with a score of 70 percent or above.
- Solar technicians must show licensure (North American Board of Certified Energy Practitioners-NABCEP or Limited Renewable Energy Technician — LRT for solar electric and Solar Thermal License (STL) for solar thermal) or pass a competency testing with a score of 70 or above for the technology. Until December 31, 2006, solar technicians may also demonstrate competency with proof of two 2005 installed systems in their technology that have been inspected and approved by the Energy Trust of Oregon.
- Geothermal technicians must show proof of International Ground Source Heat Pump Association training (IGSHPA) or IGSH-PA certified manufacturer's training program or other training approved by the ODOE Director.

(d) Participate in ODOE tax-credit training and annual ODOE update telephone conference calls.

(e) Assure owner has user manual for equipment/system.

(f) Provide the customer with a completed application and a copy of the final itemized dated invoice for the system that is marked "inspected and paid for." Assure owner has a written full warranty for the system that lasts no less than 12 months after the system is installed. Maintain tax-credit certification status by completing the following technology-specific requirements: For solar technology — Complete at least two (2) hours of Oregon Solar Energy Industries Association (OSEIA)-approved solar-related training and either have submitted and approved two (2) tax credit applications for systems in technology in which technician is certified or score 70 percent or above on an ODOE competency test for appropriate solar technology. For air source heat pumps/air conditioning — Maintain current requisite technical certification and licensing; complete and either have submitted and approved four (4) tax credit applications or score 70 percent or above on competency test. For performance tested duct systems — Have submitted and approved a minimum of four (4) tax credit applications or score 70 percent or above on competency test. For geothermal — Have submitted and approved a minimum of two (2) tax credit applications.

(6) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by an ODOE tax-credit certified technician. Homeowner-installed systems will be reviewed by ODOE on a case-by-case basis.

(7) A tax-credit certified technician must notify ODOE within 30 days if changes are made in any of the information in the certification application.

(8) ODOE 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. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0027

#### Applications Review

(1) ODOE must 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 330-070-0097.

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

(3) ODOE must act on a complete application within 60 days after it is received. ODOE 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, ODOE will explain to the applicant why more time is needed:

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

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

(c) During review, ODOE may ask for proof that the system complies with OAR 330-070-0010 through 330-070-0097. ODOE 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, ODOE may, with the owner's consent, inspect an installed AED:

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

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

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

(5) ODOE 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. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

(6) If ODOE rejects an application for system certification, an applicant may appeal the rejection. If ODOE approves a system certification 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 ODOE. Appeals must be conducted as per ORS 183.310 through 183.500.

(7) If ODOE receives an application(s) for a qualifying alternative fuel device accompanied by a letter from the applicant designating an IOU or other qualifying party as the recipient of the tax credit certificate, then ODOE may aggregate such applications and issue a single tax credit certificate to designated qualifying party quarterly for applications for projects to be completed in that calendar year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

### 330-070-0040

#### Other Rules and Regulations

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

(2) The policy of the Department of Energy is:

(a) To accept the findings of local, state and federal agencies which license or permit projects to be built or run;

(b) To avoid influencing any of those agencies to approve or deny a license or a permit; and

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

(3) Each applicant must:

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

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

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

(4) System certification and tax credit technician certifications 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 ODOE 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 technicians must install all systems in compliance with the system manufacturer's published specifications.

(7) ODOE must assign a yield for all solar domestic water heating systems. For systems approved by ODOE that are not SRCC OG-300 certified, ODOE must 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; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0045

#### Enforcement

(1) Applicant's actions that are cause for revocation of a residential alternate energy tax credit

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

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

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

- (i) Failure to follow applicable standards;
- (ii) Failure to comply with required codes or obtain required permits or inspections;
- (iii) Return of the AED to the seller or installer for a refund;
- (iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(C) The applicant refuses to allow ODOE to inspect the AED after a reasonable written request by the Department. A reasonable request must allow applicant to choose a day within three weeks of the request from the Department.

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

(2) Technician's actions that are cause for revocation of technician's tax credit certification:

(a) A technician tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the system or technician tax-credit certification was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if:

(A) False statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit certified technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax-credit certification as defined in OAR 330-070-0026.

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

(A) The technician's employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding; or

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

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

(D) The technician fails to install the AED system in a professional manner; or

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

(F) The technician and employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(G) The technician and employing company fail to honor a warranty which they are contractually obligated to perform; and

(H) The technician and/or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by ODOE within 30 days of written notification from ODOE of the problem, unless a time extension is granted by ODOE.

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

(J) New information indicates that the AEDs installed under the technician tax-credit certification and his or her employing company do not meet eligibility requirements.

(c) A technician's tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469.160 through 469.180; or

(B) The technician or employing company 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 ODOE to substantiate the yield. For geothermal heat pumps, the technician or employing company has claimed savings higher than other units of similar efficiency; or

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

(D) The technician or employing company has misrepresented a competitor's product or service; and

(E) The technician or employing company fails to make corrections requested in writing by ODOE to remedy violations of (A)–(D) of this subsection within 30 days, unless more time is allowed by ODOE; or

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0048

#### Administrative Process for Review and Revocation of Contractor Tax Credit Certification

(1) If ODOE receives a complaint, the tax-credit certified technician and employing company must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractors Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of technician tax-credit certification or civil penalty.

(b) In all other cases, ODOE must evaluate the technician's or employing company's response and determine whether a violation occurred. ODOE must notify the technician and employing company of its determination and, if appropriate, the necessary remedy. ODOE must give the technician and employing company 30 days to remedy a violation. ODOE may grant the technician and employing company additional time where appropriate.

(2) If the technician and employing company do not take appropriate action within the time specified, ODOE must begin enforcement proceedings. An enforcement proceeding may be brought to revoke the technician tax-credit certification, remove company name from ODOE listing, and/or to impose a civil penalty.

(3) ODOE must commence an enforcement proceeding by sending the technician and employing company a notice of violation. The notice must describe the violation(s) and notify the technician and employing company of the proposed penalty (revocation and/or civil penalty).

(4) Civil Penalties: The technician and employing company may be subject to a civil penalty if a system certification or technician tax-credit certification is revoked by the Director. The amount of the penalty must be the total amount of tax relief estimated to have been provided to purchasers of the system for which a system or technician tax-credit certification is revoked under this rule.

(5) Before the Director imposes a penalty, the technician and/or employing company must be given 21 days in which to request a hearing pursuant to ORS 183.310–183.550 and the Attorney General's Uniform and Model Rules of Procedure, January 15, 2004 edition. The

hearing will be to contest the revocation of a system or technician tax-credit certification based on actions listed under OAR 330-070-0045.

(6) Re-application: To reapply after the revocation of a technician tax-credit certification, the technician and employing company must prove to the satisfaction of ODOE that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that technician or employing company or any other firm with any of the same shareholders may reapply for certification.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.180  
Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0055

#### Guidelines for Consumer Information

(1) A tax credit certified technician must inform each buyer in simple terms:

- (a) How to tell if the device is running right. Who to call if it is not;
- (b) How to tell if the freeze protection is in effect. Who to call if it is not;
- (c) What maintenance is needed, annually and long term;
- (d) Who will honor warranties; and
- (e) What are the conditions of the warranties including but not limited to how to start and keep warranties in force.

(2) A tax-credit certified technician or employing company must provide all clients with a copy of materials deemed necessary by the Director prior to sale of the system.

Stat. Auth.: ORS 469.086  
Stats. Implemented: ORS 316.116  
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0059

#### Guidelines for Solar Pool and Spa AEDs

(1) Installations must be of professional quality, be installed according to manufacturer's instructions; comply with all applicable state, county, or local codes and regulations; and be verified by a ODOE tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

- (a) Clear instructions on how to monitor the system performance;
- (b) Description and recommended frequency of homeowner maintenance;
- (c) Diagram of the system noting location of valves and monitoring devices; and
- (d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs;

(3) Pool heating system designs and installations must comply with the following additional requirements:

- (a) Collectors and piping must be securely mounted to withstand local wind loads;
- (b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;
- (c) Any building insulation disturbed due to the system installation must be restored to previous condition;
- (d) Pool collector materials must come with a minimum 10-year full warranty (to ensure that equipment designed for temporary installation is not used).
- (e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.
- (f) Collector risers must follow the slope of the surface they are mounted on to ensure drainage for proper freeze protection.
- (g) Pool collectors must be equal to not less than 40 percent of the pool surface area if equipped with swimming pool blanket or not less than 60 percent if no pool blanket is present.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the Oregon Department of Energy. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) Spa or hot tub must be insulated with not less than R-15 perimeter and bottom insulation and have a cover rated to not less than R-5.

(5) ODOE will provide technicians with a simple means of estimating annual energy savings for a pool heating system. Spa heating system performance will be determined on a case-by-case basis. For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

(6) The costs listed in subsection (8)(a) through (h) 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.

(7) Eligible costs include:

- (a) The cost of solar collectors;
- (b) The cost of thermal storage devices;
- (c) The cost of monitors, meters and controls;
- (d) The cost of photovoltaic devices used to supply electricity to parts of the system;
- (e) Installation charges;
- (f) Fees paid for design or building;
- (g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and
- (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.

(8) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

- (a) The system addition increases first year energy yield; and
- (b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(9) ODOE will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) ODOE 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.

(10) A tax credit for a system addition must count as a tax credit for the tax year in which the addition is placed in service. The total tax credit of current and previous year credits shall not exceed \$1,500 per year.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 469.086  
Stats. Implemented: ORS 316.116  
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0060

#### Guidelines for Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality, comply with all applicable state, county, or local codes and regulations and be verified by an ODOE tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

- (a) Clear instructions on how to determine if the system is functioning properly;
- (b) Description and recommended frequency of homeowner maintenance;
- (c) Diagram of the system noting location of valves and monitoring devices;
- (d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

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

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

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

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

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

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Drain-down or manual drain systems for pools or spas must be designed for gravity draining of the collector and piping.

(g) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

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

(C) 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; and

(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) ODOE will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems common to Oregon and R&D systems. Annual energy savings will be based on the annual performance simulations provided by the SRCC modified for conditions required under state law.

(a) OG-300 systems that meet ODOE approval do not have to be on the yield chart if there has been no request by a tax-credit certified technician that they appear on the yield chart.

(b) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent. Yields must be developed for each of the three weather zones defined by ODOE and updated at least annually.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. ODOE will extend this temporary authorization for up to 12 systems of a specific design. The solar technician will need to submit a complete copy of the system design and operation documents provided to the consumer to ODOE for approval. ODOE shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this status will be determined by ODOE based on 90 percent of the estimated annual energy output.

(b) Temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. ODOE will extend an unlimited quantity of systems to be installed in a 12-month period, providing ODOE has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(11) System yields shown in the yield charts may be increased by a tax-credit certified technician providing they sign a statement of compliance provided by ODOE and meet the following storage tank insulation levels:

(a) A one tank/aux. tanks adjustment of +100 kWh applies to the tank in a solar water heating system that has 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 by ODOE.

(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 because they are usually not part of the original home design, they are generally located outside the conditioned space of the house. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(12) All technician tax-credit certified-installed systems must:

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

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

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

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

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

(13) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(14) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. ODOE will evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0062

#### Guidelines for Passive Solar Space Heating AEDs

(1) Installations must be of professional quality and comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy yield must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Such systems must:

- (a) Have sufficient solar access, not jeopardized by future buildings or tree growth;
- (b) Provide usable heat for the heated space;
- (c) Provide adequate thermal storage for solar heat gained;
- (d) Prevent overheating of the heated space that requires mechanical space cooling; and
- (e) In addition, sunspaces must:
  - (A) Have no backup heating device; and
  - (B) Be able to be isolated from the heated space.

(4) Determination of annual performance shall be based on one of the following approved methods:

(a) Using ODOE's prescriptive passive solar heating path to achieve 20 percent savings.

(b) Annual hourly simulation using an approved energy modeling software (e.g. Energy-10).

(c) Monitored data from system before and after installation of AED.

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

- (a) The cost of mass or water walls for thermal storage;
- (b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;
- (c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and
- (d) The cost of passive heat distribution components.

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

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0063

#### Guidelines for Combined Active Solar Space and Domestic Water Heating AEDs

(1) Installations must be of professional quality, made to manufacturer's instructions, comply with all applicable state, county and local codes and regulations, and be verified by an ODOE tax-credit certified solar technician.

(2) Active solar space heating systems must produce energy savings equal to not less than 15 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit.

(3) The estimated first-year energy savings shall be based on the following:

(a) The house design prior to installation of the solar energy equipment, not a base code design or reference design.

(b) The total energy savings from both space heating and domestic hot water heating, with not less than 50 percent of the savings coming from solar heating.

(c) An annual solar utilization calculation method approved by the Director that accounts for the operating temperature of the energy storage and collector system and gives no credit for any insulation measures not directly associated with the solar AED.

(d) Typical residential occupancy setpoints and operating behavior. Savings will not be granted for consumer behavior options, with the exception of nighttime window insulation which will be evaluated at 50 percent of maximum effectiveness.

(4) Applicant must provide the following information:

(a) As-built to scale home drawing that indicates envelope shell insulation levels;

(b) Complete system design documentation with component list and controls sequence;

(c) Annual estimated savings calculations; and

(d) Solar equipment specifications and performance test data.

(5) Solar device costs eligible for the tax credit for active space heating systems 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; and
- (g) Fees paid for design or building.

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

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0064

#### Guidelines for Photovoltaic AEDs

(1) Installations must be professional quality, comply with all applicable Oregon codes, comply with the requirements of the National Electric Code article 690, and be verified by an ODOE tax-credit certified solar technician.

(2) A photovoltaic tax credit for a system installed on or after November 4, 2005, shall be limited to \$6,000 per PV system. The amount of the credit shall be based on \$3 per watt. The maximum tax credit given in a calendar year is \$1,500. If a system results in a tax credit larger than \$1,500, the remainder will be applied on to the subsequent year until either the \$6,000 limit or the total tax credit is provided.

(3) System size shall be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC).

(4) The minimum system size must be 200 Watts DC output under STC.

(5) 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) Trackers;
- (g) Installation charges; and
- (h) Permits and fees, including 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.

(6) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

**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 must limit waste of the resource.

(3) Systems must not have adverse effects on:

(a) Other systems; and

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

(4) Systems must not create hazards such as:

(a) Steam or water vapor;

(b) Vapors or odors;

(c) Noise; and

(d) Hazardous wellhead design.

(5) System parts must have adequate:

(a) Structural strength;

(b) Resistance to weather and fire;

(c) Ease of upkeep; and

(d) Durability.

(6) No system will 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 that 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. must 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 protected against pressures, vacuums and temperatures.

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

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

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

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

(14) Systems must 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 ground-water.

(16) 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.

(17) Downhole heat exchangers will be reviewed on a case by case basis.

(18) The system COP must be at least three, including energy used by pumps. COP shall be determined by the following methods:

(a) For water source heat pumps, the COP must 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 must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

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

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

(21) All ground water heat pumps and ground loop water heating AEDs must include setting the water heater thermostat to 120 degrees F as a hot water conservation measure.

(22) A ground source heat pump system may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings, if the duct system to which it is attached is tested and certified in accordance with the protocols specified in OAR 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the ground source heat pump system itself,

and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the ground source system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

**330-070-0073****Guidelines for Energy Efficient Appliances and Alternative Fuel Devices**

(1) Energy efficient appliances must 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 currently listed with ODOE as qualifying premium efficiency appliances.

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

(3) Clothes washers:

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Clothes washers shall have a minimum Modified Energy Factor (MEF) of 1.60 and a maximum Water Factor (WF) of 8.50 gal/cubic foot/cycle.

(4) Refrigerator-Freezers:

(a) Must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers;

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 30 cubic feet; and

(c) Must have a fully automatic defrost cycle.

(5) Dishwashers:

(a) Dishwashers must have an Energy Factor of 0.61 cycles/kWh or higher; and

(b) Effective January 1, 2004, dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(c) Effective August 2, 2004, dishwashers must have a maximum water use per cycle, as tested, of 6.5 gallons.

(6) Water Heating Appliances:

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by ODOE.

