



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Repeal Business Energy Tax Credits Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/30/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

Rules are no longer needed in Chapter 330, as Oregon Laws 2011, Chapter 474 (HB 2523) transferred administration of the income tax credit allowed for renewable energy resource equipment manufacturing facilities from Oregon Department of Energy to the Oregon Business Development Department. The transfer went into effect on January 1, 2012. Repealing these rules is an administrative task to clean up ORS Chapter 330. This rulemaking addresses the need by repealing the listed rules, as they no longer apply to Chapter 330.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes, Chapter 315, Section 341
https://www.oregonlegislature.gov/bills_laws/ors/ors315.html

Oregon Laws 2011, Chapter 474 (HB 2523)
<https://olis.oregonlegislature.gov/liz/2011R1/Downloads/MeasureDocument/HB2523/Enrolled>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Repealing these rules will not affect racial equity in this state. This rulemaking repeals rules that are no longer applicable due to the transfer of administration of the BETC to the Oregon Business Development Department.

FISCAL AND ECONOMIC IMPACT:

There is no estimated fiscal or economic impact as a result of repealing these rules. This rulemaking repeals rules that are no longer applicable due to the transfer of administration of the BETC to the Oregon Business Development Department.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no estimated cost of compliance to repealing these rules. This rulemaking repeals rules that are no longer applicable due to the transfer of administration of the BETC to the Oregon Business Development Department.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules. This rulemaking repeals rules that are no longer applicable due to the transfer of administration of the BETC to the Oregon Business Development Department.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An Administrative Rule Advisory Committee was not consulted. This rulemaking repeals rules that are no longer applicable due to the transfer of administration of the BETC to the Oregon Business Development Department.

HOUSING IMPACT STATEMENT:

As required under ORS 183.530 and 183.534, the Department has considered the potential impact of repealing these rules and believes repealing these rules will cause no impact to the following costs for developing a typical 1,200 square foot detached single family dwelling on a 6,000 square foot parcel of land: (1) materials and labor costs (2) administrative construction or other costs (3) land costs, or (4) other costs.

RULES PROPOSED:

330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0133, 330-090-0135, 330-090-0140, 330-090-0150, 330-090-0160, 330-090-0350, 330-090-0450

REPEAL: 330-090-0105

RULE SUMMARY: Repeals the rule describing a Business Energy Tax Credit (BETC).

CHANGES TO RULE:

~~330-090-0105~~

~~What a BETC Is~~

~~(1) A Business Energy Tax Credit (BETC) for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 but excluding wind facilities with an installed capacity of more than 10 megawatts for which preliminary certification is issued on or after January 1, 2010 are eligible for a tax credit equal to 50 percent of eligible costs. Wind facilities with an installed capacity of more than 10 megawatts, for which preliminary certification is issued on or after January 1, 2010, are eligible for a tax credit equal to 5 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities are eligible for a tax credit of up to \$9,000 and qualifying high performance homes are eligible for a tax credit of up to \$12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment.¶~~

~~(2) The Oregon Department of Energy (Department) must issue a final certificate pursuant to ORS 469B.161 before the credit can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules chapter 330, division 90 applies to all BETC applications. These rules apply to all applications pending as of the effective date of these rules.¶~~

~~(3) The Department may also apply these rules to applications currently being reviewed by the Department where a final determination is pending or has been made, when the Department finds that its failure to apply the new criteria set forth in these rules may hamper the Department's efforts to reduce the costs of the BETC program.~~

~~Statutory/Other Authority: ORS 469.040, 469.165~~

~~Statutes/Other Implemented: ORS 469.185–469.225~~

RULE SUMMARY: Repeals the definitions in the BETC rules.

