

BIOFUELS LEGISLATION

SUMMARY

10/4/06

The following is a brief statement of the essential features of the measure:

- Expands property tax incentives for Biofuel and certain fuel additive production facilities.
- Creates tax incentive for producers of Biofuel raw materials.
- Establishes renewable fuel use standards.
- Prohibits sales of gasoline that contain certain additives.
- Expands the State agency alternative fuel mandate to include biodiesel for vehicles and equipment.
- Creates income tax incentive for consumer use of Biofuels.
- Modifies the Energy Facility Siting site certificate exemption criteria.
- Maintains Exclusive Farm Use (EFU) for on-farm Biofuel production facilities.

A BILL FOR AN ACT

Relating to renewable energy; creating new provisions; amending ORS 283.327, 307.701, 314.752, Chapter 315, 318.031, 308A.056, 469.320, 646.905 and 646.910, 646.920 and section 4, chapter 475, Oregon Laws 1993, and sections 9, 15 and 17, Oregon Laws 2001; and appropriating money.

Be It Enacted by the People of the State of Oregon:

PROPERTY TAX INCENTIVE FOR BIOFUEL AND CERTAIN FUEL ADDITIVE FACILITIES

SECTION 1. ORS 307.701 is amended to read:

307.701. (1) As used in this section

(a) **'Biofuel'** means liquid, gaseous or solid fuel produced from a liquid, gaseous, or solid organic source or sources, including but not limited to biomass, waste and residue from agriculture, forestry or related industries or other industrial or municipal waste solid waste, wastewater, or biosolids.

(b) **'Ethanol'** has the meaning given the term under ORS 646.905.

(c) **'Biodiesel'** means a diesel fuel substitute produced from non-petroleum renewable resources (inclusive of vegetable oils, animal fats and biomass) that meet the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency and any blending components derived from renewable fuel.

(d) **'Biomass'** means any organic matter that is available on a renewable or recurring basis from wood, forest or field residues or dedicated energy crops or other organic biosolids that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol or inorganic arsenical compounds;

(e) **'Production facility'** means a facility that is used to produce Biofuel.

(f) **'Verified fuel additive'** means a fuel additive that:

(A) Has been verified under the United States Environmental Protection Agency's Environmental Technology Verification Protocol or the California Air Resources Board verification programs; and

(B) Is at least 90 percent renewable materials.

(2) Upon compliance with subsection (4) of this section, the real and personal property of [*an ethanol*] a production facility that meets the requirements of subsection (3) of this section is exempt from taxation. The exemption shall be 50 percent of the assessed value of the property determined under ORS 308.146. The exemption under this section may be claimed for five assessment years.

(3) [*An ethanol*] A production facility may qualify for exemption from taxation under this section if the facility:

(a) Is [*first*] in the process of construction, erection or installation as a new facility after July 1, 1993;

(b) Is or will be placed in service to produce ethanol, **Biofuel or verified fuel additives** within [four] **five** years after January 1 of the first assessment year for which [the] **an** exemption [under this section] is claimed **under this section or ORS 285C.170 or 285C.175**; [and]

(c) **Consists of newly constructed, installed or acquired property, including property that was previously owned by a different owner and used at a different location, that is first placed in service during the calendar year preceding the assessment year for which an exemption listed in paragraph (b) of this subsection is claimed; and**

[(c)] (d) Within [four] **five** years after January 1 of the first assessment year for which [the] **an** exemption [under this section] **listed in paragraph (b) of this subsection** is claimed, is or will be certified by the State Department of Agriculture as a facility that produces:

(A) Ethanol capable of blending or mixing with gasoline. The blend or mixture shall meet the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. 7545 and 40 C.F.R. Part 79[.]:

(B) Biofuel; or

(C) Verified fuel additives.