(B) Electric units of nominal 1-ton or less shall have an Energy Factor not less than 1.0; units with capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5.

(C) Natural gas, propane, or oil-fired units shall have an Energy Factor of 0.80 or greater as tested with natural gas fuel, and shall have a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by ODOE must be the basis for tax credit qualification. The following rules also apply:

(a) The systems must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All joints and seams in duct work outside the conditioned space must be sealed, when accessible, with mastics that meet NFPA class 1 requirements, that are UL 181 listed, and that meet ASTM standards C557 and C919-79.

(b) All closure systems must be applied according to the manufacturer's instructions or as specified by these standards.

(c) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(d) Duct leakage must be tested using ODOE-approved, calibrated duct testing equipment and ODOE approved testing protocols.

(e) Testing to verify that these standards have been achieved must be conducted by technicians approved by ODOE or by an ODOE-designated agent or representative.

(f) In addition to general requirements (a) through (e), performance checked duct systems must meet situation specific standards for eligibility, materials, design, installation, air tightness and safety, as specified in the Oregon Department of Energy Premium Efficiency Duct System Standards, dated October 30, 2003.

(g) Measures eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) New construction

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

(vi) Duct testing; and

(vii) Labor and materials for bringing duct systems inside heated space.

(B) New ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles; and

(vi) Duct testing.

(C) Duct repair and sealing/existing ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Labor and materials for installing multiple returns;

(iii) Labor and materials for installing passive pressure relief grilles; and

(iv) Duct testing.

(h) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Test results worksheet for "new construction," "new duct systems in existing homes," or "duct repair and sealing"/existing ducts in existing homes, as applicable;

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, shall be made available to ODOE upon request; and

(D) Itemized invoice identifying measures detailed in (g).

(i) The amount of the tax credit for performance checked duct systems must be 25 percent of the eligible costs detailed in (g), up to \$250.

(9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by technicians certified by ODOE or its approved agent, based on procedures approved by ODOE.

(b) Approved supplemental air flow test methods must be used, including: flow grid, duct blaster, strip heat, or flow hood. Supplemental air flow test results must include pre-repair and post repair air flow readings in cubic feet per minute, cfm.

(c) To verify electronically commutated motor (ECM) installation results, the wattage of the existing fan motor and new ECM fan motor must be measured using a wattmeter or by clocking the revenue meter using the following procedure:

(A) Turn off all circuit breakers except the breaker to the AC/HP air handler.

(B) Turn on the air handler fan (cooling speed).

(C) At the meter, use a stopwatch, and for a period of at least 90 seconds, count the number of revolutions of the wheel. Record seconds and number of revolutions.

(D) Record meter data: kWh and multiplier if any.

(E) Calculate the watt draw of the fan: Watts = [kWh x number of revolutions x multiplier x 3600]/seconds.

(d) Eligible measures must be confirmed by the system diagnostic tests using ODOE-approved protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(e) Measures eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include:

(A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more; and

(E) Replacing an existing inside fan motor with an electronically commutated motor (ECM) when initial diagnostic tests show low air flow and tests after ECM installation show an air flow improvement of 10 percent or more.

(f) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre and post repair system air flow measurements using approved methods listed in (b), if applicable;

(D) Watt draw of existing fan motor and new ECM, if applicable; and

(E) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(g) The amount of the performance checked heat pump/AC tax credit must be 25 percent of the cost of testing and repair, up to \$250.

(10) Alternative Fuel Vehicles must 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 current at the time these rules are adopted; or

(b) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(c) Other components as recognized by ODOE as necessary for alternative fuel use.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of re-fueling/recharging an alternative fuel vehicle within 14 hours. The following rules also apply:

(a) On-board charging systems that feed into the rechargeable energy storage system in a hybrid vehicle must be high-voltage systems of 100 Volts or higher that have an active regenerative braking system integrated into the recharging system of the hybrid vehicle; and

(b) The use of an on-board charging system on a hybrid vehicle must result in significant energy savings as determined by the Director of ODOE.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed; Have a maximum EUI (HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory; Have a minimum SEER rating at DOE "B" conditions of 14.5 (Effective April 1, 2006, this requirement will be deleted.); (e) Have a minimum EER rating at DOE "A" conditions of 12.5 (Effective April 1, 2006, have a minimum EER rating at DOE "A" conditions of 13.0); and

(f) Be installed in accordance with the protocols specified in section 330-070-0073(10)(a) through 330-070-0073(10)(g) of these rules.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be a central, split-system;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum DOE Region IV HSPF rating of 8.5 (Effective April 1, 2006, have a minimum DOE Region IV HSPF rating of 9.0);

(e) Have a minimum SEER rating at DOE "B" conditions of 13.0 (Effective April 1, 2006, this requirement will be deleted.); (f) Have a minimum EER rating at DOE "A" conditions of 11.0. (Effective April 1, 2006, have a minimum EER rating at DOE "A" conditions of 12.0); and

(g) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance

Manufacturers Association (GAMA) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.90 (90 percent);

(c) Use outdoor air for combustion; and

(d) The air handler for the unit must have an electronically commutated, permanent magnet variable speed DC (ECPM) motor, or have an EUI (FURNACE) of less than 0.02.

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted; and

(b) Have a minimum AFUE rating of 0.88 (88 percent).

(19) Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace systems may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the air conditioning and/or heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed. (20) Any other standards adopted by ODOE for energy efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director of the Oregon Department of Energy.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0085

#### Fuel Cell Systems

To be eligible for a tax credit under these rules, fuel cell systems must have a minimum rated stack capacity of 0.5 kW and a maximum rated system capacity of 10 kW.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04

### 330-070-0089

#### Guidelines for Wind AEDs

(1) To qualify for a tax credit, a wind AED system must:

(a) Meet all applicable industry standards published by the American Wind Energy Association (AWEA). The customer and ODOE must be given a copy of the documentation that shows that these standards have been met. The documentation must apply to the correct make, model and version of the wind AED for which the applicant seeks the credit.

(b) Include a one-year written guarantee from the dealer or maker assuring the buyer a full refund or no-cost replacement of the system if the system does not meet all applicable standards published by AWEA. The guarantee shall provide that, in the event the system does not meet the AWEA standards, the refund or no-cost replacement shall be at the buyer's option.

(2) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(3) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to wind, lightning, ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(4) The wind AED must withstand all natural forces it may be expected to experience.

(5) No part of a wind AED project must put toxic substances into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(6) Wind AED parts must be serviceable without the need to trespass.

(7) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(8) Manual Shutdown: All wind AEDs must have a manual way to stop the rotor from turning. This method must work safely during high winds and routine service.

(9) Overspeed Control: Rotor overspeeds shall be prevented by the wind AED's design.

(10) Tower safety: All parts of a wind AED project shall meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(11) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(12) Lightning: Wind AEDs must withstand lightning strikes.

(13) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(14) The first-year energy yield of wind AEDs must be at least 350 kWh.

(a) The first-year energy yield must be estimated using the measured wind data and the wind AED's power curve or energy production data.

(A) The provided wind data must cover at least a one-year period.

(B) Wind data may be used from three nearby wind monitoring stations, the wind AED site itself, or, in the event of less than one year's measurements at the wind AED site, the application shall include the months of on-site measurements and one year's worth of data from two nearby locations.

(b) ODOE will use data supplied by the applicant to verify the first-year energy yield.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-070-0091

#### Eligible Costs for a Wind AED

(1) The costs listed in subsections (2)(a) through (m) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified as AEDs to ODOE's satisfaction. Only total working systems will qualify for a tax credit. All systems must comply with OAR 330-70-0021 and 330-070-0040.

(2) Eligible costs include:

(a) The cost of wind turbine generators;

(b) The cost of DC/AC converters, inverters and synchronous inverters;

(c) The cost of wind and system instruments and controls when part of a total wind AED;

(d) The cost of energy storage (batteries or other methods);

(e) The cost of tower, foundation and guys;

(f) Fees paid for design and building;

(g) Fee to install;

(h) The cost of electric meters, switches and electrical safety equipment;

(i) The cost of electric transformers and lines and supports;

(j) The cost of safety equipment;

(k) Up to \$200 of wind easement cost;

(l) The cost of windmills; and

(m) The cost of pumps, linkage, pump heads, and vacuum chambers.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04

### 330-070-0097

#### Guidelines for Electricity Producing AEDs

(1) Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be UL listed and installed per the state electrical code.

(2) All applications must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

## 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 submissions 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 & 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 & 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 Oregon Laws 1981, Chapter 792. These products include:

(a) Crude petroleum;

(b) Fuel oil (distillate and residual);

(c) Kerosene;

(d) Liquefied petroleum gases;

(e) Motor vehicle fuel (when used as fuel for agricultural purposes); and

(f) Petroleum coke (when used as fuel in metal processing). "Petroleum products" does not include fuels subject to the requirements of Section 3 of Article IX of the Oregon Constitution, ORS 319.020 relating to aircraft and motor vehicle fuel, and ORS 319.530.

(9) "Petroleum Supplier" 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 & 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 pre-

ceding 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84

### 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 & 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 & 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 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84

### 330-075-0045

#### Retention of Supporting Documentation by Energy Resource Suppliers

Supporting documentation used by the energy resource supplier in compiling the information submitted pursuant to OAR 330-075-0010 to 330-075-0045 shall be kept available by the energy resource supplier for inspection by the Department for three years from the date of submission.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469,421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84

## DIVISION 80

### STATE ADMINISTRATION OF FEDERAL PETROLEUM ALLOCATION PROGRAMS FOR MOTOR GASOLINE AND MIDDLE DISTILLATES

### 330-080-0005

#### Purpose

(1) In response to the Arab oil embargo of 1973, the federal government has, through the Emergency Petroleum Allocation Act of 1973 and other statutes, and through regulations adopted pursuant thereto, established a series of programs governing the allocation and pricing of crude oil and refined petroleum products. Among these are:

(a) The "state set-aside program" (**10 CFR 211.17**), whereby a percentage of the total expected supply of a product is received each month to be allocated to alleviate hardships and emergencies; and

(b) A program (**10 CFR 211.12(f)**), whereby new end-users can apply for an assignment of an allocated product or a supplier.

(2) Administration of the described programs may be delegated to states. Oregon has requested the Region X Office of the U.S. Department of Energy (US DOE) for this authority as to motor gasoline and middle distillates only.

(3) The purpose of these rules is to provide the substantive framework for administering these federal programs as to motor gasoline and middle distillates only. To the extent possible, definitions of terms and substantive provisions have been taken directly from existing federal regulations. Copies of federal regulations incorporated herein by reference are available from, Oregon Department of Energy (ODOE).

(4) The basic philosophy of ODOE in implementing these programs is to alleviate emergency or hardships of actual end-users of motor gasoline and middle distillates and to alleviate regional shortages of gasoline available to the general public. Therefore, in making decisions under these rules, the emphasis will be to assure needed supplies to such end-users, taking into consideration the allocation priorities established by federal law.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.030

Hist.: DOE 3-1979(Temp), f. & cf. 5-24-79; DOE 4-1979(Temp), f. & cf. 9-20-79; DOE 5-1979, f. & cf. 10-29-79

**330-080-0020**

**Prime Supplier's Responsibilities**

(1) State Representative: Each prime supplier shall notify in writing the State Office of its designated representative, which shall be a firm with a place of business in Oregon. The State Office shall, to the maximum extent possible, consult with the designated representative prior to issuing any authorizing document affecting state set-aside volumes to be provided by the prime supplier.

(2) State Set-Aside Volume:

(a) A prime supplier shall inform the State Office and the Region X Office of US DOE monthly in accordance with **10 CFR 211.222(b)** of the estimated volume of motor gasoline and middle distillate subject to state set-aside to be sold into Oregon for consumption within Oregon;

(b) At the time of issuance of these rules state set-aside percentage level is five percent of motor gasoline and four percent of middle distillates. Any change in these percentages will be published by the State Office. The State Office has the authority, subject to federal approval, to revise the set-aside percentage level upwards or downwards as the supply situation requires;

(c) The set-aside volume available for a particular month shall be the sum of the amounts calculated by multiplying the state set-aside percentage level by each prime supplier's estimated portion of its total supply for that month which will be sold into Oregon's distribution system for consumption within Oregon.

(3) Release of State Set-Aside:

(a) All prime suppliers shall supply products from their state set-aside volume each month, as directed by the State Office, based on the actual volume delivered by the suppliers to purchasers in the state. Suppliers shall provide the applicant with the assigned amount of an allocated product from any convenient local distributor. Wholesale purchaser-resellers of prime suppliers shall honor authorizing documents upon presentation, and shall not delay deliveries required by the authorizing document while confirming such deliveries with the prime suppliers, and shall receive from its supplier an equivalent volume of the allocated product;

(b) Any portion of a state set-aside volume which is not allocated during a particular month or which is not subject to an authorizing document issued no later than the last day of that month is part of the prime supplier's total supply for the subsequent month, and shall be distributed according to the allocation procedures in **10 CFR Part 211**;

(c) At any time during a month, the State Office may order part or all of a prime supplier's set-aside volume released for normal distribution;

(d) The State Office may designate geographical areas within Oregon as suffering from an intra-state supply imbalance, and may order some or all of the prime suppliers with purchasers within such geographical areas to release part or all of their set-aside volume through their normal distribution systems to increase the allocations within such areas;

(e) Orders issued by the State Office are effective upon presentation to the designated state representative, and represent a call on the prime supplier's set-aside volumes for the month of issuance even though delivery cannot be made until the following month.

[Publications: Publications referenced 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 referenced 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. & cf. 5-24-79; DOE 4-1979(Temp), f. & cf. 9-20-79; DOE 5-1979, f. & cf. 10-29-79

## DIVISION 90

### BUSINESS ENERGY TAX CREDITS (BETC)

#### 330-090-0105

##### What a BETC Is

A Business Energy Tax Credit may be received against owed Oregon income taxes for up to 35 percent of the cost of qualifying energy or conservation projects. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying energy or conservation projects. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications received by ODOE on or after October 1, 2006..

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, cf. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06

#### 330-090-0110

##### Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than gasoline or diesel, that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, biodiesel, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A 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 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 person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

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

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(5) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(6) "Building Automation Controls Project": Systems that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section (17)(b)(D) of this rule.

(7) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(8) "Carpool Program": A program in which riders share the same vehicle to commute between different communities/ neighborhoods on a regular basis.

(9) "Car Sharing Program": A program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(10) "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.

(11) "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.

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

(13) "Commuter Parking Space" means a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(14) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). 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-served basis.

(15) "Completed Project": An energy or conservation project for which all costs have been paid or committed by a binding contract or

agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(16) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(17) "Cost": The actual 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. Costs financed with federal funds, other than costs financed by grants or tax credits excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses. Costs incurred by entities that are not taxpayers, including but not limited to, cooperatives, non-profit corporations, state or local governments including school districts, water districts, or any other special districts, may be eligible costs irrespective of their funding sources.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the project;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the project; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a project; or

(E) 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 must 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. ODOE 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 for substantial energy savings.

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

(f) Excluding Research, Development & Demonstration, Sustainable Building Projects, recycling market development, and transportation projects, eligible project costs are limited by the following:

(A) All other projects must have a 15-year simple payback period, except rental dwelling weatherization projects and solar photovoltaic projects that are limited to a 30-year simple payback. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) All other projects must have a simple payback of more than one year and less than the service life of the project,

(g) Costs for a Research, Development & Demonstration project also include costs of instruments, controls, and other equipment needed to monitor or audit the project. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible project costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for Transportation Projects include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service and transportation services. Except for RD&D projects, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation projects is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the project.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the project cost based on similar projects, but not exceeding 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Projects are exempt from the previous requirements of this definition, as the eligible cost for these projects is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building projects OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(18) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Web site of the Oregon Department of Energy.

(19) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(20) "Energy or Conservation Project": A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station, a sustainable building project, or Research, Development & Demonstration project that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for a Research Development & Demonstration project, 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 or other eligible entity. 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 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 project needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(d) A space conditioning system(s) is an energy project if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(17)(e), of a fuel switching project will be allowed if the upgrade complies with these rules.