CHANGES TO RULE:

330-090-0110

Definitions ¶¶

For the purposes of Oregon Administrative Rules, Chapter 330, Division 90, the following definitions apply unless the context requires otherwise:¶¶

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.¶¶

(2) "Alternative Fuel Fueling Station": A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.¶¶

(3) "Alternative Fuel Vehicle (AFV)" is a vehicle designed to operate on an alternative fuel and includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. AFV does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles or vehicles leased by an investor-owned utility (IOU) to others. For purposes of qualifying for a BETC, gasoline-hybrid AFVs purchased on or after January 1, 2010 must also be designed for electrical plug-in.¶¶

(4) "Applicant": An applicant means:¶¶

(a) A person who applies for a preliminary certification of a BETC under this section includes:¶¶

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.¶¶

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification. These entities must follow all procurement processes, including competitive bid, where applicable.¶¶

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.¶¶

(b) A person who applies for a final certification of a BETC under this section must be the facility owner listed on the preliminary certification.¶¶

(c) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.¶¶

(d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.¶¶

(5) "Biofuels": A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:¶¶

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act,¶¶

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend,¶¶

(c) Ethanol (CH₃CH₂OH) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007,¶¶

(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and¶¶

(e) "E85," a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.¶¶

(6) "Biomass": An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis. This definition excludes cordwood or wood used for burning in fireplaces.¶¶

(7) "Building Automation Controls Facility": Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice and applicable building code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as defined in these rules. Facilities are eligible when energy saving features meet the following requirements and applicable code:¶¶

(a) For existing systems within their service life, the following standards apply:¶¶

(A) The baseline will be based on the existing system's capabilities in fully functional and operating condition.¶¶

(B) Eligible costs will be based on the incremental cost and energy savings of the proposed system as compared to a fully functioning baseline system (savings and costs associated with maintenance and repair activities are not eligible).¶¶

(b) For systems beyond service life or new buildings, the following standards apply:¶¶

(A) Eligible costs and energy savings will be based on the incremental cost and energy savings between the proposed system and the baseline system.¶¶

(B) Only the components of the project that achieve energy savings will be considered eligible. If the component does not achieve energy savings it will not be considered an eligible cost.¶¶

(C) The baseline system must incorporate similar technologies to the proposed system. The minimum standard or baseline system will have the following features, plus any additional features required by code: a start/stop program, night setback program, enthalpy control program (economizer), lighting control program (sweep > 5,000 sq.ft.) and a variable flow (10 hp and above).¶¶

(8) "Building Code": Applicable state and local codes as defined in ORS 455.010 that are in effect the date the Department receives the application for preliminary certification.¶¶

(9) "Building Envelope": That element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.¶¶

(10) "Car Sharing Facility": A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.¶¶

(11) "Certified cost": The cost certified in the final certification issued pursuant to ORS 469B.161.¶¶

(12) "Combined Heat and Power (Cogeneration)": Means a facility designed to generate electrical power and thermal energy from a single fuel source with a fuel chargeable to heat rate calculation demonstrating a heat rate of 6,120 Btu/kWh or less (10 percent better than the 6,800 Btu/kWh current standard generation). This facility may be eligible for a 35 percent BETC. Facilities that do not meet this heat rate requirement may still qualify in part for a credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:¶¶

(a) FCP = Fuel chargeable to power heat rate.¶¶

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).¶¶

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.¶¶

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.¶¶

(13) "Commercial New Construction Facility": An energy facility which includes a new structure or one of the following:¶¶

(a) An addition to an existing structure, which provides additional square footage;¶¶

(b) An alteration to an existing structure, which changes the functional use of the entire structure;¶¶

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or¶¶

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water

heating and process.¶¶

(14) "Commercial Process": An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.¶¶

(15) "Commuter Parking Space" means a facility that is a parking space that is:¶¶

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.¶¶

(b) Leased by the employer for an employee's use.¶¶

(A) Separate from the lease for the business premises.¶¶

(B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.¶¶

(c) Owned by the employer.¶¶

(d) Not located in a lot used primarily for business customers.¶¶

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.¶¶

(16) "Completed Application": Contains all of the information required in these rules and payments under OAR 330-090-0150. All questions on the application must be answered. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, a completed application for final certification must also include a completed, signed pass-through partner(s) agreement form, where the facility owner chooses to transfer the tax credit. Except as provided in ORS 469B.167(2)(c) and OAR 330-090-0133, no application for a final certification in which the facility owner has indicated a choice to transfer the tax credit under ORS 469B.148 is considered complete until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to the pass-through partner.¶¶