(4)(a) (A) In order to claim an exemption from taxation under this section for any assessment year, the owner of [an ethanol] **a** production facility shall file with the county assessor, on or before April 1 of the year for which exemption is claimed, a statement verified by the oath or affirmation of the owner listing all real and personal property claimed to be exempt and showing the purpose for which the property will be or is used.

(B) In the case of a Biofuel production facility, in addition to the requirements of subparagraph (A) of this paragraph, the application for exemption must include all of the following:

(i) **A list of the taxing districts in which the property is located; and**

(ii) **A copy of a written notice mailed to each taxing district.**

The notice must:

(I) State that the applicant is seeking a property tax exemption under this section;

(II) State that a taxing district may elect not to participate in the exemption, in which case taxes of the district will continue to be imposed on the property of the applicant; and

(III) Comply with any other requirements established by the Department of Revenue.

(b) If the ownership and use of the **production facility** property included in the statement **described in paragraph (a)(A) of this subsection and** filed for a prior year remain the same, a new statement [shall not be] **is not** required. However, if the ownership or use changes, or if the facility property is added to or retired, a new statement is required and the property [shall] **may** not be exempt under this section if the statement is not filed. The new statement [shall] **must** be filed no later than December 31 of the year to which the statement pertains.

(5) If the **production** facility property is not placed in service within the time required under subsection (3) of this section, or if the certification required under subsection (3) of this section is not obtained within the required time, then the facility property [shall] **may** not be exempt for any year under this section. For any year for which the property has been granted exemption under this section, the county assessor shall add the property to the assessment and tax roll as omitted property in the manner provided under ORS 311.216 to 311.232.

(6) None of the exemptions in this section shall be construed as affecting pre-existing farm use assessments.

SECTION 2. (1) A city, county or other local taxing district with property tax authority may elect not to participate in an exemption for a Biofuel production facility or a verified fuel additive production facility granted under ORS 307.701.

(2) A taxing district may make the election by filing written notification of the election with the county assessor of the county in which the taxing district is located before July 1 of the first tax year for which the election is to be effective.

(3) An election made under this section shall be valid for all tax years following the year for which the election is first made, until the election is revoked by the taxing district.

(4) A taxing district may revoke an election made under this section by filing written notification of the revocation with the county assessor of the county in which the taxing district is located before July 1 of the first tax year for which the revocation is to be effective.

(5) The written notifications of election and revocation described in this section shall contain the information and be in the form prescribed by the Department of Revenue.

(6) An election or revocation made under this section applies to all Biofuel production facility property or verified fuel additive production facility property within the taxing district:

(a) For which an application has been filed under ORS 307.701; and

(b) That qualifies for exemption under ORS 307.701.

SECTION 3. The amendments to ORS 307.701 by section 1 of this 2007 Act apply to production facilities for which an application for exemption under ORS 307.701 is first filed on or after January 1, 2006, for tax years beginning on or after July 1, 2006.

SECTION 4. Section 4, chapter 475, Oregon Laws 1993, is amended to read:

Sec 4. [(1) An ad valorem property tax exemption provided by section 2 of this Act is first applicable to the tax year beginning July 1, 1994.]

[(2) Section 2 of this Act is repealed on July 1, 2008. The repeal applies to tax years beginning on or after July 1, 2008. Notwithstanding that an ethanol production facility has not received five years of exemption under section 2 of this Act, no exemption for the facility shall be granted under section 2 of this Act for a tax year beginning on or after July 1, 2008.] An exemption for a production facility may not be granted under ORS 307.701 for any production facility that has not qualified for at least one year of exemption as of July 1, 2012.

TAX INCENTIVE FOR PRODUCERS OF BIOFUEL RAW MATERIALS

SECTION 5. Section 6 of this 2007 Act is added to and made a part of ORS chapter 315.

SECTION 6. (1) As used in this section:

(a) 'Agricultural producer' or 'biomass collector' means a person that produces plant/animal matter or collects forest products or wood waste that is used in Oregon for use as or to produce biofuel.