(e) A new electric motor that complies with the BETC Technical Requirements.

(f) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(g) Except as noted in (20)(d), an energy project does not include:

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

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except 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, for applicants listed in ORS 469.205(1)(c)(A) and

(B), 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.

(21) "Director": The Director of the Oregon Department of Energy or designees.

(22) "Final Certification": Final certificate issued upon completion of an approved BETC project.

(23) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

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

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

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

(24) "Hybrid Electric Vehicle": A vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(25) "Individualized Travel Behavior Change Program": A program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(26) "Industrial Process Energy Project": Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, 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 (20)(e) of this rule; but

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

(27) "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.

(28) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(29) "Lighting Project": Means a project that will reduce the affected lighting system energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the project or that will be subsequently replaced will be recycled and, if so, how.

(30) "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 will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(31) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(32) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(33) "Necessary Feature": A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes energy or conservation projects to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling project equipment. Recycling projects are necessary features except as noted in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(34) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b).

(35) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(36) "Parking Cash Out" means a cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(37) “Pass-through Option”: An option that allows a project owner to transfer the project’s tax credit eligibility to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(38) “Pass-through Partner”: A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(39) “Preliminary Certification”: Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(40) “Premium Efficient Appliance”: An appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE’s Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE’s Premium Efficient Commercial Appliances Directory.

(41) “Project Eligible Square Footage”: For the purpose of calculating the tax credit amount for a Sustainable Building Project, project eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the project. It does not include exterior square footage beneath overhangs, awnings, canopies, walkways or unconditioned plaza areas beneath conditioned portions of the building.

(42) “Project Operator”: The person or people to whom the applicant gives authority to manage a project. Such person or people will be the applicant’s agent for all reasons related to the project once its development begins.

(43) “Project Owner”: An applicant who purchases and owns a qualified project.

(44) “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;

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

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

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

(e) The date energy or conservation project information for a preliminary certification application is received by a cooperative agreement organization.

(45) “Public Purpose Organization”: The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(46) “Qualified Transit Pass Contract”: A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(47) “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. It does not include the combustion or incineration of a waste stream, although these waste remediation processes may be a part of an “Energy Project” where they include characteristics required to meet that definition.

(48) “Recycling Project”: Equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific washsheds, as noted in OAR 330-090-0110(18)(h). 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 or rule. 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.

(49) “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 equipment which yields a feedstock with new and changed characteristics for the production of new products; or

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

(50) “Renewable Energy Resource”: A renewable energy resource:

(a) Does include, but is not limited to:

(A) Straw, forest slash, wood waste, or other wastes from forest-land.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric or geothermal project with more than one megawatt of installed capacity unless it is a Research, Development, and Demonstration project as defined in OAR 330-090-0110(52) or definition 52 of this rule.

(B) Whole, living trees harvested for use as a fuel unless those trees have a growth cycle that will enable the trees to be replaced for use as a fuel during the service life of the project.

(51) “Renewable Resource Project”: Development that uses a renewable energy resource in a business or other eligible entity to make electricity, bio-gas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(52) “Research, Development, and Demonstration Project (RD&D)”: A project that complies with (a) and (b):

(a) A project that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as an energy or conservation project in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research projects that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development projects that include the new manufacture or initiation of the capability to produce or deliver energy or conservation projects in Oregon, excluding development projects that increase established manufacturing or production capacity in Oregon;

(C) Demonstration projects that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;

(D) Innovative travel reduction projects that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.

(E) Projects that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Manufacturing facilities that produce renewable energy components such as wind, solar, geothermal, and other technologies.

(G) Projects in the Director’s determination are likely to achieve Energy Office goals.

(b) A project that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(53) “Riders”: Employees, students, clients, customers, or other individuals using transportation facilities or transportation projects for travel.

(54) “Rideshare Matching Services Program”: A program that provides matching services to registered members to find shared rides for commuting on a regular basis.

(55) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline system has exceeded its service life, only an incremental project will be considered eligible for a tax credit.

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

(57) "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 curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(58) "Substantial Energy Savings": Means that ODOE has determined that:

(a) An energy or conservation project, other than a lighting retrofit or sustainable building project and excluding Research Development & Demonstration, transportation, recycling market development, recycling project, will save at least 10 percent of the energy used in a given system or process;

(b) A lighting retrofit project will reduce the affected lighting system energy use by at least 25 percent;

(c) The project is a sustainable building project as defined in Definition 59 of this rule; or

(d) The project measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(59) "Sustainable Building Project": Means a building project as defined in section 8 of this rule that is rated and certified under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council. For a Sustainable Building Project to be eligible for a tax credit it must comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(60) "Transportation District": A transportation district included in ORS 184.675(7).

(61) "Transportation Facility": A transportation project that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. This includes, for purposes of this rule, commuting to and from class. Transportation facility includes, but is not limited to, a qualified transit pass contract or a transportation services contract, a car sharing program, and a parking cash out project.

(62) "Transportation Project": An energy or conservation project that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation project must meet one or more of the following criteria:

(a) Telework defined as working from home or from an office near home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per calendar year. Eligible costs include purchase and installation of new or used equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance

and operation of any equipment;; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per calendar year. Eligible cost includes purchase of vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass project.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 days per calendar year. Eligible costs include purchase of bicycles and equipment used to store bicycles. Accessory items such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation project and cannot exceed the cost of the transportation project. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 days per calendar year. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) "Transportation Service": is defined as a project that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service project is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service project must provide service for a minimum of 150 days per year. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible.

(k) "Individualized Travel Behavior Change": is defined as a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants

in a specific geographical area or in a targeted group. Pre and post-project surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Projects are subject to the VMR cost-effectiveness formula

(l) "Rideshare Matching Service": is defined as a program that provides matching services to registered members to find shared rides for commuting on a regular basis. Pre and post-project surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Projects are subject to the VMR cost-effectiveness formula.

(m) "Carpool/Vanpool Program": is a program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but does not include the cost of the vehicle. The applicant must conduct pre and post-project surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 calendar days per year. Projects are subject to the VMR cost-effectiveness formula.

(63) "Transportation Provider": means a public, private, or non-profit entity that provides transportation services to members of the public.

(64) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(65) "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.

(66) "Vanpool Program": A program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(67) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a project when compared to single occupant vehicles.

(68) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06

### 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.

(1) Standards for an Applicant — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) File, have a pass-through partner that files, or commit to select such a partner prior to final certification, an Oregon income 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 will 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; and

(b) Comply with or have a variance from the land use laws of the city or county where the project will be; and

(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 must 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 must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy project must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy project must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) Standards for Leased Energy or Conservation projects: 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.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06

### 330-090-0130

#### How ODOE Handles a BETC

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the project during the review process, an applicant must notify ODOE in writing.

(c) A project owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(2) Preliminary Certification Preapproval: The Director may preapprove a preliminary certification for projects that ODOE has reviewed and determined to be otherwise qualified under these rules. Such projects may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a project owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Projects that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on an energy or conservation project begins.

(a) Within 60 days after an application for preliminary certification is filed, the Director will 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 will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(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 preliminary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an appli-

cation is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the project.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) 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).

(d) Facts that show the proposed use is an energy or conservation project under these rules.

(e) Project start and finish dates.

(f) Facts that describe the project, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the project.

(h) The applicant's signature on the application attesting that it is correct.

(i) 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 must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before project development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(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 RD&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 payment required by OAR 330-090-0150(2).

(l) For wind projects with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report must be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicles: 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) For transportation projects: required documentation for each category specified by OAR 330-090-0110 (62) (a through m).

(q) Other data the Director requires to assure a project complies with these rules.

(5) Preliminary Certification 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 preliminary certification after project start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after project start if:

(A) The request is in accord with OAR 330-090-0120; and

(B) Special circumstances make application for preliminary certification before project start up a hardship. Such circumstances include process delays beyond the applicant's control, project funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of project start date. Under extraordinary circumstances the Director may extend the waiver period provided the project serves the aims of the program.

(6) How Preliminary Certification Can be Revoked: The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A project is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before project development starts.

(c) The project undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a project that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, project design, and materials. The change also must 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 will decide if the changed project complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the project or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the project owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the project owner has received the pass-through payment in full and notified ODOE.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the project is complete.

(a) Within 30 days after a final certification application is filed, the Director will decide if it is complete. If it is not complete, the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(17)(b). For a Research, Development & Demonstration project, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within six months after the project begins to operate; and, if needed to make the project work better.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The project complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) 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 paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the project owner or pass-through partner; or

(ii) If the project costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17); or

(iii) For a sustainable building project, a copy of the project U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of project cost receipts.

(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 must 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.

(10) Changes After Final Certification:

(a) The applicant must inform the Director in writing if a project that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased project has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the preliminary certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a project may apply for final certification. The request must comply with OAR 330-090-0130(9). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a project owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The project has been moved; or

(B) Title to the project has been conveyed; or

(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.

(12) Loss of Tax Credit Benefits: If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the project owner may not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the project owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the project. ODOE will schedule the inspection during normal working hours, following reasonable notice to the project operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a project, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will 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) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06

### 330-090-0135

#### Business Energy Tax Credit Sustainable Building Project Rules

(1) To be eligible for a tax credit, sustainable building projects must achieve a minimum rating of "Silver" using one of the U.S. Green Building Council's rating systems, listed in the BETC Technical

Requirements, in effect as of the project registration date. Projects receiving a “Gold” or “Platinum” rating will be awarded proportionally larger tax credits, as calculated by ODOE. Sustainable building projects must also comply with all applicable BETC Technical Requirements.

(2) All Sustainable Building Projects must acquire a preliminary certification from ODOE in accordance with OAR 330-090-0130(3). For these projects, the project owner must submit a certified copy of the Project Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify ODOE in writing, and provide a statement of intent to apply for a tax credit as an energy project, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).

(3) ODOE may, at its discretion, convert a preliminary certification for an Energy Project to a preliminary certification as a Sustainable Building Project, or accept a statement of intent to register as a Sustainable Building Project, provided that a certified copy of the U.S. Green Building Council project registration certificate is provided to ODOE within 30 days of the new preliminary certification date.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

### 330-090-0140

#### Pass-through Option Projects

##### (1) Accepting a Business Energy Tax Credit Certificate in Return for a Cash Payment Equivalent to Net Present Value of the Tax Credit.

(a) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a project that is otherwise eligible for the tax credit in return for a cash payment equivalent to the net present value of the tax credit.

(b) Net Present Value: The minimum tax credit required to be passed through, known as the net present value, to an otherwise eligible applicant who purchases and owns a qualified project.

(A) The net present value will be determined and published at least each year and may be periodically revised by the Director.

(B) The Director may establish different net present value amounts for projects with final certifications of more than \$20,000 and for projects with final certifications of \$20,000 or less.

(C) In making a determination of the pass-through amounts, the Director may consider the inflation rates, opportunity costs, and tax consequences among other factors.

(D) The net present value for the project is the amount in effect when ODOE receives the pass-through option agreement declaring a pass-through partner, without regard to when the final certification is issued.

##### (2) An Investor-Owned Utility May Choose to Become a Utility Pass-Through Partner under the Provisions of this Section or Participate as a Pass-Through Partner under Other Provisions of These Rules that Would Apply to Any Other Pass-Through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-Through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(D) The application for preliminary certification of the pass-through must 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 applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each project's owner, site address, project description or type, number of dwelling units for multifamily projects, total project cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each project including all of the information required in 110-090-0130(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Director for final certification. An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, solar or other renewable resource and the total project costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is defined in the BETC Technical Requirements as a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s);

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If the project costs are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).

(B) Within 30 days after a final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv); or

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment will 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 will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert.

ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

### 330-090-0150

#### Budget Limits and Payments for BETC

(1) **Amount of Credits Allowed:** A BETC preliminary or final certification for an energy or conservation project will not be issued for more than \$10 million.

(2) **Cost of Reviews:** ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for projects qualifying under OAR 330-090-0130(2), for which a fee must be paid with the application for final certification. For all projects except Sustainable Building Projects or qualifying under OAR 330-090-0130(2), the payment will be 0.0075 multiplied by the project eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or 30 dollars whichever is greater. For Sustainable Building Projects, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For projects that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(A) Denial of a application for preliminary certification or for projects that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for projects that qualify under OAR 330-090-0130(2) of final certification; or

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in project re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No projects will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for projects that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

## DIVISION 100

### SMALL SCALE LOCAL ENERGY PROJECT PROCEDURAL RULES

#### 330-100-0000

##### Notification of Rulemaking Activities

Prior to the adoption, amendment or repeal of any rule, the Small Scale Local Energy Project Loan Program will give notice of the proposed adoption, amendment or repeal:

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

(2) By mailing a copy of the notice to persons on the Small Scale Local Energy Program's mailing list established pursuant to ORS 183.335(7);

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 28 days before the effective date of the rule; and

(4) By mailing a copy of the notice to the Associated Press, the Oregonian and the Capitol Press Room.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 470.140

Hist.: DOE 10-1980, f. & ef. 9-5-80; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

#### 330-100-0005

##### Model Rules of Procedure

Pursuant to ORS 183.341, the Small Scale Local Energy Loan Program adopts the Attorney General's Uniform and Model Rules of Procedure Division I and II under the Administrative Procedures Act as amended and effective January 15, 2004.

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 470.140

Hist.: DOE 10-1980, f. & ef. 9-5-80; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

## DIVISION 105

### REVIEW OF LOAN REQUESTS BY THE SMALL SCALE LOCAL ENERGY PROJECT ADVISORY COMMITTEE

#### 330-105-0005

##### Definitions

Where context permits, these definitions apply to ORS Chapter 470 and these rules:

(1) "Application" or "Request" means an application submitted on a Department-approved form and its supporting papers.

(2) "Adverse Decision" means a decision to deny a loan application or to make a loan in an amount contrary to advice of the Committee.

(3) "Committee" means the Small Scale Local Energy Project Advisory Committee created under ORS 470.070.

(4) "Secretary" means the Secretary to the Committee. He or she will be an employee chosen by the Director.

(5) The definitions contained in OAR 330-110 and ORS 470.050, as amended, apply to these rules.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

#### 330-105-0007

##### Committee Officers and Their Powers

The Committee will elect a Chair and Vice-Chair every two years. The Chair or Vice-Chair may serve until his or her successor is elected. The Chair or Vice-Chair may be removed by a unanimous vote of the other members. A vacant office will be filled by vote at the next Committee meeting.

(1) The Chair will preside over all Committee meetings. Except as provided in (3) below, the Chair will sign all documents on behalf of the Committee. The Vice-Chair will fill the role of the Chair when the Chair is absent.

(2) The Chair may create, and appoint members to, sub-committees. Sub-committee members are not required to vote or concur on their findings. Each may report alone to the Committee or Chair.

(3) Only the Chair may sign letters in the name of the Committee unless the Committee by vote authorizes a member or the Secretary to do so. All letters of the Committee will be prepared and filed by the Secretary. The Committee must approve in advance any letters.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.070

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

**330-105-0008**

**Committee Meetings**

(1) The Committee will meet at the call of the Chair. Four or more members may also call a meeting. The Chair may run meetings informally. The Chair may require that Robert's Rules of Order be used to run all or part of any meeting.

(2) The agenda for each meeting will be prepared by the Secretary and the Chair. The agenda will set out all matters set to come before the Committee at the meeting. The Secretary will send the agenda and related material to members at least one week prior to a meeting. If the Chair or a majority of the members concur:

- (a) New matters may be added to the agenda;
- (b) Debate may be limited on any matter; or
- (c) The agenda may be revised.

(3) OAR 330-105-0007 through 330-105-0045 provide for the orderly conduct of Committee meetings. Failure to strictly comply with the requirements of OAR 330-105-0007 through 330-105-0045 will not invalidate any action taken by the Committee or keep it from taking action on a matter.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.070 - 470.080

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

**Procedure for Review**

**330-105-0015**

**Committee Review**

(1) The Department will process each loan request and recommend approval or denial of the loan request and specify the amount, terms and conditions of the loan.