(17) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director determines the applicant has made all reasonable efforts to operate, including making changes required by the Department.¶¶

(18) "Component Parts of Electric Vehicles": means component parts for use solely in Electric Vehicles and not in conventional vehicles. Component parts shall be distinguished by their absence from conventional vehicles and shall not include components that can be used interchangeably in both electric and conventional vehicles. For the purpose of this definition, "conventional vehicle" is a production vehicle that is powered with an internal combustion engine, excluding hybrids.¶¶

(19) "Cooperative Agreement Organization": The Department may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by the Department based on the qualifications of the organization and subject to conditions specified in the agreement.¶¶

(20) "Cost": The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a BETC. Costs that are incurred to bring a facility up to building code standards or otherwise repair the building in order to install the facility are considered necessary features, and may not be eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.¶¶

(a) Cost can include payments for:¶¶

(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;¶¶

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150, and shipping;¶¶

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and¶¶

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:¶¶

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;¶¶

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;¶¶

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and¶¶

(iv) Costs for employee's or contractor's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible.¶¶

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.);

and¶¶

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system) under the American with Disabilities Act.¶¶

(b) Cost may not include:¶¶

(A) Interest and warranty charges;¶¶

(B) Litigation or other operational-related legal fees and court costs;¶¶

(C) Patent searches, application and filing payments;¶¶

(D) Costs to maintain, operate, or repair a facility;¶¶

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC review charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;¶¶

(F) Routine operational or maintenance costs associated with the facility, other than a transportation services facility, including services, supplies and labor;¶¶

(G) Expenses related to training, education or other related expenses;¶¶

(H) Expenses that are directly or indirectly offset with federal fee waivers; or¶¶

(I) Other costs the Director excludes.¶¶

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:¶¶

(A) Tax credits passed through by the lessor to the lessee;¶¶

(B) The amount paid when the facility is transferred; and¶¶

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

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

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. The Department may do inspections to verify eligible costs.¶¶

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features. Cost may be limited to incremental cost for conservation applications for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.¶¶

(A) In commercial new construction, it is the difference between building to code, or standard practice if this exceeds code, and building to meet or exceed the standards for substantial energy savings.¶¶

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

(f) Eligible facility costs are limited by the following:¶¶

(A) Facilities must have a more than one to 15-year simple payback period unless otherwise specified in these rules. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and¶¶

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.¶¶

(C) Rental dwelling weatherization facilities are limited to a 30-year simple payback.¶¶

(D) Solar photovoltaic (PV) facilities are limited by the maximum eligible facility cost ratio (MEC), expressed in terms of \$/watt. PV facility eligible cost shall be calculated by multiplying the appropriate rate provided below by the facility size. Once a facility has received preliminary certification the calculated cost shall be effective for 36 months for facilities to be owned by the public and 12 months for all other facilities, from the date of certification. If the Department has not received a complete application for final certification within this time, the cost shall be recalculated based on the rate in effect at that time the final application is submitted. The minimum module performance certified by the manufacturer shall be used to calculate eligible cost. The MEC for a facility rated to produce:¶¶

(i) Up to and including 30 kW is \$7.50/watt.¶¶

(ii) More than 30 kW, but less than 200 kW, is $-0.01 \times (\text{system size in kW}) + 7.8$.¶¶

(iii) 200 kW or more is \$5.80/watt.¶¶

(E) Costs for a facility, or portion thereof, that has previously received a BETC.¶¶

(F) Costs to replace the same baseline facility more than once. The Department may require the baseline facility to be specifically identified and/or permanently decommissioned.¶¶