(2) An agricultural producer or biomass collector shall be allowed a credit against the taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for the production in this state of plant or animal matter that is used to produce biofuel in this state or that is forest or rangeland vegetative biomass.

(3) The amount of the credit shall not exceed:

(a) One dollar per million British thermal units (MMBtu) of biofuel.

(b) The Oregon Department of Energy will determine and publish the Btu content and credit amount of biofuel/biomass feedstock in administrative rule to be reviewed and subject to change annually.

(4)(a) Each Biofuel producer shall report to an agricultural producer the quantity, in gallons or pounds, of Biofuel produced from plant or animal matter sold to the producer by the agricultural producer. The report shall be made in writing within 30 days of the date of sale of the plant or animal matter to the Biofuel producer.

(b) If the Agricultural producer or Biomass collector is a tax exempt entity, then the tax credit can be transferred for claim through the Biofuel lifecycle to the Biofuel producer

(c) Each producer that uses biomass to produce fuel shall maintain records of the quantity of biomass obtained and the identity of the agricultural producer from whom the biomass was obtained. The producer shall maintain the records for the length of time prescribed by the Department of Revenue.

(d) The tax credits in this section shall be deemed bankable or transferable throughout the Biofuel production cycle.

(5) Except as provided in subsection (7) of this section, the amount of the credit may not:

(a) Exceed the tax liability of the taxpayer; and

(b) Exceed the amount stated on the tax credit certification issued under subsection (9) of this section.

(6) The credit shall be claimed on a form prescribed by the Department that contains the information required by the Department.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, but may not be carried forward for any tax year thereafter.

(8) In the case of a credit allowed under this section:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of the taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the Department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9)(a) Prior to the close of the calendar year in which begins the tax year for which a credit under this section is to be claimed, a taxpayer that seeks to claim a tax credit under this section shall apply to the Department for tax credit certification. The application shall be on a form prescribed by the Department that contains the information required by the Department, including the amount of tax credit the taxpayer intends to claim.

(b) The Department shall process applications in the order in which the applications are filed and shall certify the amount stated on the application, or a lesser amount that the Department determines is within the annual limit set forth in paragraph (c) of this subsection. The department shall give written notice of the certified amount to the taxpayer.

(c) The Department may not certify more than \$_____ as eligible for tax credits under this section in any calendar year.

(d) The Department may deny an application for tax certification if the application is incomplete or if the Department determines that the application does not state a reasonable basis for the allowance of any tax credit under this section.

SECTION 7. ORS 314.752 is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders. Nothing in this section shall be construed to deny the availability of credits shall the individuals, sole proprietorships, partners of partnerships or limited partnerships, or members of limited liability companies.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, partnership, limited partnership or limited liability company, there shall be taken into account the shareholder's, partner's or member's pro rata share of the tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the tax credit that in the case of a nonresident that the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, '[business] tax credit' means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or

incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a tax credit or is designated as a tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fish ways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farm worker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.234 (child development program contributions), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) **and section 6 of this 2007 Act (production for biodiesel and ethanol, biomass usage).**

SECTION 8. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and the Corporation Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes and the operative date of this chapter), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.234, 315.254, 315.304, 315.504, 315.511 and 315.604 **and section 6 of this 2007 Act** (all only to the extent applicable *[for]* to a corporation) and ORS 285C.309, 315.507, 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038, 317.080, 317.124 to 317.131, 317.152 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to 317.485, 317.488, 317.510 to 317.635 and 317.705 to 317.725.

SECTION 9. Section 6 of this 2007 Act and the amendments to ORS 314.752 and 318.031 by sections 7 and 8 of this 2007 Act apply to tax years beginning on or after January 1, 2008.

SECTION 10. A taxpayer may not be allowed a credit under Section 6 if the tax year for which the qualified feedstock is purchased is on or after January 1, 2013.