(2) The Department will send to the Committee members for review notice of its recommendations, together with a copy of the loan request and the staff review and findings, on the following:

- (a) Any loan requests, other than state agency loan requests, of more than \$100,000;
- (b) State agency loan requests of more than \$500,000;
- (c) Loan assumption requests of more than \$100,000 by non-government borrowers; and
- (d) Loan increase requests of more than \$25,000 and more than 10 percent of the original approved loan amount where the total loan amount exceeds the limits set above for Committee review.

(3) Failure of the Committee to respond to the Department within 14 days from the date of mailing of the Department's notice of its recommendations means concurrence with the Department's recommendations. Should a majority of Committee members, including the Chair, contact the Department and decline to hear the loan request before the 14 days have passed, the Department may proceed with its recommendation.

(4) The Secretary will inform the Committee members, in writing, of each loan amount or loan denial recommended to the Director.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

**330-105-0020**

**Oral Comments**

(1) The Committee may choose whether to hear comment on any matter before it.

(2) The Department will inform applicants, in writing, of the date, time, and place of any Committee meeting set to hear their requests.

(3) The Committee may set time limits on comments.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

**330-105-0025**

**Committee's Advice to the Director**

After its review, the Committee will inform the Director in writing:

- (1) Whether the project complies with OAR 330-110; and

- (2) The recommended amount and terms or conditions for the loan.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

**Procedure for Appeal**

**330-105-0030**

**Introduction**

The Director will decide the amount of any loan. If the decision is adverse, the Committee may appeal to the Governor.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 - 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

**330-105-0035**

**Notice of Adverse Decision**

The Secretary will give prompt notice of any adverse decision and the reasons for such decision. Notice will be sent to the applicant and Committee members.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.090

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 7-2004, f. & cert. ef. 12-20-04

**330-105-0040**

**Appeal to the Committee**

An applicant may ask the Committee to review an adverse decision. The request must be made in writing to the Secretary within 10 working days after the date of the notice of the Director's decision. It must give the grounds for review in detail. The Secretary will send the request promptly to the Committee.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

**330-105-0045**

**Appeal to the Governor**

(1) The Committee may decide by majority vote to appeal an adverse decision to the Governor. The appeal must be made within the time allowed by law. The appeal may include a copy of the application, the staff findings and recommendations, the notice of the Director's decision, and a statement of the reasons for the appeal. It may also include transcripts or recordings of comments made to the Committee during its review.

(2) The decision of the Governor is final. If the Governor fails to act within 30 days after receiving the appeal, the appeal is denied.

(3) The Secretary will inform the applicant and the Committee in writing of the Governor's decision.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

**DIVISION 110**

**THE SMALL SCALE LOCAL ENERGY LOAN PROGRAM**

**330-110-0005**

**Purpose, Statutory Authorization, Policy**

(1) The purpose of these rules is to provide procedures for the Small Scale Local Energy Project Loan Program 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 Chapter 183.

(2) It is the policy of the Department 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 energy source.
- Stat. Auth.: ORS 469 & 470.140  
 Stats. Implemented: ORS 470.050 - 470.310  
 Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0010

#### Definitions

As used in ORS Chapter 470 and in these rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

- (1) "Adequate security" means the pledge of real or personal property or a credit enhancement or other security of value authorized by ORS 470.170 to secure a loan against default.
- (2) "Alternative fuel project" means:
  - (a) 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, hythane, methane, methanol, natural gas, propane, biodiesel or any other fuel approved by the Director; and
    - (B) Produce lower or equivalent exhaust emissions or are more energy efficient than vehicles fueled by gasoline; and
  - (b) A facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.
- (3) "Applicant" means a loan program applicant or borrower.
- (4) "Biomass" means plant and animal matter, but not fossil fuels.
- (5) "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. Cogeneration must qualify under the Small Scale Local Energy Loan Program Technical Requirements.
- (6) "Committee" means the Small Scale Local Energy Project Advisory Committee.
- (7) "Conservation Measure" means a system, component of a system, mechanism or series of mechanisms, support service, or combination thereof that:
  - (a) Reduces the use of energy at the project site;
  - (b) Directly avoids the loss of energy in the transmission of energy;
  - (c) Conserves energy used in transportation with the energy savings being substantially in Oregon;
  - (d) Is a cogeneration project; or
  - (e) Increases the production or efficiency of or extends operating life of a system or project otherwise described in OAR 330-110-0010(7), including but not limited to restarting a dormant project.
- (8) "Conventional Fuels" means purchased electricity or fossil fuels.
- (9) "Creditworthy" means an applicant has a satisfactory credit history and sufficient capacity to repay the loan.
- (10) "Demonstration Project" means a project that showcases new or improved technologies or designs that promise cost-effective production or conservation of energy if adopted by the marketplace, including elements unrelated to energy production or conservation, but are practically inseparable from the project, and would not receive adequate financing unless these unrelated elements are also eligible for Department loan financing.
- (11) "Department" means Department of Energy.
- (12) "Director" means the Director of the Department of Energy or designee.
- (13) "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 local 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 local energy project to generate electricity for sale.
- (14) "Energy Need" means any of the energy demand forecasted by the Department under ORS 469.070 and the need to save energy to cut costs.
- (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 including but not limited to balance sheets, statements of financial condition, statements of financial position, income statements, statement of earnings, statements of revenues and expenses, statements of profit and loss, statements of operations, statements of retained income, statements of cash flows, statements of changes in financial position, pro forma statements, and any accounting reports, reviews, 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 natural person whose project serves his or her dwelling, not his or her business.

(19) "Interim Loan" means a disbursement of a Program loan for the purpose of paying for pre-construction costs.

(20) "Loan Contract" means, in addition to the meaning set forth in ORS 470.050(9), the loan agreement and all other documentation required by the Director to make a loan or change its terms and conditions.

(21) "Local Community or Region" means one or more energy users in Oregon.

(22) "Municipal Corporation" has the meaning assigned to that term by ORS 470.050.

(23) "Preference" means, in any choice between projects or applicants, 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.

(24) "Program" means the Small Scale Local Energy Project Loan Program.

(25) "Qualified" means one is able and eligible under the law to apply for a loan and enter into a loan contract.

(26) "Recycling Project" means a facility or equipment that converts waste, as defined in ORS 459.005, into a new and usable product.

(27) "Renewable Resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(28) "Responsible" means private and business history and circumstances indicating an applicant can be relied upon. For a business, it also means the owners of the business will, if asked, pledge to repay the loan.

(29) "Revolving Loan" means a loan made from funds moved to the loan fund from the sinking fund.

(30) "Security Value" means the value assigned by the Department to the project or other security.

(31) "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 businesses.

(32) "Small Scale Local Energy Project" or "Project" has the meaning given in ORS 470.050; including systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in Oregon or are recycling or alternative fuel projects. The project may produce heat, electricity, mechanical action, or substitute fuels. A project may also be an improvement that increases the production or efficiency of or extends the operating life of a system or device otherwise described in this OAR 330-110-0005(30), including but not limited to restarting a dormant project. A project also:

(a) Must be primarily in Oregon but can have a minor contiguous component in a neighboring state. The components located in Oregon should exceed 70% of the project cost;

(b) Can indirectly conserve energy or enable the conservation of energy or indirectly use or enable the use of a renewable resource by the applicant or another person as for example: transmission, power conditioning, energy storage or smart metering;

(c) Can directly or indirectly reduce the amount of energy in construction and operation of a facility including the manufacture and transportation of construction materials providing the project or components meet acceptable sustainability practices established in the Small Scale Local Energy Loan Program Technical Requirements.

(33) "Small Scale Local Energy Loan Program Technical Requirements" means the specific technical requirements of the Department for certain projects. A loan application will be subject to

the technical requirements in effect on the date the Department receives the loan application.

(34) “Subsidiary” means a business that is owned by another, economically controlled by another, or owned in common with another.

(35) “Substitute Fuel” means organic matter that can be used directly or converted in order to replace Conventional Fuel.

(36) “Usable Life” of a project means the number of years that a project can likely function without major repair or replacement.

(37) “Waste Heat” means produced but unused heat that can be applied to an energy need.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 2-1981(Temp), f. & ef. 6-3-81; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1991(Temp), f. & cert. ef. 6-10-91; DOE 3-1991, f. & cert. ef. 12-3-91; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

### 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 the 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 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0016

#### Ineligible Costs

(1) Loans funded from proceeds of tax-exempt bonds may not pay capital costs incurred prior to bond issuance unless a document disclosing an intent to reimburse the costs has been completed.

(2) A loan may not pay for parts of a project that are not consistent with energy production or conservation or that do not qualify as an alternative fuel project or recycling project, or does not meet the sustainable building practices standard, unless the project is found by the Director to be a demonstration project.

(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.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

### 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 which are seldom financed by the Department or which are not common.

(3) The Director may deny a loan because other sources of funding are adequate. The Director may limit the size or number of loans to anyone to carry out these rules.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 - 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; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0025

#### Application

(1) If asked, the Department may give advice on a loan before an application is filed. The Department may advise whether the project

appears to comply with these rules, whether funds are likely to be available, and which costs may be eligible. The Department’s advice, however, does not constitute a loan approval or any other binding commitment.

(2) Application must be made on forms and in a manner set by the Department.

(3) For the purpose of OAR 330-110-0025 and ORS 470.060, “application” includes any documents submitted by an applicant to comply with conditions to a loan commitment.

(4) The Department may request an applicant’s social security number in accordance with provisions of the Privacy Act of 1974.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.060 & 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0030

#### Application Review Process

(1) The Department will review all applications. It may require an applicant to submit further documentation to find whether a loan should be made. If the Department fails to receive any items asked for within fourteen days after making its request to the applicant in writing, the loan request may be denied. If the loan request is denied and the applicant still desires to make a loan request, the applicant will have to submit a new application and pay again any fees and charges applicable to loan applications.

(2) Application review and appeal must conform to ORS 470.080 to 470.100 and OAR 330-105.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 - 470.100

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0035

#### Findings by the Director

(1) To approve an application for a loan, the Director must make the following findings:

(a) The project is consistent with preservation and enhancement of the environment. Factors to evaluate may include whether the project saves conventional fuel, makes efficient use of a renewable resource, reduces greenhouse gas emissions or promotes sustainability. Applicants are expected to comply with all federal, state, and local environmental requirements

(b) The plan for the project assures its timely completion, quality, and adequate funding. “Funding” includes working capital and reserves.

(c) The 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 Department.

(e) Any other finding required by ORS 470.090.

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

(3) Findings under OAR 330-110-0035 and ORS 470.090 are for the benefit of the Department for lending purposes only. They do not endorse the project, its design, or its parts. They offer no assurance of any kind to any other person or entity for any purpose.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0036

#### Public Health, Safety, and Environmental Issues

(1) The policy of the Department is:

(a) To accept the findings of local, state and federal agencies that license or permit projects to be built or run; and

(b) To avoid influencing any of those agencies to approve or deny a license or a permit.

(2) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project.

(b) Comply with the express terms and conditions of each permit and license; and

(c) Comply with all state laws and regulations that apply to the project.

(3) The Department may issue a loan commitment based on the applicant's representation or promise that each license and permit has been or will be obtained. If the applicant fails to obtain any required license or permit, the Department may 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) A project on a navigable stream or connecting to a utility must obtain a license or exemption from the Federal Energy Regulatory Commission;

(b) A license or permit to use water for power must be obtained from the Water Resources Commission;

(c) A land use permit or variance must be obtained from the city or county where the project will be built; and

(d) The Northwest Power and Conservation Council's 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 obtain a land use permit or variance from the city or county where the project will be built.

(8) Biomass cogeneration developers must comply with at least the following:

(a) An air contaminant discharge permit, a waste discharge permit and a solid waste disposal permit must be obtained from the Department of Environmental Quality; and

(b) A land use permit or variance must be obtained from the city or county where the project will be built.

(9) An applicant that must obtain an energy facility site certificate under ORS 469.300 to 469.520 for a project is not eligible for a loan except if the project is exempted from the site certificate requirement by ORS 469.320(2) or other exemptions granted by the Energy Facility Siting Council.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 & 470.150

Hist.: DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0040

#### Loan Limits, Security, and Conditions

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

(2) A loan secured by residential property must not exceed 80 percent of security value of such property if the Department has a first lien or 75 percent if the Department has a junior lien.

(3) A loan to a municipal corporation that will be repaid from project income may be secured by project income. The projected income, net of operating expenses and maintenance costs, must be at least 125% of debt service for each year of the loan. A loan to a municipal corporation for conservation measures, alternative fuel projects or recycling projects may be secured by the facility or equipment that make up the project. Total cost savings are expected to equal loan payments for municipal conservation projects.

(4) A loan to a state agency, an eligible federal agency or a public corporation may be secured by project income, by the facility or equipment that make up the project, by a lease purchase contract or by any other income or security deemed sufficient by the Director.

(5) The Director may include savings in operation and maintenance costs in estimating the annual Project cost savings. The Director

may also, when calculating the estimated savings in fuel costs, include reasonably expected increases in the cost of fuel.

(6) A project that primarily produces energy for sale must have:

(a) Secure sources of supply and contracts for the sale of output;

(b) Projected income, net of operating expenses and maintenance costs, of at least 125% of debt service for each year of the loan; and

(c) 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 Director finds that financial factors warrant otherwise, a loan to a business for a project that saves or produces energy for use on site, is an alternative fuel project, or is a recycling project may be made only:

(a) Upon the pledge or delivery of adequate security;

(b) For less than 80 percent of the security value of real property on which the Department has a first lien or 75 percent if the Department has a junior lien;

(c) To a business that has made a profit after taxes for at least the two years immediately preceding the loan application; and

(d) To a business that has a ratio of current assets to current liabilities of at least 1.75 to 1 and a ratio of total debt to owner's equity of no more than 2 to 1.

The Director may exempt a business from the requirements of OAR 330-110-0040(7) if it demonstrates to the satisfaction of the Director that sound businesses of similar type and size do not normally meet these standards.

(8) Loan proceeds may be used for the following purposes and amounts:

(a) Cost of acquisition of the project site: Not to exceed ten percent of the project's budget;

(b) Capital for start-up: Not to exceed three percent of the project's budget;

(c) Reserves: Not to exceed fifteen percent of the loan amount;

(d) Pre-construction costs: Not to exceed five percent of the project's budget;

(e) Costs for starting construction: Not to exceed ten percent of the project's budget.

(9) Alternative fueling stations with underground fuel tanks do not qualify for funding as an Alternative Fuel project. The proceeds of an Alternative Fuel project loan may only be used for the following purposes:

(a) Incremental costs of the project that are 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 that, in standard industry practice, are used to dispense gasoline or, in the case of vehicles, equipment or devices that use gasoline and that also allow use of an alternative fuel without modification.

(b) In the case of vehicles, products and installations approved by and meeting or exceeding the emission standards of the Department of Environmental Quality.

(10) No more than 50% of loan proceeds may be used to refinance existing debt authorized by ORS 470.050(16)(a)(F) unless such debt is with the Department. Security obtained through refinancing must add significant value to the loan security.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080, 470.120, 470.150 - 470.155, 470.170 & 470.210

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0042

#### Bond Refunding

(1)(a) The Department must pursue opportunities to refund bonds to reduce interest sums paid by the Department. When the Department refunds a bond with tax-exempt bonds, the Department must share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300(1). Affected borrowers are those whose loans were made with the proceeds of the refunded bonds.

(b) For the purposes of OAR 330-110-0042(1), savings from a refunding are shared on an equitable basis if the Department receives

half the savings, and the affected borrowers receive or split half the savings, net of costs, from a bond refunding. When the Internal Revenue Code or other law limits the amount of refunding savings the Department may retain or provide to the affected borrowers, the Department may receive less or more than half the savings, and the affected borrowers will receive the remainder. If multiple loans were funded from the proceeds of the refunded bonds, the affected borrowers will share the savings in proportion with their respective shares of the proceeds of the refunded bonds that were used to make their loans, adjusted for the remaining term to maturity of their loans.