(G) For solar thermal (ST) systems,¶¶

(i) The maximum eligible cost (MEC), not including pool heating facilities, shall be calculated using the following formula: $MEC = SOC \times \text{Number of modules} \times \text{Solar Thermal Rate}$. Standard Oregon Conditions (SOC) is based on the OG-100 collector performance data published by the Solar Rating and Certification Corporation (SRCC) on the date the preliminary application is issued. SOC is calculated using a weighted average of the values in the "Mildly Cloudy" (1500Btu/ft²-day) test data using the following equation:¶¶

$SOC = 0.1(\text{Category A}) + 0.2(\text{Category B}) + 0.3(\text{Category C}) + 0.4(\text{Category D})$.¶¶

(ii) The system size is defined as the SOC multiplied by the number of collectors in the system. The following thermal rates are divided into three tiers based on the system size:¶¶

(I) For a system size of less than 100 KBtu/day, the rate is \$220/KBtu/day¶¶

(II) For a system size that is 100 KBtu/day or greater, but less than 250 KBtu/day, the rate is \$210/KBtu/day¶¶

(III) For a system size greater than 250 KBtu/day, the rate is \$200/KBtu/day.¶¶

(H) Sustainable building practices facilities, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities, excluding efficient truck technology, are exempt from simple payback requirements.¶¶

(I) For renewable energy facility installations, the following are ineligible costs: roofing, re-roofing and engineering for roofing on renewable facilities.¶¶

(g) Costs for space conditioning or individual metering of a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be limited to the total eligible facility costs.

Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.¶¶

(h) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D), purchasing or otherwise obtaining alternative fuel vehicles that are designed to transport five or more passengers, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.¶¶

(i) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. The Department may determine the incremental cost as a portion of the facility cost based on similar facilities up to forty percent of the purchase cost.¶¶

(j) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:¶¶

(A) The utility must submit exact specifications of the limit to and receive approval by the Department prior to implementation of the limit.¶¶

(B) The utility must provide notification to the customer that there is no minimum when applying directly to the Department, however, payments required by OAR 330-090-0150(3) do apply.¶¶

(k) Sustainable building practices facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using data established in Table 1. [ED. NOTE: Table reference is available from the agency.]¶¶

(l) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization or federal grants or credits and the BETC may not exceed total costs.¶¶

(21) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Department's website.¶¶

(22) "Director": The Director of the Oregon Department of Energy or designees.¶¶

(23) "Energy Department": The Department of Energy.¶¶

(24) "Energy Facility": is defined in ORS 469B.130.¶¶

(25) "Facility": is defined in ORS 469B.130 and also includes a Research, Development & Demonstration (RD&D) facility that complies with these rules. A facility must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development.¶¶

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

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.¶¶

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the following BETC program requirements:¶¶

(A) A report demonstrating any mercury-switch thermostats that is replaced or have been recycled and, if so, how.¶¶

(B) Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in these rules, of a fuel-switching facility will be allowed if the upgrade complies with these rules.¶¶

(d) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.¶¶

(e) For a solar photovoltaic facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:¶¶

(A) Facility must be permitted and in compliance with all applicable building and electrical codes.¶¶

(B) All facility equipment must be rated for the temperature and exposure conditions in which it will operate.¶¶

(C) All facility components must be new (modules, inverter, batteries, mounting hardware).¶¶

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.¶¶

(E) The facility must include all building code required signage and a customer manual.¶¶

(F) A customer manual must contain the following information:¶¶

(i) Facility documentation, including:¶¶

(I) As-built drawings that accurately describe the components installed and the wiring design, including wire sizes, and estimated length of wire runs.¶¶

(II) Facility site plan that indicates array and inverter location.¶¶

(III) Sunchart used to determine facility total solar resource fraction.¶¶

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.¶¶

(ii) Warranties and installation documentation¶¶

(I) Minimum two-year contractor warranty for materials and workmanship¶¶

(II) Manufacturer's warranty for PV modules and inverter¶¶

(III) Permit documentation¶¶

(iii) Manuals and data sheets¶¶

(I) Bill of material listing all primary facility components including part numbers¶¶

(II) Inverter owner's manual¶¶

(III) Manufacturer data sheets for major components, including but not limited to: inverters, modules, racking/mounting facility, charge controller and batteries.¶¶