RENEWABLE FUEL STANDARDS

SECTION 11. Sections 12 through 18 of this 2007 Act are added to and made a part of ORS 646.910 to 646.920.

SECTION 12. (1) The State Department of Agriculture shall study and monitor biodiesel fuel production, use and sales in this state.

(2) When the production of biodiesel in this state from Pacific Northwest (Oregon, Washington, Idaho, Montana) feedstock reaches a level of at least five million gallons on an annualized basis for at least three months, the Department shall notify all retail dealers, non-retail dealers and wholesale dealers in this state, as described in subsection (4) of this section.

(3) When the production of biodiesel in this state from Pacific Northwest (Oregon, Washington, Idaho, Montana) feedstock reaches a level of at least fifteen million gallons on an annualized basis for at least three months, the Department shall notify all retail dealers, non-retail dealers and wholesale dealers in this state, as described in subsection (4) of this section.

(4) The notice under subsections (2) and (3) of this section shall inform retail dealers, non-retail dealers and wholesale dealers that:

(a) The production of biodiesel has reached the level described in subsection (2) or (3) of this section; and

(b) Three months from the date of the notice, a retail dealer, non-retail dealer or wholesale dealer may only sell or offer for sale diesel fuel described in section 13 of this 2007 Act.

SECTION 13. (1) Upon notice having been given under Section 12(2), a retail dealer, non-retail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume.

(2) Upon notice having been given under Section 12(3), a retail dealer, non-retail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume.

(3) The State Department of Agriculture shall adopt standards for biodiesel sold in this state. The Department shall consult the specifications established for biodiesel in the American Society for Testing and Materials International specification D6751-03a, or similar specifications, in forming its standards. The Department may review specifications adopted by the American Society for Testing and Materials International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content requirement under subsections (1) and (2) of this section does not apply to diesel fuel sold or offered for sale for use by railroad locomotives.

SECTION 14. Section 13 of this 2007 Act becomes operative on a date that is three months following the date of the notice required under section 12 of this 2007 Act.

SECTION 15. (1) The State Department of Agriculture shall study and monitor the ethanol fuel production, use and sales in this state.

(2) When production of ethanol in this state reaches a level of at least 90 million gallons on an annualized basis for at least three months, the Department shall notify all retail dealers, non-retail dealers and wholesale dealers in this state, as described in subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, non-retail dealers and wholesale dealers that:

(a) The production of ethanol has reached the levels described in subsection (2) of this section; and

(b) Three months from the date of the notice, a retail dealer, non-retail dealer or wholesale dealer may only sell or offer for sale gasoline described in section 16 of this 2007 Act.

SECTION 16. (1) A retail dealer, non-retail dealer or wholesale dealer may not sell or offer for sale gasoline unless the gasoline contains at least 10 percent ethanol by volume.

(2) Gasoline containing ethanol that is sold or offered for sale meets the requirements of this section if the gasoline, exclusive of denaturants and permitted contaminants, contains not less than 9.2 percent by volume of agriculturally derived, denatured ethanol that complies with the standards for ethanol adopted by the State Department of Agriculture.

(3) The Department shall adopt standards for ethanol blended with gasoline sold in this state. The standards adopted shall require that the gasoline blended with ethanol:

(a) Contains ethanol that is derived from agricultural or woody feedstock;

(b) Contains ethanol denatured as specified in 27 C.F.R. parts 20 and 21;

(c) Complies with volatility requirements specified in 40 C.F.R. part 80;

(d) Complies with or is produced from a gasoline base stock that complies with the American Society for Testing and Materials International Specification D4814-04b, or an equivalent standard;

(e) Is not blended with casinghead gasoline, absorption gasoline, drip gasoline or natural gasoline after it has been sold, transferred or otherwise removed from a refinery or terminal; and

(f) Complies with American Society for Testing and Materials International Specification D4806-04a, or an equivalent standard.