(2) Savings from a bond refunding accrue over the remaining term of the refunded bonds. The Department will share these savings with affected borrowers by reducing the amount of their loan payments over the remaining term of the loans. If the accumulated savings over the remaining term of a loan is less than \$15,000 or if the Director finds that it is in the interest of both the Department and the borrowers, the Department may reduce the principal amount of the loan by the net present value of the savings, calculated using a discount rate of the maximum arbitrage yield of the refunding bonds as defined in Section 148 of the Internal Revenue Code.

(3) The Department must not refund tax-exempt bonds with taxable bonds, unless the Department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds.

(4) At least 120 days before the date on which the Department intends to issue refunding bonds, the Department must notify each borrower whose loan was made from the proceeds of the bonds being refunded and must offer the borrower the opportunity to prepay the borrower's loan. The Department will request that the borrower notify the Department of their intent to prepay their loan within 60 days of the date of the notification or risk losing the opportunity to prepay.

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

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.270

Hist.: DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

### 330-110-0045

#### Waiver, Authority of Administrator

The Director:

(1) May, in writing, waive any of these rules. The waiver must serve the aims of, and not conflict with, ORS chapter 470.

(2) May contract with regulated financial institutions, state or federal agencies or others to provide services, subsidies, or grants to the program.

(3) May take such steps as are needed to recover loan funds and prevent their misuse, or to prevent a project from being diverted from its purposes.

(4) May delegate, in writing, authority to approve, deny, or amend loans and to execute bond and loan documents. A partial release of lien may be granted by the Director upon the written request of an applicant if the remaining security value is adequate to secure the loan and meet the security requirements of OAR 330-110-0040. The Director will consider the creditworthiness and repayment history of the applicant in considering such a request.

(5) May contract with a utility to operate a project in the event of any default that results in the Department taking and running the project.

(6) May settle, modify or release any loan debt so long as such action 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 & 470.140

Stats. Implemented: ORS 470.080 & 470.150

Hist.: DOE 12-1980, f. & cert. ef. 12-16-80; DOE 6-1982, f. & cert. ef. 4-21-82; DOE 2-1983, f. & cert. ef. 5-16-83; DOE 3-1983(Temp), f. & cert. ef. 9-20-83; DOE 4-1984, f. & cert. ef. 3-6-84; DOE 2-1986, f. & cert. ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

### 330-110-0050

#### Confidential Records

(1) Upon written request and within a reasonable time, the Director will provide non-exempt loan program records for inspection in accordance with the Oregon Public Records Law, ORS 192.410 to 192.505.

(2) The person asking to inspect the records may be charged in advance for the Department's cost to locate, compile, copy, and mail the records. Such costs include but are not limited to costs incurred in separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, and telefaxing materials. Such charges will be estimated or itemized for the person making the request before they are incurred.

(3) The following records are 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 that has been concluded, and nothing in this subsection may limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(d) Production, sales or cost data;

(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; and

(f) Technical information or data related to an applicant's proposed small scale local energy project, including but not limited to, any description, analysis, evaluation or projection regarding the project or a component of the project.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.065

Hist.: DOE 6-1982, f. & cert. ef. 4-21-82; DOE 2-1983, f. & cert. ef. 5-16-83; DOE 4-1984, f. & cert. ef. 3-6-84; DOE 2-1986, f. & cert. ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

### 330-110-0055

#### Fees and Charges

Pursuant to ORS 470.060, an applicant will pay the Department for costs to review, process, and service a request or loan. Applicants will pay the following charges:

(1) A non-refundable application fee as fixed by statute. "Application," as used here, includes requests to assume or transfer or increase existing loans but does not include interim loan requests made with a project loan request.

(2) A non-refundable underwriting fee of \$500 or one-half of one percent of the loan request amount, whichever is greater, but not to exceed \$5,000. All but \$500 of the underwriting fee may be applied toward the loan fee upon closing of the loan.

(3) A loan fee of one percent of the loan amount required at loan closing.

(4) Charges for credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals, unless charges incurred also benefit another application, in which case the charges will be divided equitably. Such charges will be estimated or itemized for the applicant before they are incurred.

(5) Charges for managing construction fund investments for an applicant are one-half of one percent of the initial investment cost.

(6) A fee of \$500 for each request to release or modify security. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the applicant before they are incurred.

(7) Department costs in excess of any fees and charges will be collected through interest and any other charges specified in the loan contract executed by the applicant and the Department.

(8) The interest rate on a loan will be the rate in effect for the type or size of loan on the date of the note or other evidence of indebtedness. However, the interest rate set in a binding loan commitment may not be increased without the applicant's consent. The interest rate for any project proposed by an eligible federal agency must be set in accordance with ORS 470.150(2). Loan contracts may provide for rates to be adjusted upon issuance of the bonds whose proceeds fund the loans.

(9) The Department may offer a fee that combines the fees and charges in OAR 330-110-0055(1) through (3) and that is equal to or less than the sum of the fees and charges in OAR 330-110-0055(1) through (3). If offered, a combined fee will apply to any applicant receiving similar loan terms.

Stat. Auth.: ORS 469 & 470.140  
 Stats. Implemented: ORS 470.060 & 470.150  
 Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

## DIVISION 118

### STATE AGENCY ENERGY SAVINGS PROGRAM

#### 330-118-0000

##### Purpose

OAR 330-118-0000 through 330-118-0090 allows state agencies to retain and spend 50 percent of the net savings from energy projects pursuant to ORS 469.752 to 469.756.

Stat. Auth.: ORS 469.752 - 469.756  
 Stats. Implemented: ORS 469.752 - 469.756  
 Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

#### 330-118-0010

##### Definitions

As used in Chapter 487, Oregon Laws 1991 and in these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

- (1) "Baseline Energy Budget" means the expenditure limitation amount budgeted for energy costs by the agency immediately prior to installation of the project.
- (2) "Budget and Management Division" means the Department of Administrative Services Budget and Management Division.
- (3) "Cogeneration" has the meaning given that term in ORS 758.505(2).
- (4) "Department" means the Oregon Department of Energy.
- (5) "Efficiency of Energy Use" means the ratio of output (work done) to input (energy used).
- (6) "Electric Utility" means a utility which is regulated by the state or the Federal Energy Regulatory Commission that provides retail electric power to consumers.
- (7) "Energy Cost savings" means the dollar savings based on the annual monitored savings from the project calculated as follows:
  - (a) For projects which do not sell energy or power to an electric utility or the Bonneville Power Administration, energy savings times the last rate in effect or fuel cost during the monitored savings period;
  - (b) For projects which sell energy or power, the amount of energy or power delivered to one or more electric utilities or the Bonneville Power Administration as a result of the project times the rates(s) stated in the energy or power sales agreement(s);
  - (c) For projects which do not either sell or use all of their energy or power savings or production, the energy cost savings shall be the sum of amounts proportionally calculated as in subsection (a) and (b) of this section.
- (8) "Energy Savings" means the amount of energy not used as a result of the project as compared to a prior period. Prior period energy use may be adjusted for changes in building use or occupancy. Energy savings result from the efficiency of energy use. Energy savings shall be measured in millions of Btus (MMBtus), and may be the result of vehicle, aircraft or vessel miles not travelled.
- (9) "Gas Utility" means a public utility as defined in ORS 757.005(1)(a)(A) which provides natural gas service to consumers.
- (10) "Infrastructure Improvements" means improvements to facilities, buildings, equipment and other components which make up and support the physical structure of the agency.
- (11) "Monitored Savings" means measurements of actual energy savings or the miles reduced per vehicle, and may include, but not be limited to, energy accounting systems, energy bill comparisons, and metering. Subject to the approval of the Department, engineering estimates may be used in cases where measurement of actual savings is not practical.
- (12) "Net Savings" means the operating savings and the energy cost savings, after debt service, leases, operations and maintenance costs, service contracts insurance, fuels and their transport and storage, transmission, and other recurring direct costs, resulting from a project. Net savings shall accrue only during the savings period.
- (13) "Operating Savings" means reduction or elimination of: labor or service contracts; demand charges; chemicals; maintenance

of energy consuming conversion and distribution equipment; replacement equipment; and lubricants and maintenance expenses in the case of vehicles, aircrafts, and vessels; providing each item is \$1,000 or more annually.

(14) "Performance Measures" means performance measures, as required by Executive Department, that address energy use in buildings, facilities, and transportation. Wherever possible the performance measures should be based on monitored savings, or metered power and energy production.

(15) "Project" means a state agency's improvement of the efficiency of energy use, development of cogeneration facilities or use of renewable resources by or at state facilities. For the purposes of these rules, a project includes only those agency activities which the agency is pursuing under the authority of ORS 469.754.

(16) "Renewable Resources" has the meaning given that term in ORS 758.505(9)(a).

(17) "Revolving Fund" means a fund in the State Treasury, or a separate account or fund in the General Fund in the State Treasury, that by law is dedicated, appropriated or set aside for the purposes listed in ORS 469.754(3). "Revolving fund" does not have the meaning used in 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

#### 330-118-0020

##### Project Eligibility

(1) Eligible projects include, but are not limited to, the following:

(a) Projects which improve efficiency or attain high efficiency of energy use through energy system or process changes, equipment replacement, or waste heat recovery;

(b) Projects consisting of measures meeting energy efficiency criteria encouraged or approved by the electric or gas utilities providing service to the state facility or the Department;

(c) Employee awareness campaigns and on-going training; and

(d) Projects that meet these eligibility requirements, that began construction or installation after September 30, 1991, and that were not completed prior to final adoption of rules. These projects are not subject to the provisions of the Offering the Right of First Refusal.

(2) The following projects are not eligible:

(a) A project that saves dedicated funds, which are not transferable to the General Fund; and

(b) A plan of a state agency to improve the efficiency of energy use in a state-rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(3) In the event eligibility is unknown or disputed, the party(ies) may petition the Director of the Department for a decision. The Director's decision shall be final.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

### 330-118-0025

#### Project Notice

(1) Whenever an agency proposes to undertake a project under ORS 469.754 the state agency shall provide a notice to the Department and to the gas and electric utilities which serve the state facility where the project is domiciled and to a mailing list of interested persons developed by the state agency for this purpose. The notice shall be provided to any requesting person and include a statement of whether the agency intends to rely on the authority in ORS 469.754 and these rules, or whether the agency intends to rely on its own authority to proceed with the project.

(2) When a state agency intends to proceed with a project other than listed in section (3) of this rule, the notice shall, in addition to the information above, include:

(a) The physical location of the project(s);

(b) The anticipated size or size range of the project(s) stated in annual energy (in kWh or Btu) or capacity (in kW, horsepower or pressure), and its anticipated seasonal disposition;

(c) Whether the project(s) may provide steam or useful heat, and its anticipated seasonal disposition;

(d) A description of how the project(s) could be developed, financed and operated;

(e) An intended schedule for completion and operation of the project(s); and

(f) The anticipated fuel source(s).

(3) If a state agency plans a project costing less than \$50,000, an energy efficiency project encompassing under 50,000 square feet, a project affecting the efficiency of energy use in transportation, a renewable resources project which does not generate electricity, and employee awareness campaign, or project with a useful life of less than 5 years, then they are exempt from OARs 330-118-0030, 330-118-0040, 330-118-0050 and 330-118-0055. Also exempt from these rules are other projects as predesignated by the utilities which serve the state agency. ODOE will maintain a list of such predesignated exempt projects.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 2-1994, f. & cert. ef. 12-12-94

### 330-118-0030

#### Right of First Refusal

(1) To exercise their right to first negotiate and right of first refusal the electric and gas utilities which serve the project's domicile must submit a proposal in response to an agency's procurement solicitation.

(2) A state agency shall provide the electric and gas utilities which serve the project's domicile, and any other potential suppliers, timely access to the project site for the audit and planning purposes.

(3) An electric or gas utility which serves the project's domicile that wants to negotiate for or to match any sales of a project's electrical or steam output which may be sold must state such interest in their proposal in response to the agency's procurement solicitation.

(4) A state agency is not obligated by these rules to commit to utility proposals to buy electricity, develop, finance, operate or otherwise act together in energy conservation or cogeneration and renewable resource projects which generate electricity or sell energy or power to electric utilities or the Bonneville Power Administration. These rules do not alter the agency's or utility's rights and obligations under ORS 758.505-758.555 and 18 CFR 292, et seq.

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

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

### 330-118-0040

#### 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 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

### 330-118-0050

#### Negotiating Agreement

The agency is authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance a project at state-owned or state-rented facilities. Utilities may be vendors. The procedure shall be:

(1) Upon entering into a commitment with a vendor, the agency appoints representative(s) to work with the vendor to develop the project. Within three months the agency representative(s) and the vendor complete a project plan, including commissioning and training; develop a detailed budget; decide the allocation of risks and responsibilities of each party from project development through operation; determine costs to be assumed by the agency and by the vendor; determine length of agreement; set timelines.

(2) The agency and the vendor execute a written agreement within two months of completing the above tasks.

(3) The Department resolves disputes between agency and vendor arising from the project. The director's decision is final.

(4) If changes to the project are made subsequent to the written agreement, the agreement may be amended.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

### 330-118-0055

#### Disposition of Steam and Electricity

(1) An agency is not obligated to sell any or all of a project's energy, power, steam, or any other energy form.

(2) If an electric or gas utility which serves the project's domicile has responded according to OAR 330-118-0030(3) the agency shall initiate an auction for the sales of the electric output or steam which the utility has expressed interest in acquiring. The auction shall be open to all potential buyers of the energy and solicit bids. Upon evaluation of bids, and with consultation with the Department, the agency may select buyer(s) for contract negotiations. The agency reserves the right to reject all proposals. If an agency determines that negotiations are at an impasse, it may terminate negotiations and select another buyer. If an agency judges an offer from an electric or gas utility which serves the project's domicile to be of equal merit to the highest ranking offer, the utility's offer shall be deemed a match and be selected for contract negotiations, all else equal. Upon written notice from the agency at the close of the auction the electric and gas utilities which serve the state facility where the project is domiciled shall have the right to match the best offer available to the agency for a period of 30 days. The agency may use competitive negotiations to select the best offer. The utility will have the right to match the best offer whether or not competitive negotiations are used. Should two utilities which serve the project's domicile be judged to have the highest ranking offers, the agency may select either one. Criteria for selecting buyers of steam and electricity shall include:

(a) Transaction costs;

(b) Risks retained by the agency;

(c) Term; and

(d) Impact on estimated net savings over the life of the project.

(3) Nothing in these rules impairs an agency's rights under any other provisions of law including rights to market energy from qualifying facilities according to ORS 758.505-758.555 and the implementing rules and orders of the Oregon Public Utility Commission, and 18 CFR 292 et. seq. Nothing in these rules affects any authority, including the authority of a state agency or a municipality to regulate utility service or the development and use of electricity, gas or steam.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 2-1994, f. & cert. ef. 12-12-94

### 330-118-0060

#### Budget Not Cut

The net savings shall not be deducted from the agency's budget throughout the savings period, as long as the project produces savings.

When preparing its biennial budget request the agency may use the baseline energy budget. This amount may be adjusted by an inflationary factor to cover increases in utility rates or fuel costs, increases in energy costs due to weather variations, or similar events causing changes in energy use.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

### 330-118-0070

#### Retaining Fifty Percent of Net Savings

A state agency that implements a project in accordance with this rule may retain 50 percent of the net savings and maintain its baseline energy budget by:

(1) Prior to implementation of the project, the agency shall submit to the Budget and Management Division:

(a) Notification in writing of their intent to exercise their 50 percent savings option, pursuant to ORS 469.754; and

(b) Performance measures pertaining to the project.

(2) The agency shall send annual reports of monitored savings and net savings for the project to the Budget and Management Division by September 1 of each year.

(3) Upon Budget and Management Division approval, the agency shall transfer from its operations account half the amount of the accrued net savings to the revolving fund. The balance shall be transferred to the State's General Fund.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

### 330-118-0080

#### Use of Savings

A state agency shall spend the 50 percent of net savings to increase productivity through: Energy efficiency projects; high-tech improvements, such as the purchase or installation of new desk-top or lap-top computers or the linkage of computers into systems or networks; or infrastructure improvements. The agency shall submit to Budget and Management Division a plan for use of the revolving fund through the biennial budget process.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92

### 330-118-0090

#### Agreements with the Department for Technical Assistance

(1) The agency may request an assessment of energy and power marketing opportunities, energy audit and/or engineering study through the Department's Small Scale Energy Loan Program.