(G) All facilities must include one or more meters that are capable of recording the facility's total energy production. Meters must be equivalent to American National Standards Institute (ANSI) certified revenue meters with a 0.5 or better accuracy class and, if digital, it must have non-volatile data memory.¶¶

(H) Array must be sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer. The temperature-adjusted voltage must remain within the inverter limits at the historical record low temperature for the location in which it is installed.¶¶

(I) Wires must be sized to keep the total voltage drop below 2 percent on the DC conductors from the array to the inverter including the existing wire whips on the PV modules, and/or 2 percent on the AC conductors from the inverter to the point of interconnection (total not to exceed 4 percent).¶¶

(J) The installing contractor must provide a minimum 24-month full warranty on parts and labor to the facility owner.¶¶

(K) The solar array must be used exclusively for business purposes. The applicant must supply a recent utility billing statement and a power purchase or net metering agreement, with a local utility in the name of the business. If the system is being placed on a rental dwelling, a signed rental agreement must be provided and the property must remain a rental property for at least five years. Arrays erected at a location that includes a residence that is not a rental dwelling, must be separately metered from the residence to qualify for a BETC.¶¶

(L) Facilities participating in the pilot Feed-In Tariff program under ORS 757.365 are not eligible to receive a BETC.¶¶

(f) For a solar thermal facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:¶¶

(A) The facility must be permitted and in compliance with all applicable building, electrical, and plumbing codes.¶¶

(B) All equipment must be rated for the temperature and exposure conditions in which it will operate.¶¶

(C) All primary facility components must be new (collectors, tanks, controls, pumps).¶¶

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.¶¶

(E) The facility must include a customer manual containing the following information:¶¶

(i) Facility documentation, including:¶¶

(I) As-built drawings that accurately describe the components installed, including a valve chart.¶¶

(II) Facility site plan that indicates the location of collectors and storage tank.¶¶

- (III) Sunchart used to determine facility total solar resource fraction.¶¶
- (IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.¶¶
- (V) Permit documentation.¶¶
- (ii) Warranties and installation documentation, including:¶¶
 - (I) A minimum two-year contractor warranty for materials and workmanship.¶¶
 - (II) Manufacturer's warranty for collector, tanks, pumps and heat exchanger (if present) and any other components under warranty by the manufacturer.¶¶
- (III) Permit documentation.¶¶
- (iii) Manuals and data sheets, including:¶¶
 - (I) Bill of material listing all primary facility components, including part numbers.¶¶
 - (II) Facility controller owner's manual.¶¶
 - (III) Manufacturer data sheets for major components, including, but not limited to: collectors, tank, controllers, pumps, Btu meter, expansion tank, etc.¶¶
- (F) Facility is sized appropriately for the load. The solar savings fraction is not to exceed 0.70 for domestic water heating systems without a means of rejecting heat once the load is met.¶¶
- (G) Thermal storage is adequate to accommodate daily use pattern. For typical domestic load profiles, this is defined as a minimum of 1.25 gallons per square foot of collector area. For facilities with loads that are coincident with solar generate this storage amount may be reduced if documentation is provided.¶¶
- (H) All solar storage tanks must be insulated with not less than R15 insulation.¶¶
- (I) The following standards are for pipe insulation:¶¶
 - (i) Collector loop insulation must be rated for conditions in which it operates. Pipe insulation shall have a maximum K value of 0.25 Btu in/hr. sq. ft. F° and a minimum thickness of 0.75 inches.¶¶
 - (ii) Potable water pipe located outdoors must be insulated to a minimum R-value of 12. Pipe insulation must be protected with a U-V rated tape or pipe jacket. U-V paint is not sufficiently durable.¶¶
- (J) Anti-convective pipe loop or trap is required on the inlet and outlet of the storage tank. These loops or traps shall have a minimum 8-inch vertical drop to constitute an effective convective heat barrier. Heat trap nipples alone are not reliable in stopping heat migration, and will not meet this requirement.¶¶
- (K) Install thermometers on collector supply and return pipes. One movable thermometer for two wells is sufficient.¶¶
- (L) Install a BTU meter capable of measuring total delivered energy on all facilities with standard Oregon conditions rating greater than 250 KBtu/day. A Btu meter must have a designated flow meter and temperature sensors and be located on the load side of the system.¶¶
- (M) Install a properly sized thermostatic mixing valve on the output of the domestic hot water system to ensure that delivered temperature does not exceed 140°F.¶¶
- (N) Solar thermal facilities must be installed in compliance with the Oregon Mechanical Specialty Code (Chapter 14 OMSC), the Oregon Residential Specialty Code (Chapter 23), the Oregon Plumbing Specialty Code and all other local regulations with jurisdiction.¶¶
- (O) Facilities must be designed and installed for complete automatic operation including protection from freeze damage and overheating of collectors.¶¶
- (P) Pressurized storage tanks must not be allowed to be heated above 180°F.¶¶
- (g) A facility does not include:¶¶
 - (A) A residential structure or dwelling that is being used for a residence, except for residential structures that are used exclusively as a rental dwelling or that qualify as a licensed homebuilder installed renewable energy facility or high performance home facility.¶¶
 - (B) A renewable energy system or device, other than a homebuilder installed renewable energy facility or high performance home facility, that is placed on or at a residence, except for those used exclusively as a rental dwelling, for the purpose of supplying energy to the residence.¶¶
 - (C) Swimming pools and hot tubs used to store heat.¶¶
 - (D) Wood stoves.¶¶
 - (E) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC rules.¶¶
 - (F) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.¶¶
 - (G) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.¶¶
 - (H) Devices or materials which are standard practice.¶¶
 - (I) Recycling automotive air conditioning chlorofluorocarbons (CFC).¶¶
 - (J) Conservation in rental dwellings, for applicants listed in ORS 469B.145(1)(c)(A) and (B), which were issued an