(4) The department may review specifications adopted by the American Society for Testing and Materials International, or equivalent organizations, and federal regulations and revise the standards adopted pursuant to this section as necessary.

SECTION 17. Section 16 of this 2007 Act becomes operative on a date that is three months following the date of the notice required under section 15 of this 2007 Act.

SECTION 18. ORS 646.905 is amended to read:

646.905. As used in ORS 646.910 to 646.920:

(1) 'Alcohol' means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) 'Biodiesel' means a diesel fuel substitute produced from non-petroleum renewable resources (inclusive of vegetable oils, animal fats and biomass) that meet the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency and any blending components derived from renewable fuel.

[2] (3) 'Co-solvent' means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

[3] **(4)** 'Ethanol' means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[4] **(5)** 'Gasoline' means any fuel sold for use in spark ignition engines whether leaded or unleaded.

[5] **(6)** 'Methanol' means methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[6] **(7)** 'Motor vehicles' means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

[7] **(8)** 'Non-retail dealer' means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to non-retail customers.

[8] **(9)** 'Retail dealer' means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

[9] **(10)** 'Wholesale dealer' means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another.

GASOLINE ADDITIVE RESTRICTIONS

SECTION 19. ORS 646.910 is amended to read:

646.910. [No] (1) **A** wholesale or retail dealer may **not** sell or offer to sell any gasoline blended or mixed with:

(a) [*Alcohol*] **Ethanol** unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79[.];

(b) **Methyl tertiary butyl ether in concentrations that exceed five-tenths of one percent by volume; or**

(c) **A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of:**

(A) **Diisopropylether.**

(B) **Ethyl tert-butylether.**

(C) **Iso-butanol.**

(D) **Iso-propanol.**

(E) **N-butanol.**

(F) **N-propanol.**

(G) **Sec-butanol.**

(H) **Tert-amyl methyl ether.**

(I) **Tert-butanol.**

(J) **Tert-pentanol or tert-amyl alcohol.**

(K) **Other additives that have not been approved by the California Air Resource Board or the EPA.**

(2) **Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed five-tenths of one percent by volume or any of the oxygenates listed in subsection (1)(c) of this section, provided:**

(a) **The gasoline is used or disposed of outside this state; and**

(b) **The gasoline is segregated from gasoline intended for use within this state.**

SECTION 20. The amendments to ORS 646.910 by section 19 of this 2007 Act become operative November 1, 2007.

STATE GOVERNMENT USE OF BIOFUEL

SECTION 21. ORS 283.327 is amended to read:

283.327 Use of alternative fuels; acquisition of vehicles using such fuel; safety standards. (1) To the maximum extent economically possible, state-owned motor vehicles shall use **Biofuel** [*alternative fuel*] for operation.

(2) **After July 1, 2007**, [S]state agencies shall acquire only motor vehicles capable of using **Biofuel**[*alternative fuel*], except that acquired vehicles assigned to areas unable economically to dispense **Biofuel are exempted from this requirement**[*alternative fuel need not be so configured*].

(3) Each agency owning motor vehicles shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using **Biofuel**[*alternative fuel*].

(4) To the maximum extent economically possible, state-owned structures shall use Biofuel or direct-application electricity from Biofuel generation.

[1991 c.399 §2; 1993 c.335 §5; 2005 c.22 §201]

BIOFUEL CONSUMER INCOME TAX INCENTIVES

SECTION 22: Section 22 of this Bill is added to ORS Chapter 315:

Tax Credit for purchase of fuel blends.

(1) **Definitions;** As used in this section “fuel blends” means diesel fuel of blends equal to or exceeding 99 percent biodiesel, gasoline of a blend equal to or exceeding 85 percent methanol or ethanol, forest or agriculture waste or residue solid biofuel for use in combustion devices.

“alternative fuel vehicle”

(2)(a) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred to purchase fuel blends for use in an alternative fuel vehicle.

(b) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred to purchase forest or agriculture waste or residue solid Biofuel that contains 100% biomass.