(2) The agency may submit written requests to the Department for specific assistance, including but not limited to marketing of energy and power, engineering, architectural, and energy analysis. At the discretion of the Department, an Interagency Agreement, in accordance with ORS Chapter 190, may be executed. The Department reserves the right to charge the agency fees for work not covered by Small Scale Energy Loan Program statutes, such as arbitration, technical review, etc.

(3) Any loans with the Small Scale Energy Loan Program must comply with OAR chapter 330, divisions 105 and 110.

Stat. Auth.: ORS 469.752 - 469.756

Stats. Implemented: ORS 469.752 - 469.756

Hist.: DOE 1-1992, f. & cert. ef. 4-30-92; DOE 2-1994, f. & cert. ef. 12-12-94

## 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, 279 & 469  
Stats. Implemented: ORS 345, 469 & 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, 469 & 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, 469 & 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, 469 & 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, 469 & 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 345, 469 & 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, 469 & 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, 469 & 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

#### 330-125-0020

##### General Eligibility Requirements

(1) A home buyer or a home builder may apply for participation in the program; however, the cash incentive will be paid to the home builder and contract awarding the incentive can be signed only by the home builder.

(2) An applicant must demonstrate the financial ability to build the number of single-family residences or multi-family buildings for which incentives are requested. Such residences or buildings must be built in Oregon within eight months of entering into a contract with the Department, except in the case of natural disasters, strikes, and unavoidable shortages in materials and supplies. A time extension may be granted at the discretion of the Director of the Department for reasonable delays due to unforeseeable circumstances.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

#### 330-125-0022

##### Home Builder Eligibility Requirements

(1) A home builder must demonstrate to the Department:

(a) That he or she has built at least three residences since January 1, 1979; or

(b) That he or she has done at least \$250,000 gross business in building construction since January 1, 1979.

(2) All home builders who participate in the program must be bonded and licensed as required by ORS Chapter 701.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 3-1984, f. & ef. 1-30-84

#### 330-125-0025

##### General Limitations

(1) Only one incentive will be granted for each residential unit.

(2) The total cost of a single-family residential unit, excluding land costs, on-site and off-site improvements, may not exceed \$120,000.

(3) No person or company may receive an incentive for more than five single-family residential units. This limitation may be waived by the Director of the Department if a sufficient number of incentives have not been awarded within 60 days of the beginning of the selection and evaluation period.

(4) No Departmental employees, BPA employees involved in the RSD Program, or their immediate families are eligible to receive an incentive under this program.

(5) Proposed residences which will use heat pumps must have a gross floor area of at least 2,000 square feet.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469  
Hist.: DOE 3-1984, f. & ef. 1-30-84

### 330-125-0030

#### Guidelines for Selection

(1) The Department will announce the first date that applications will be evaluated for selection. Qualified applicants will be given a preference on a "first-in-time" basis. First-in-time is determined by the date of the postmark on the envelope containing the application or the date of receipt in the Department for applications that are delivered in person. However, all applications received before the first day for selection and evaluation will be treated as if they were post-marked or received on the first day.

(2) Applications will be evaluated according to the following guidelines:

(a) Attain 30 single-family model standard residences with a matched-pair control house;

(b) Attain single-family residences with more than one control house;

(c) Attain single-family residences with one control house;

(d) Achieve a geographic distribution of residences between the climate zone of 6,000 degree-days or less and that of 6,001 degree-days or more. (See **Figure 53.A, Design Criteria, Oregon Structural Specialty Code**);

(e) Achieve a distribution of design types based on Appendix J, **Northwest Conservation and Electric Power Plan** or design types provided by the Department;

(f) Achieve the following distribution of single-family residences: 45 percent that have less than 1,400 sq. ft.; 35 percent that have between 1,401 and 2,000 sq. ft.; and 20 percent that have more than 2,000 sq. ft.;

(g) Expedite building of residences by selecting applicants who are most prepared to build, as shown by financial resources, lot ownership, and progress on building design.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469  
Hist.: DOE 3-1984, f. & ef. 1-30-84

### 330-125-0035

#### Application Procedures

(1) An applicant shall submit an application on forms prescribed by the Department. The application shall:

(a) Estimate the total cost of each proposed residential unit;

(b) State the gross floor area of each proposed residential unit;

(c) State the location of each proposed residence;

(d) State the choice(s) of design type(s) to meet the model conservation standards;

(e) Provide sufficient information to document the applicant's financial ability to construct each residence for which an incentive is requested;

(f) Provide sufficient information to document the home builder's record of construction;

(g) State number of control houses or matched-pair control houses the applicant can provide;

(h) If the residence (or matched-pair control house) is a sun-tempered or passive solar design, provide a sun chart for the site;

(i) State that the land is appropriately zoned;

(j) Provide information on available utilities;

(k) State the applicant has control over the land by ownership or by option to purchase;

(l) Provide the home builder's state registration number;

(m) State the name of proposed lender that will finance construction.

(2) The first day of the selection and evaluation period will be announced by the Department. Applications will be accepted until no more than 200 qualified recipients have been selected by the Department. The Director of the Department may close the application period when a sufficient number of qualified applications have been received or after 60 days, whichever is earlier. If a sufficient number of applications has not been received within 60 days, the Director may establish a second application period.

(3) Applications will be assigned a file number upon receipt.

(4) Applicants will be notified by the Department of the status of their applications within 30 days of their receipt by the Department.

(5) Incomplete applications and applications from parties who do not meet the minimum qualifications will be returned.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469  
Hist.: DOE 3-1984, f. & ef. 1-30-84

### 330-125-0040

#### Incentive Contract

(1) Parties selected to receive an incentive must sign a contract with the Department concerning compliance with RSD Program design, siting, construction, reporting, and monitoring requirements and return the contract to the Department within 30 days of the contract being offered. Failure to sign the contract will void the Department's offer of an incentive. Where an incentive has been reserved for a home buyer, that home buyer will have 30 days from notification by the Department to identify a home builder. That home builder then must sign a contract within 30 days of the Department's offer of a contract.

(2) The home builder contract will provide the method of payment(s) and inspection requirements that must be met before payment(s) is made.

(3) The home builder contract may be made contingent upon the home builder or a potential home buyer obtaining a loan commitment to pay for building the model conservation standards residence.

(4) The home builder signing the contract shall:

(a) Agree to build in Oregon an electrically-heated residence(s) to the model conservation standards;

(b) For residences that are not pre-sold at the time the incentive is approved, agree to request that the home buyer permit and assist in the monitoring of the residence's energy consumption and indoor air quality by the Department or BPA. However, agreement by the home buyer to participate in monitoring is a requirement for a home builder to receive a full incentive for matched-pair residences;

(c) Agree to provide cost-accounting data on the incremental costs of building to the model conservation standards;

(d) Agree to allow the Department, BPA, or their agents to inspect the construction of the residence to ensure compliance with the plans approved by the Department;

(e) Agree to attend and complete the technical and cost-accounting training sessions being provided by the Department and its agents.

(5) Any home buyer who is identified at the time the home builder signs a contract with the Department will be required to enter into a contract with the Department. The home buyer must:

(a) Agree to participate in Departmental or BPA monitoring of energy use and indoor air quality in the residence for at least one year; and

(b) Agree not to require any design or construction changes that will affect the model conservation standard provisions in the residence without prior written approval of the Department.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469  
Hist.: DOE 3-1984, f. & ef. 1-30-84

### 330-125-0045

#### Compliance with Land Use Laws

Any party receiving an incentive shall agree to comply with all local land use ordinances and building codes and to obtain all necessary permits for construction of a residence. A portion or all of the incentive payment may be withheld until an occupancy permit is issued by the local jurisdiction.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469  
Hist.: DOE 3-1984, f. & ef. 1-30-84

## DIVISION 130

### ENERGY EFFICIENT DESIGN AND OPERATION FOR STATE AGENCY FACILITIES

### 330-130-0010

#### Purpose

The Oregon Office of Energy, in consultation with the Oregon Department of Administrative Services and the Oregon University System, has developed OAR 330-130-0010 through 330-130-0080. These rules prescribe procedures to:

(1) Minimize energy use in new and renovated facilities designed and constructed by state agencies; and

(2) Reduce the amount of nonrenewable energy used in existing buildings by at least 10 percent from the amount used by the state agency in the 2000 calendar year, in compliance with ORS 276.900 through 276.915.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01

### 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) "Agency Contact" means a lead person appointed by the Agency who is responsible to coordinate all SEED related business with the Oregon Office of Energy, i.e. project notifications, interagency agreements, invoice and payment, project coordination, guideline updates, advisory.

(3) "Baseline Building" means the basic building conceived by the Agency and the Design Team. The Baseline Building shall incorporate the standard design features of typical buildings of the same usage and just meet the descriptive requirements of the Oregon Energy Code according to criteria established in the SEED Program Guidelines.

(4) "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.

(5) "Biennial Report" means the report, which evaluates the compliance of Agencies with the objectives of ORS 276.900 through ORS 276.915.

(6) 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: interior lighting, building envelope, domestic hot water, or special equipment.

(iii) Only those systems identified in (i) and (ii) that are significantly affected are subject to procedures outlined in 330-130-0040.

(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.

(7) "Building Model" means a computer model, which calculates annual building energy use. The Oregon Office of Energy shall approve hourly Building Models, simplified hourly Building Models and the approach to modeling ECM energy savings above the code baseline building as established in the SEED Program Guidelines. The Building Model for all Class 1 Buildings shall be an hourly Building Model, except for the following examples where simplified hourly Building Modeling or prescriptive packages established in the SEED program Guidelines 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 simplified hourly Building Model or other calculation is appropriate as approved by the Oregon Office of Energy.

(8) "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.

(9) "Design Team" means the architect(s), engineer(s), and other professionals who are responsible for the design of the new building or renovation.

(10) "Energy Analysis Report" means a report prepared by an Energy Analyst, under the direction of a professional engineer or licensed architect, recommending an Optimum ECM Package for a Class 1 building. 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.

(11) "Energy Analyst" means the individual who prepares the building energy analysis and the Energy Analysis Report under the direction of a professional engineer or licensed architect who reports to the project architect or Agency. The Energy Analyst shall be approved or jointly agreed upon by the Agency and the Oregon Office of Energy.

(12) "Energy Code" means Chapter 13 of the current **State of Oregon Structural Specialty Code**.

(13) "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.

(14) "ECM Package" means two or more ECMs combined for analysis.

(15) "Energy Systems Performance Verification Plan" means a plan that outlines how the building's energy systems are to be tested during the construction phase and how the building's performance is to be verified with long-term monitoring during occupancy.

(16) "Model of energy efficiency" means a facility that is designed, built and operated according to these SEED rules, that exceeds the state building code by 20 percent or more, that makes use of renewable energy resources where practical and that received a SEED Award from the Oregon Office of Energy in recognition of outstanding energy efficiency measures.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "SEED Program Guidelines" are guidelines developed by the Oregon Office of Energy with assistance from an Advisory Committee that consists of representatives from interested Agencies, design professionals, consulting engineers and utilities.

(22) "Simple Payback" means the estimated ECM cost divided by the estimated first year ECM energy, operating, and maintenance savings.

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

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01

**330-130-0030  
Notification**

When the building class has been determined during the pre-design or programming phase of a building project, the following procedures shall be followed:

(1) Class 1 Buildings. Before the Design Team is selected, the Agency and the Oregon Office of Energy may enter into an interagency agreement which outlines the procedures as shown in 330-130-0040, the hourly rates to be charged by the Oregon Office of Energy and the related statement of work. The Agency Contact shall coordinate with the Oregon Office of Energy the set-up of the Initial Meeting early in the pre-design or programming phase of a building project. The interagency agreement may include Expanded Services, which are beyond the scope of this rule. See 330-130-0040 section (8) below.

(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.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

**330-130-0040****Procedures for Class 1 Buildings**

The SEED process as outlined below follows some typical steps in the design process as the organizing principle. In case the Agency is accustomed to using different phases or terminology, or if the project does not fit the suggested steps, an alternative plan shall be developed between the Oregon Office of Energy and the Agency.

(1) Pre-Design or Programming phase. The purpose of the SEED process is to ensure early involvement so energy efficiency is an integral part of the building design.

(a) Initial Meeting. Early in the Pre-Design or Programming phase, the Agency and the 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. The Oregon Office of Energy shall be notified of all meetings where significant review of or final decisions about energy systems are anticipated.

(b) Request for proposal and contract. The request for proposal (RFP) and the contract's Statement of Work shall include a reference to the goal of 20 percent or better than the state building code, to the SEED process and to the "model of energy efficiency." The Oregon Office of Energy shall develop language the Agency may use to include energy efficient design in the request for proposals and the contract for architectural and engineering services. Upon request, the Oregon Office of Energy will review or comment on the RFP, Contract or energy qualifications of proposals as an Expanded Service (see section (8) below).

(c) Energy Analyst. The Agency shall hire the Energy Analyst who meets the requirements indicated in the SEED Program Guidelines.

(2) Schematic Design Phase:

(a) Energy Planning Session. Early in the Schematic Design Phase, the Agency, Design Team, Oregon Office of Energy and Energy Analyst shall meet to further define the project design, construction schedule, energy goals of the project, the design criteria, the integrated energy design approach, the Energy Systems Performance Verification Plan and the modeling approach. The Energy Analyst shall regularly update these items during the design process.

(b) Preliminary Investigation. Working with the Agency and the Design Team, the Energy Analyst shall prepare a comprehensive list of ECMs to capture significant opportunities for building energy savings. Two weeks before the Scoping Process (see step (c) below), the Agency shall deliver to the Oregon Office of Energy the following items:

(A) Description of the Baseline Building and its energy-using systems;

(B) List of proposed ECMs

(C) Approach and tools for modeling;

(D) Initial plans;

(E) Design intent;

(F) Description of operating criteria; and

(G) Results of preliminary modeling effort, if any.

(c) Scoping Process. The Oregon Office of Energy, the Agency, the Design Team, and the Energy Analyst shall select the ECMs for analysis. If needed, further refinement of the modeling effort will be discussed and decided upon.

(3) Design Development Phase:

(a) Baseline and Individual ECM Analysis. The Energy Analyst shall use the Building Model for Baseline Building analysis and individual ECMs analysis. The Energy Analyst may use fully documented manual calculations for simple, non-interactive ECMs and may eliminate potential ECMs with preliminary estimates of costs and savings if the Simple Payback is greater than the equipment life.

(b) Metering Plan. The Agency, in consultation with the Energy Analyst, the Design Team and the Oregon Office of Energy, shall specify what types of utility meters are to be installed and what system is to be used to monitor the building's energy use. Where desirable, sub-metering shall be provided on major energy using equipment or systems. This Metering Plan shall be incorporated in the Energy Systems Performance Verification Plan.

(c) Interim Submittal and Review. Two weeks before the ECM Review Meeting, the Agency shall submit to the Oregon Office of Energy the Preliminary Energy Analysis Report. The Oregon Office of Energy shall review the Preliminary Energy Analysis Report and provide its written or verbal comments and recommendations to the Agency prior to the ECM Review Meeting. The following items shall be submitted as part of the Preliminary Energy Analysis Report:

(A) Narrative describing the Baseline Building and the proposed ECMs.

(B) Tables showing energy use for the Baseline Building and the building with proposed ECMs;

(C) The Baseline Building Model input and output;

(D) A list of eliminated ECMs and calculations;

(E) Analysis results for individual ECMs; and

(F) The Metering Plan.

(d) 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.

(e) Final Report Submittal. The Agency shall deliver the final Energy Analysis Report containing the Optimum ECM Package and projected energy use to the Oregon Office of Energy for review.

(f) 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.

(4) Construction Documents Phase:

(a) Implementation of Cost-Effective Measures. The Agency shall incorporate the Optimum ECM Package into the final building design.