occupancy permit on or after January 1, 1996.¶¶

(K) Other items the Director finds are not allowed under ORS 469B.130 to 469B.169.¶¶

(26) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Practices Facility, facility eligible square footage includes all temperature-conditioned floor areas, and one level of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.¶¶

(27) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.¶¶

(28) "Facility Owner": An applicant who purchases and owns a qualified facility.¶¶

(29) "Facility Start" prior to erection, construction, installation or acquisition: The earliest date on or after the date of the application that meets one of the following criteria:¶¶

(a) A non-refundable deposit will be placed on the facility equipment;¶¶

(b) A purchase order will be placed for the equipment;¶¶

(c) A contract for the design of the facility will be executed;¶¶

(d) A document that obligates the applicant to proceed with a facility will be executed; or¶¶

(e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility. or¶¶

(f) For a Sustainable Building Practices Facility, the eligible cost date is within 30 days of receiving the LEED registration number, before 50 percent of Design Document for the facility are complete, or prior to receiving building permits for the facility. or¶¶

(g) For a renewable energy facility, the applicant shall not be considered to have started erection, construction, installation or acquisition of a proposed facility until excavation or actual physical construction of the renewable energy facility has begun. Eligible costs include all costs as defined in these rules, including costs incurred prior to the receipt by the department of the preliminary certification application related to site and facility development and approval. Applicants who start a facility prior to issuance of preliminary certification shall not be eligible to reapply.¶¶

(30) "Federal Grant": Any grant received from the federal government in connection with a facility, includes grants authorized under §1603 of the American Recovery and Reinvestment Act of 2009 (ARRA).¶¶

(31) "Final Certification": Final certificate issued after completion of an approved BETC facility.¶¶

(32) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:¶¶

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or¶¶

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

(c) Heat or other related energy in the earth; or¶¶

(d) By-products of (a) through (c).¶¶

(33) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground-loop alternative energy device that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent BETC.¶¶