(3)(a) The credit allowed under this section for diesel blended fuel shall not exceed \$.50 per gallon in any tax year.

(b) the credit allowed for gasoline blended fuel shall not exceed \$.50 per gallon of ethanol blended fuel.

(c) the credit allowed for forest or agriculture waste or residue solid Biofuel shall not exceed _____ per ton of solid Biofuel.

(d) Notwithstanding subparagraph (a) of this paragraph, the amount of the credit allowed in any one tax year may not exceed the tax liability of the taxpayer or \$200 per Oregon registered motor vehicle certified to use fuel blend or combustion device, whichever is less. Unused credit amounts may not be carried forward to a subsequent tax year.

(e) The Oregon Department of Energy will determine and publish a commodity eligibility and credit amount of fuel blend or forest or agriculture waste or residue solid biofuel in administrative rule to be reviewed and subject to change annually.

(4) For each tax year in which a credit is claimed under [subsection 1], the taxpayer shall maintain records sufficient to determine the taxpayer’s purchase of qualifying fuel blends. A taxpayer shall maintain the records required under this subsection for at least 10 years.

(5) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(6) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(7) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(8) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

ENERGY FACILITY SITING PROCESS; EXCEPTIONS

SECTION 23. ORS 469.320, as amended by section 23 of this 2007 Act, is amended to read: 469.320. Site certificate required; exceptions; temporary facility.

(1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(1) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Exclusively uses agricultural feedstock including, but not limited to grain, whey, potatoes, oil seeds, waste vegetable oil or cellulosic biomass as the source of material for conversion to a liquid or gaseous fuel for use in transportation vehicles;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; *[and]*

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge[.]; **and**

(E) Emits no more than 117 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

EXCLUSIVE FARM USE FOR ON FARM BIOFUEL PRODUCTION

SECTION 24. ORS 215.283, as amended by section 24 of this 2007 Act, is amended to read:

215.283 (2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use **including commercial production of Biofuels** but not including the processing of farm crops as described in subsection (1)(u) of this section.

215.283 (1)(u) A facility for the processing of farm **crops or the production of Biofuels** located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

SECTION 25. ORS 308A.056, as amended by section 25 of this 2007 Act, is amended to read:

308A.056 Definition of “farm use.” (1) As used in ORS 308A.050 to 308A.128, “farm use” means the current employment of land for the primary purpose of obtaining a profit in money by:

- (a) Raising, harvesting and selling crops;
- (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;
- (c) Dairying and selling dairy products;
- (d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;
- (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;
- (f) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;
- (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land described in this section; or
- (h) Using land described in this section for the production of **Biofuels or any other** agricultural or horticultural use or animal husbandry or any combination thereof.

(2) “Farm use” does not include the use of land subject to timber and forestland taxation under ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood).

(3) For purposes of this section, land is currently employed for farm use if the land is:

- (a) Farmland, the operation or use of which is subject to any farm-related government program;
- (b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
- (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of this subsection, prior to maturity;

(d) Land not in an exclusive farm use zone that has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that is not currently being used for any economic farm use;

(f) Except for land under a single family dwelling, land under buildings supporting accepted farming practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

(g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(i) Land lying idle for no more than one year when the absence of farming activity is the result of the illness of the farmer or a member of the farmer's immediate family, including injury or infirmity, regardless of whether the illness results in death;

(j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood); or

(k) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training greyhounds for racing.

(4) As used in this section:

(a) "Accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.

(b) "Cultured Christmas trees" means trees:

(A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(B) Of a marketable species;

(C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

(D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices:

(i) Basal pruning;

(ii) Fertilizing;

(iii) Insect and disease control;

(iv) Stump culture;

(v) Soil cultivation; or

(vi) Irrigation. [1999 c.314 §3; 2001 c.613 §21; 2003 c.454 §120; 2003 c.621 §81a]