(b) Submittal of Construction Documents. The Agency shall provide the Oregon Office of Energy with construction documents in sufficient detail to verify that the ECMs will be included in the final construction documents and specifications or no later than at 90 percent design completion, whichever comes first. This submittal shall also include the Preliminary Energy Systems Performance Verification Plan.

(c) The Oregon Office of Energy shall review this submittal and forward its written findings and recommendations to the Agency within ten working days after receiving the report, if practicable.

(5) Construction Phase:

(a) Contractor Submittals and Substitutions. The design firm shall ensure that contractor equipment submittals, requests for substitutions and change orders adhere to the ECM design intent. If requested, the Oregon Office of Energy will be available to review such documents.

(b) 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 during the installations of ECMs.

(c) Performance verification. The Energy Systems Performance Verification Plan shall be carried out and Oregon Office of Energy shall receive a copy of the test reports.

(d) Training. It is recommended that instruction on the design intent and operation of the building as a system be offered to the owners and operators of the new facility. This may be part of the Energy Systems Performance Verification Plan. The training should parallel the operations manual prepared for the owner.

## (6) Occupancy Phase:

(a) Monitoring. During the first 18 months into occupancy, energy use by the building systems shall be monitored and compared with the modeling results. In case significant differences between those two results are discovered during this period, the Agency shall investigate to find the cause, so that:

(A) An adjustment can be made to the operation of the building; or

(B) An explanation for the difference can be found that is acceptable to the Agency and the Oregon Office of Energy. The Agency shall send its finding to the Oregon Office of Energy for inclusion in the Biennial Report to the Legislature.

(b) Non-compliance. If, after monitoring the building for 18 months, the building's performance does not exceed the energy conservation provisions of the state building code by 20 percent or more because of reasons reported under (6)(a), the Agency shall submit an energy conservation plan to the Oregon Office of Energy within 90 days after reporting the non-compliance. This plan will outline the modifications to be made until monitoring shows that the goal of 20 percent or better is met, or all reasonable attempts to reduce the energy use have been made. These remedial actions shall be reported and sent to the Oregon Office of Energy for inclusion in the Biennial Report to the Legislature.

(c) SEED Award. The Oregon Office of Energy shall give the SEED Award to the Agency if the building complies with these SEED rules and is a "model of energy efficiency." These reports and the SEED Award will also be used for educational or marketing purposes to show what works and help convince agencies that the return on energy efficient design is well worth the possible extra cost in the planning and construction phases.

(7) Waiver. Under certain circumstances, part of these rules that describe specific activities may be waived.

(8) Expanded Services. Expanded services are services provided by the Oregon Office of Energy that are outside the scope of OAR 330-130-0010 through 0080. Such services may include but are not limited to acting as the owner's agent on energy issues, modeling during various phases of the design process and when the building is occupied, 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 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

**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 required prescriptive ECMs or all reasonable cost-effective ECMs. ECMs or ECM packages with a Simple Payback shorter than equipment life shall be considered cost-effective for Class 2 Buildings.

(2) Role of the Oregon Office of Energy. The Oregon Office of Energy shall provide a list of prescriptive groups of measures or packages in excess of code that are deemed to result in energy usage that is at least 20 percent less than required by code. The Oregon Office of Energy shall also 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 all measures or packages installed in the building. This information will be used in preparation of the Biennial Report to the legislature.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

**330-130-0060****Service Charges**

Charges to the Agency by the Oregon Office of Energy for services shall be as follows:

(1) Class 1 Buildings:

(a) The charges by the Oregon Office of Energy to the Agency will be based on an hourly rate for the actual hours worked on the pro-

ject. 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. The maximum charge shall be calculated at \$0.002 for each dollar of construction cost unless otherwise agreed to in writing by the Agency and the Oregon Office of Energy.

(b) The Oregon Office of Energy will invoice the Agency for all final charges 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 Oregon Office of Energy may invoice in advance for final building inspections.

(2) Class 2 Buildings. No charge unless the Agency chooses to enter into an interagency agreement with the Oregon Office of Energy.

(3) Charges do not include Design Team or Energy Analyst services. The Agency shall obtain these services directly. Charges include all services provided by the Oregon Office of Energy or their representative in fulfilling the requirements described in 330-130-0040. Charges do not include services such as described in section 330-130-0040(8) "Expanded Services" provided by the Oregon Office of Energy.

(4) Charges may be waived for special circumstances including but not limited to demonstration or pilot projects.

(5) All charges are subject to review and adjustment by the Administrator of the Oregon Office of Energy.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2002, f. 5-8-02, cert. ef. 5-13-02; DOE 1-2003, f. & cert. ef. 1-10-03

**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 276.915.

(4) The Oregon Office of Energy, the Oregon Department of Administrative Services and the Oregon University System shall jointly prepare a Biennial Report to the legislature on January 1 of every odd-numbered year.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01

**330-130-0080****Procedures for Monitoring the Reduction in Energy Use by State Agencies**

In order to review whether an Agency meets the requirement to reduce the amount of use of nonrenewable energy by at least 10 percent from the amount used by the Agency in the 2000 calendar year, the following rules for tracking energy use apply.

(1) Energy use shall be tracked on a monthly basis using billing data. Electricity and heating fuels shall be tracked separately.

(2) The use of standard commercially available software for uniform tracking is recommended.

(3) Energy use per square foot of conditioned space shall be tracked, where applicable.

(4) Weather adjustments relative to the base year 2000 are allowed if they follow a standard process developed by the Oregon

Office of Energy through the SEED Program Guidelines and that both the raw and revised usage is reported.

(5) When significant changes of facility size or use takes place, adjustments to the baseline energy consumption may be made.

(6) It is recommended that sub-metering of buildings and/or major energy consuming equipment is added where advisable and feasible in order to get better data on energy use and facilitate better energy management of the facilities.

(7) If an Agency fails to achieve and maintain a 10 percent reduction on and after June 2003, the following rules apply:

(a) The Agency shall notify the Oregon Office of Energy that it failed to maintain the 10 percent energy savings.

(b) Within 90 days of such notification, the Agency shall submit to the Oregon Office of Energy a corrective plan to reduce energy use by 10 percent. The plan shall outline all modifications, procedures, and changes that need to be introduced until the target is met and maintained. The plan shall be in a format approved by the Oregon Office of Energy.

(c) The Agency may request the Oregon Office of Energy to provide technical assistance in developing this corrective plan. In the event that the Agency requests assistance, the Agency shall compensate the Oregon Office of Energy's costs for assistance in preparation or review of the plan.

(d) The Agency shall implement the corrective plan within six months from the date of approval by the Oregon Office of Energy. The Agency shall monitor progress, report to the Oregon Office of Energy, and modify the plan as necessary every six months, until the target reduction is achieved.

(e) This conservation plan and the results of remedial action(s) shall be included in the Biennial Report to the legislature, to be jointly prepared by the Oregon Office of Energy, the Oregon Department of Administrative Services and the Oregon University System.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

## DIVISION 140

### SELF DIRECTION OF PUBLIC PURPOSES CHARGES BY LARGE RETAIL ELECTRICITY CONSUMERS

#### 330-140-0010

##### Scope and Applicability of These Rules

(1) The rules contained in this division include the criteria and procedures by which a large retail electricity consumer with a site located within the State of Oregon, using more than one average megawatt in a calendar year (8,760,000 kilowatt hours/year), may become a self-directing consumer of a portion of its public purpose charges.

(2) The rules contained in this division apply to large retail electricity consumers of electric companies and electricity service suppliers, except that these rules do not apply to retail electricity consumers of an electric company serving less than 25,000 consumers in this state unless the electric company offers direct access to any of its large retail electricity consumers in this state or offers to sell electricity services available under direct access to more than one large retail electricity consumer of another electric utility.

(3) The rules contained in this division apply to large retail electricity consumers of consumer-owned utilities and electricity service suppliers, once the consumer-owned utility governing board has elected to allow open access to a class of customers for which that electricity consumer is a member. These rules only apply to the first three percent of public purpose charges imposed upon retail electricity consumers by a consumer-owned utility.

(4) The rules contained in this division apply to a public purpose charge equal to 1 percent of the total revenue from the sale of electricity to large retail electricity consumers that are an aluminum plant whose electric company's service territory abuts the greatest percentage of the site of the aluminum plant that uses more than 100 average megawatts of electricity per year.

(5) Large retail electricity consumers eligible to become self-directing consumers shall not claim a credit against public purpose charges owed for new energy conservation or new renewable resource

purchases until they are issued certificates for qualified expenditure under these rules.

(6) All information submitted to or collected by the Oregon Department of Energy or its agent under these rules shall be protected as business trade secrets to the extent permitted under the Public Records Act.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

#### 330-140-0020

##### Definitions as Used in This Division

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source with the same term of contract.

(2) "Certification of Qualified Expenditure for New Energy Conservation" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies the cost of an installed energy conservation project is eligible to be claimed as a credit against public purposes charges owed by the large electricity consumer under these rules.

(3) "Certification of Qualified Expenditure for New Renewable Resources" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies the contracted cost of new renewable resource purchases is eligible to be claimed as a credit against public purpose charges owed by the large electricity consumer under these rules.

(4) "Commission" means the Public Utility Commission of Oregon.

(5) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(6) "Declaration of Intent to Self-Direct Public Purposes Charges" means a request in writing from a large electricity consumer that requests the Oregon Department of Energy recognize the large electricity consumer as eligible to self-direct public purpose charges under these rules.

(7) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the Commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

(8) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(9) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(10) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(11) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(12) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(13) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(14) "Electricity" means electric energy measured in kilowatt-hours, or electric capacity measured in kilowatts, or both.

(15) "Electricity services" means electricity distribution, transmission, generation or generation-related services.

(16) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail

electricity consumers in its own service territory. An ESS can also be an aggregator.

(17) "Energy Conservation Project" means a capital investment in equipment that reduces the electric energy use or improves electric energy efficiency at a large electricity consumer's site or system at that site which has a simple payback of greater than one year and less than ten years. The simple payback shall be determined by using the eligible capital cost of the project divided by the first year electric energy cost savings.

(18) "Energy conservation project cost" means the costs of necessary features of an energy conservation project that include but are not limited to capital costs, administrative costs, general expenses, facility energy audits resulting in capital investment in an energy conservation project, design and engineering, shipping, materials, permits, installation, performance evaluation, and equipment operations training. The cost of a new energy conservation project may include large electricity consumer's cost of an energy analysis or study conducted by any public or private party, and any administrative costs paid.

(19) "Independent Energy Audit" means an evaluation by an independent auditor of all potential electricity using systems at an electric consumer's site that identifies in a written report the characteristics of electric energy use of those systems and all energy conservation projects for each of the electric energy using systems at the site.

(20) "Independent Energy Auditor" means a provider of energy systems audits that identify potential energy conservation projects for large electricity consumers that is not in the employ of the retail electricity consumer's company or any of its subsidiary or affiliate organizations except under contract as an independent service provider that is selected to provide independent audit service under these rules. An independent auditor may include a consumer-owned utility.

(21) "Independent certified public accountant" means a certified public accountant recognized by the State of Oregon, that is not in the employ of the retail electricity consumers company or any of its subsidiary or affiliate organizations except under contract as an independent service provider.

(22) "Large electricity consumer" means a nonresidential consumer that is a retail electricity consumer that has used more than one average megawatt of electricity (8,760,000 kWh/year) at any one site in the prior calendar year.

(23) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(24) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(25) "New" as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company, with the exception that "new energy conservation" also includes expenditures by large electricity consumers eligible for self-directing public purpose charges that meet the following conditions:

(a) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(A) the energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(B) the energy conservation measure did receive funding from an electric company conservation program and the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access or the date they request preliminary certification under these rules. A self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(b) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(26) "New renewable energy resource" means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before January 1, 2000. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before January 1, 2000.

(27) "Nonresidential consumer" means a retail electricity consumer that is not a residential consumer.

(28) "Oregon Department of Energy" means the Oregon Department of Energy, an agency of the State of Oregon, created under Oregon Revised Statute (ORS) 469.030.

(29) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

(30) "People's utility district" has the meaning given that term in ORS 261.010.

(31) "Precertification of new energy conservation projects" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies that a proposed energy conservation project will be eligible for a certificate of qualified expenditure if it is installed as described in the retail electricity consumer's application for precertification.

(32) "Precertification of new renewable resource purchases" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies that a proposed renewable resource purchase will be eligible for a certificate of qualified expenditure, if contracts of commitment to purchase are established as described in the retail electricity consumer's application for precertification.

(33) "Public purpose charge" is an amount equal to 3 percent of the total revenues billed to large consumers for electricity services, distribution, ancillary services, metering, billing, transition charges and other types of costs that were included in electric rates on or after March 1, 2002 by electric utilities offering direct access to their large electricity consumers, except for an aluminum plant that is a retail electricity consumer where the amount is equal to 1 percent of the total revenues billed.

(34) "Qualifying expenditures" means those expenditures for new energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources.

(35) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; or

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(36) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after January 1, 2000, whether or not each end user purchases the electricity from the electric utility. Retail electricity consumers include any direct service industrial consumer that purchases electricity without distribution services from the electric utility.

(37) "Self-directing consumer" means a retail electricity consumer using more than one average megawatt of electricity at any one site for the twelve billing months preceding January 15 of each year or an aluminum plant using more than 100 average megawatts of electricity for the twelve billing months preceding January 15 of each year. Consumers in electric utility service territories qualify as self-directing if they have a certification of qualified expenditure from the Oregon Department of Energy for new energy conservation or new renewable energy resources.

(38) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Each building or structure included in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings or structures; and

(C) Land shall be considered contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(39) "Statement of Eligibility" means a written declaration by an authorized officer of a large electricity consumer's firm that it meets the definition of a large electricity consumer under these rules and that it intends to comply with the requirements contained in these rules for self-direction and reporting of public purpose charges for a given site.

(40) "System" means any individual process or series of equipment contributing to energy end use in a large electricity consumer's site. A system may include heating, ventilating and air conditioning, domestic hot water, lighting, or a specific industrial process such as air compression, refrigeration, shredding, forging, or other such specific process described by the large electricity consumer.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0030

#### Eligibility as a Self-Directing Consumer

(1) Oregon retail electricity consumers using more than one average megawatt of electricity at one site in the twelve billing months preceding January 15 of each year, beginning with 1999, may apply in writing to the Oregon Department of Energy to qualify to self-direct a portion of their public purpose charges starting October 1, 2001. Application must be made each year that an electricity consumer wants eligibility as a self-directing consumer.

(2) The request for eligibility as a self-directing consumer shall include a statement that electric energy consumption at the site is over one average megawatt for the twelve billing months preceding January 15 of the year preceding the date of request for initial or renewal of eligibility.

(3) The written request for eligibility as a self-directing consumer shall be on a form provided by Oregon Department of Energy and include but not be limited to the following: name of the Oregon business or organization as a customer of record for the customer's electric utility; description of the site; site street and mailing addresses; business or organization contact; calendar year for which electric energy consumption qualifies the business or organization; electric energy consumption at the site for the given calendar year; name of the electric distribution utility; name of electricity service supplier(s); account numbers at the site for the electric distribution utility and each energy service supplier; and electric meter numbers at the site. The written application for eligibility to self-direct public purpose charges and statement of eligibility shall be signed and dated by a representative of the business or organization authorized by the highest ranking officer of the business or organization.

(4) Retail electricity consumers requesting eligibility from the Oregon Department of Energy under this rule shall retain evidence of energy consumption from their energy service suppliers and distribution utility used to qualify for self-direction.

(5) Retail electricity consumers are eligible for self-direction for the one calendar year following the year for which the Oregon Department of Energy has based its approval of their request for eligibility, regardless of the electricity purchases at that site in the following calendar year.

(6) Retail electricity consumers that receive Oregon Department of Energy approval of the request for eligibility for self-direction for a specific site may submit applications for precertification of new energy conservation projects and new renewable energy resource purchases for that site.

(7) The Oregon Department of Energy may request documentation to determine the validity or accuracy of any request for eligibility to self-direct public purpose charges.

