



OREGON
DEPARTMENT OF
ENERGY

Oregon Administrative Rules

Business Energy Tax Credit

**OAR 330-90-0105 to 330-90-0150
(for ORS 469.185; 315.354; 315.356)**

**Effective December 1, 2006
(Replaces October 1, 2006)**

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DEPARTMENT OF ENERGY

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 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

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 or 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 wastesheds, 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 forestland.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric 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 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; 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

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 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; 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

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 application 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 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-

1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; 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

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 Ch. 469.040 & ORS 469.165
Stats. Implemented: ORS 469.185 - ORS 469.225
Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

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 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; 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

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed:

(a) 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 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; 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