(8) The Oregon Department of Energy shall notify the large electricity consumer's electric distribution utility in writing that the large electricity consumer is recognized as eligible for self-direction within 30 days of receipt of the request.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0040

#### Precertification of New Energy Conservation Projects

(1) Retail electricity consumers approved as eligible to become self-directing consumers by the Oregon Department of Energy may submit applications for precertification of new energy conservation projects.

(2) Retail electricity consumers shall apply directly to the Oregon Department of Energy for precertification of new energy conservation project investments that have a simple payback of greater than one year and less than ten years on a form supplied by the Oregon Department of Energy. Information submitted on the form shall include but not be limited to: the name of the retail electricity consumer; a description of the site; a description of the electricity conservation project; detail of the costs of the electricity conservation project; estimated electricity savings from the project; and calculations that support or demonstrate the electricity savings and simple payback of the project.

(3) The Oregon Department of Energy shall determine the eligible costs for the energy conservation project.

(4) Precertification of the cost eligible for credit and a description of the new energy conservation project shall be approved or denied in writing by the Oregon Department of Energy within 30 days of the receipt of a complete application.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0050

#### Precertification of New Renewable Resource Purchase

(1) Retail electricity consumers approved as eligible to become self-directing consumers by the Oregon Department of Energy may submit applications for precertification of new renewable resource purchases.

(2) Retail electricity consumers shall apply directly to the Oregon Department of Energy for precertification of new renewable resource purchases on a form supplied by the Oregon Department of Energy. Information submitted on the form shall include but not be limited to: the name of the electricity consumer; a description of the site; a description of the new renewable resource to be purchased; the electricity consumer's market price for electricity from conventional sources; costs of the new renewable resource; estimated electricity to be purchased from the new renewable resource; length of time of a proposed purchase agreement; method of certifying that the renewable energy resource purchased has not been duplicatively sold to other parties either in whole or part; and, any contract terms that would otherwise affect the cost or amount of new renewable resource purchased.

(3) The Oregon Department of Energy shall determine if the above-market cost of the proposed purchase of renewable resources, described in the application, are to be precertified as eligible self direction costs.

(4) Precertification of the cost eligible for a credit and a description of the new renewable resource purchase shall be approved or denied in writing by the Oregon Department of Energy within 30 days of the receipt of a complete application.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0060

#### Certification of Qualifying Expenditure for New Energy Conservation Projects

(1) Once the costs, or portion of the costs identified in the precertification as a component eligible for certification as an individual expense for a project, are expended, the retail electricity consumer may apply to the Oregon Department of Energy for a certificate of qualified expenditure on a form provided by the Office of Energy.

(2) Proof of amount paid must accompany the application for certificate of qualified expenditure.

(a) Proof of purchase for projects costing less than \$50,000 shall include receipts marked paid, canceled checks, contracts marked paid or other documentation of expenditure.

(b) Projects costing \$50,000 and more shall have an independent certified public accountant's statement of compilation of amount paid for the project.

(3) A certificate of qualified expenditure for all or part of the cost of precertified new energy conservation project(s) shall be approved or denied by the Oregon Department of Energy in writing within 30 days of the receipt of a complete application. A certificate of qualified expenditure may be issued for a portion of the cost of a new energy conservation project(s) that is an individual cost component or project phase defined in the preliminary certificate application and approved in the preliminary certificate.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0070

#### Certification of Qualifying Expenditure for New Renewable Resources

(1) Retail electricity consumers whose new renewable resource purchases have received precertification from the Oregon Department of Energy may apply for a certificate of qualified expenditure on a form provided by the Oregon Department of Energy.

(2) A signed contract to purchase or receipt(s) for purchase of renewable resource certificates for new renewable energy describing the amount to be paid and the length of the agreement must accompany the application for certificate of qualified expenditure.

(3) Contracted costs of \$50,000 and more shall have an independent certified public accountant's statement of compilation of the amount and schedule of expenditure for the project.

(4) Certificate of qualified expenditure shall be approved or denied by the Oregon Department of Energy within 30 days of the receipt of a complete application.

(5) The certificate of qualified expenditure shall describe the term for which a contracted new renewable resource purchase is eligible for credit against public purposes charges owed.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0080

#### Claiming a Public Purpose Charge Credit

(1) Large electricity consumers who are eligible for direct access, starting with the date of direct access, may claim credits against public purposes charges owed.

(2) Credits claimed may not exceed the amount of cost documented on certificate(s) of qualifying expenditure for that self directing consumer's site. When qualifying expenditures are certified they may be claimed as follows:

(a) Credits in excess of the amount owed for a given month's conservation or renewable resource public purpose charges shall be available for future credit use (carried forward) for up to ten years but not past February 29, 2012.

(b) Credits in excess of the amount owed for a specific site may be applied to public purpose charges at other sites owned by the electricity consumer, its subsidiaries or affiliate firms in the same distribution utility service territory provided the site is also eligible as a self-direction consumer under these rules.

(3) The maximum credit against public purpose charges owed by a self-directing consumer shall not exceed the following:

(a) The maximum self-direction credit for sites in electric company service territories shall be 73.8 percent of the public purpose charge owed. Self-direction credit for the new energy conservation portion shall not exceed 56.7 percent of the public purpose charge owed and 17.1 percent for the new renewable resource purchase portion; or

(b) The maximum credit for sites in consumer owned electric service territory shall be 68 percent of the first 3 percent public purpose charges for new energy conservation. Any remaining amount, up to the maximum of the first 3 percent public purpose charge, is limited to the portion of the public purpose charge billed for new market transformation or above market costs of renewable resource purchase.

(c) The maximum credit for at an aluminum plant site shall be 68 percent of 1 percent of the total revenue from the sale of electricity to the retail electricity consumer for new energy conservation projects

and 17.1 percent for new renewable resource purchases of 1 percent of the total revenue from the sale of electricity to the retail electricity consumer, where the electric companies service territory abuts the greatest percentage of the site of the aluminum plant that uses more than 100 average megawatts of electricity per year.

(4) Large electricity consumers, who have received recognition that their site is eligible for self-direction with a certificate of qualified expenditure for credit against public purpose charges issued by the Oregon Department of Energy, may request that their electric distribution utility or energy service supplier apply their credit against public purpose charges owed.

(5) To remain eligible to self-direct public purpose charges, large electricity consumers shall pay on a monthly basis any balance of public purpose charges owed to their electric distribution utility or energy service supplier.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0090

#### Exclusion from Payment of a Portion of the Public Purpose Charge

(1) Retail electricity consumers approved to become self-directing consumers by the Oregon Department of Energy may request exclusion from payment of a maximum of 54 percent of the public purpose charges for energy conservation for a specific site. Oregon Department of Energy shall notify the retail electricity consumer's electric distribution utility of the request for exclusion from payment of a portion of public purpose charges.

(2) To be eligible for relief from payment of public purpose charges, an independent energy audit shall determine that all new energy conservation with a simple payback of one year or greater and ten years or less has been implemented at the site or that the cost of any uninstalled new energy conservation projects identified in the independent energy audit are paid first.

(3) The independent energy audit estimated cost for the new energy conservation measure must be paid as a public purpose charge up to the amount of the energy conservation portion of the retail electricity consumer's public purpose charges. The retail electricity consumer may only be relieved of public purposes costs above the auditor's estimated cost for the new energy conservation that the electricity consumer has chosen not to install up to the maximum stated under these rules.

(4) By the second annual anniversary of the date that the Oregon Department of Energy grants exclusion from payment of a portion of public purpose charges, the retail electricity consumer shall enter into an agreement to commence another independent energy audit.

(5) The large electricity consumer shall notify their electric distribution utility that a certificate of eligibility to be relieved of a portion of public purpose charges owed has been issued for that site prior to claiming any credit allowed under this rule against public purpose charges owed.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0100

#### Independent Audit Standards and Procedures

(1) An independent energy audit shall document or identify: annual electric energy consumption history for the site, major electricity energy using systems at the site, estimated segmentation of electric energy by end use and system type, industry standard benchmark performance for each electric energy using system at the site, site system performance relative to benchmarks, all installed electric energy conservation measures, all new electric energy conservation measure opportunities at the site by end use and/or system. Industry-established Industries of the Future roadmap technologies improving electric energy efficiency shall be evaluated for applicability at each site.

(2) A retail electricity consumer may contract with an independent energy auditor from a qualified list provided by the Oregon Department of Energy or an independent energy auditor of the retail electricity consumer's choice.

(3) The Oregon Department of Energy shall qualify the independent energy auditor selected by the retail electricity consumer within

30 days of a request in writing for auditor approval if either (a) or (b) below apply:

- (a) They are from the qualified auditor list; or
- (b) If the independent energy auditor is:
  - (A) Registered to do business in Oregon; and
  - (B) Has conducted comprehensive energy use and conservation analysis or facilities design in at least three facilities of similar type and size as the site; and

(C) A sample audit report from the selected independent energy auditor meets the approval of the Oregon Department of Energy for technical accuracy, thorough identification of new energy conservation investment by system or end use at the reported facility, and the report documents accurate cost estimates for new energy conservation investments; and

(D) Documentation or evidence supporting sections (A), (B) and (C) of this rule are submitted with the written request to approve the independent auditor.

(4) The Oregon Department of Energy shall develop a list of qualified independent energy auditors.

(5) Large electricity consumers may select an independent energy auditor from the list of qualified independent energy auditors. The Oregon Department of Energy may use the list when requested by a large electricity consumer to direct auditors to conduct an independent audit of the large retail electricity consumer's site.

(6) Selection of the independent energy auditor will be based on the auditor's experience auditing the type of facility, delivery date of the audit and cost.

(7) The large electricity consumer shall directly contract with the independent energy auditor for all costs of the audit. The contract between the large electricity consumer and the independent energy auditor shall provide the Oregon Department of Energy open access to information on all aspects of the independent energy audit.

(8) Costs for independent energy audit services under this rule are not eligible for precertification as new energy conservation unless a portion of the audit defines design elements of a new energy conservation project installed by the large electricity consumer.

(9) A summary of findings shall be provided to the Oregon Department of Energy once on-site field work is complete and prior to the development of the audit report.

(10) An independent energy audit report, described under subsection 1 of this rule, shall be submitted by the large electricity consumer's independent energy auditor to the Oregon Department of Energy for review.

(11) A certificate of eligibility to be relieved of a portion of the public purpose charges, not to exceed 54 percent of the amount owed, shall be approved or denied in writing by the Oregon Department of Energy within 30 days of the receipt of a complete and approved independent energy audit report.

(12) The Oregon Department of Energy may require that all or part of the independent energy audit be reevaluated and rewritten by the independent energy auditor or the large electricity consumer at the large electricity consumer's expense if data, technical or engineering errors or omissions are identified.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687  
 Stats. Implemented: ORS 756.040 & 757.600 - 757.687  
 Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0110

#### Reporting Self-Direction Credits and Public Purpose Amounts Collected or Paid

(1) Consumer-owned utilities providing open access to any customer class shall report annually to the Oregon Department of Energy the amount of public purpose charges collected from the consumer owned utility retail electricity consumers. The report shall be submitted no later than February 28 of each calendar year starting in the calendar year after the consumer owned utility governing board elects to provide open access for any class of its customers. Reports shall not include the self-direction public purpose charges allowed under these rules.

(2) The Oregon Department of Energy shall notify in writing large electricity consumers or consumer-owned utilities of errors in the amount of self-direction credit claimed, the amount of public purpose charges submitted to the consumer's electric utility, or other errors or

omissions in reports. The notice shall recommend the corrections necessary for the large electricity consumer or the consumer-owned utility.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687  
 Stats. Implemented: ORS 756.040 & 757.600 - 757.687  
 Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0120

#### Denial or Revocation of Eligibility to Participate as a Self-Direction Consumer

(1) The Director of the Oregon Department of Energy shall determine whether a large electricity consumer is eligible to participate or to continue to participate in part or at all under these rules based on the following:

(a) The large electricity consumer no longer qualifies for participation as a self-directing consumer under these rules; or

(b) The large electricity consumer fails to submit public purpose charges owed; or

(c) Changes in an energy conservation project or renewable resource purchase that are not communicated to the Oregon Department of Energy that make the project ineligible for self-direction credit; or

(d) Errors in fact or procedure under these rules go uncorrected after requests for correction are submitted to the large electricity consumer by the Oregon Department of Energy; or

(e) Any intentional commission of error or fraud in any application for participation under these rules; or

(f) It is determined by the Director of the Oregon Department of Energy that self-directing by that large electricity consumer or class of large electricity consumers cannot be accountably administrated.

(2) The Oregon Department of Energy shall notify the large electricity consumer in writing of the revocation or denial of the large electricity consumer's eligibility to participate under these rules and include:

(a) The conditions leading to the decision to deny or revoke eligibility of the large electricity consumer's right to self-direct public purpose charges; and

(b) The date that the retail electricity consumer is no longer eligible to apply for project precertification or certification of qualified expenditure; and

(c) The previously certified qualified expenditures that the retail electricity consumer may continue to claim as credits against public purpose charges owed.

(3) The large electricity consumer may appeal the decision to the Director of the Oregon Department of Energy in writing within 30 days of the postmarked date of the notice from the Oregon Department of Energy.

(4) The Director of the Oregon Department of Energy shall approve or deny any request to appeal a revocation or denial of eligibility to self-direct public purpose charges in writing within 30 days of the postmarked date of the appeal request.

(5) The Oregon Department of Energy shall notify the large electricity consumers electric distribution utility in writing, that is an electric company or consumer owned utility, of the revocation or denial of a large electricity consumer's eligibility to participate as a self direction consumer under these rules.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687  
 Stats. Implemented: ORS 756.040 & 757.600 - 757.687  
 Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### 330-140-0130

#### Utility and Electricity Consumer Credits for Public Purpose Expenditures by their Energy Suppliers

(1) Utilities may apply to the Oregon Department of Energy to claim a credit for qualifying public purpose expenditures by their energy supplier for the market transformation activities of the Northwest Energy Efficiency Alliance under the Bonneville Power Administration residential subscription rate.

(2) Application for this credit must be made by March 1 of each calendar year to begin claiming credit by October 1 and shall document the contracted amount owed.

(3) The credit may be taken against the conservation portion of the electric distribution utility payment of collected public purpose charges as directed by Oregon Administrative Rule.

(4) The Oregon Department of Energy shall propose a credit amount to the Oregon Public Utility Commission by July 1, 2002. The credit amount shall be distributed as a reduction to public purpose charges owed equitably among all the electric distribution utility's residential ratepayers whose rates include a Northwest Energy Efficiency Alliance cost component.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

### **330-140-0140**

#### **Administrative Cost Recovery**

(1) Large electricity consumers applying to be eligible as self-directing consumers shall pay actual cost of service incurred by the Oregon Department of Energy for services provided for establishing a self-direction account, reviewing request for self direction, and the electricity consumer's portion of the cost for any services or supplies for such administration.

(2) At the request of the self direction consumer or applicant for eligibility as a self directing consumer, the Oregon Department of Energy shall estimate the actual cost of the self directing site certification administrative services to be provided for that year. The estimate shall not exceed \$1,200 per site. The applicant shall submit payment of the estimated self-direction administrative cost of actual service provided annually with the request to become eligible or to

continue as a self-direction consumer. The Oregon Department of Energy shall determine the actual cost of service provided at the end of that year and invoice the large electricity consumer for any balance owed. Any amount of estimated payment received that exceeds the actual cost of service shall be refunded to the large electricity consumer for that year being invoiced or offered as a credit against the estimated cost of actual services provided for the following year.

(3) At the request of the self-directing consumer, the Oregon Department of Energy shall estimate the actual cost of service for the self direction project certification to be provided for that year. The estimated actual cost of service provided shall not exceed 4 percent of the project cost. The self-directing consumer shall submit payment of the estimated actual cost of certification services to be provided for preliminary certification with all applications for precertification. An application for preliminary certification will not be considered complete without payment. The Oregon Department of Energy shall determine the actual cost of certification services at the end of that year and invoice the self-directing consumer for any balance owed. Any amount of estimated payment received that exceeds the actual cost of service for that year shall be refunded to the large electricity consumer for that year being invoiced or offered as a credit against the estimated cost of actual services provided for the following year.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687

Stats. Implemented: ORS 756.040 & 757.600 - 757.687

Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04