(34) "High Efficiency Combined Heat and Power" (Cogeneration): means a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel chargeable-to-heat rate yielding annual average energy savings of 20 percent is eligible for a 50 percent BETC. The fuel chargeable-to-heat rate calculations shall demonstrate a heat rate of 5,440 Btu/kWh or less (20 percent better than the 6,800 Btu/kWh current standard generation). Facilities that do not meet this requirement may still qualify for a 35 percent tax credit (see Combined Heat and Power) or in part for a tax credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:¶¶

(a) FCP = Fuel chargeable to power heat rate.¶¶

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).¶¶

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.¶¶

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.¶¶

(35) "High Performance Home": Meets the criteria in ORS 469B.130(8) and 469B.139 and is a home that is a dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code with its own space conditioning and water heating facilities and intended for sale to an end-use homebuyer. The facility must meet the following requirements:¶¶

(a) Shall be certified through the ENERGY STAR® Homes Northwest program.¶¶

(b) Designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources;¶¶

- (c) Meet the criteria established for a high-performance home under ORS 469B.139.¶¶
- (d) The building shell shall be constructed to at least the minimum values specified in the following prescriptive path:¶¶
- (A) Ceilings: U_d0.030.¶¶
 - (B) Walls: above grade U_d0.050.¶¶
 - (C) Walls: below grade U_d0.060.¶¶
 - (D) Floors: above grade U_d0.025.¶¶
 - (E) Floors: on grade, [slab edge] perimeter R-15 min. 2 feet vertical or combined vertical/horizontal – heated slab also requires R-10 foam board under slab.¶¶
 - (F) Windows and glass doors: U_d0.32 (weighted average). Exception: solar glazing that is part of a passive solar design may have a higher U-factor. Glass doors are doors that contain 50 percent or more glazing.¶¶
 - (G) Glazing area: glazing to floor area ratio \leq 16 percent (including windows, skylights, and glass doors considered as glazing in the code) for homes larger than 1,500 square feet of conditioned space floor area and $<$ 18 percent for homes 1,500 square feet of conditioned space floor area and smaller.¶¶
 - (H) Shell tightness: 5.0 ACH₅₀ Pa confirmed by blower door test.¶¶
- (e) HVAC system and air ducts shall be incorporated into conditioned space, or eliminate forced-air ductwork.¶¶
- (f) Space conditioning equipment shall meet one of the following requirements:¶¶
- (A) Two-stage gas or propane furnace, minimum AFUE 0.92.¶¶
 - (B) Gas or propane boiler, minimum AFUE 0.88.¶¶
 - (C) Central AC SEER \geq 14 (if installed).¶¶
 - (D) Ducted heat pump \geq HSPF 8.5, air source, and ground source COP \geq 3.0.¶¶
 - (E) Ductless mini-split heat pump with inverter drive, no incorporated electric backup heat, sized and installed as per ENERGY STAR® Homes Northwest specifications in effect at the time the preliminary application is issued.¶¶
- (g) A Renewable Energy Facility shall provide on-site energy savings or generation of not less than 1kWh/yr per square foot of conditioned floor space.¶¶
- (h) Water heating systems shall meet ENERGY STAR® Homes Northwest specifications including secondary water heating equipment that backs up solar domestic water heating facilities.¶¶
- (i) Includes at least one of the following measures:¶¶
- (A) Obtain certification through a Green Building program recognized by the Department.¶¶
 - (B) Meet ENERGY STAR Homes Northwest Builder Option Package #2 ventilation specifications through the use of a heat or energy recovery ventilator, except that the sensible recovery efficiency shall be $>$ 50 percent at 32°F and the EUI shall be $<$ 1.5 Watts/cfm.¶¶
 - (C) Use a gas or propane water heater with a minimum EF of 0.80 for primary water heating. The water heater may not also be used for space heating or as the backup to a solar water heating facility to be considered a qualifying measure under this section.¶¶
- (j) A High performance home may meet a package of alternate shell or HVAC measures that are equivalent to these requirements. Shell measures may be increased to offset HVAC efficiency, however HVAC measures may not be used to reduce minimum shell requirements.¶¶
- (A) Shell measures shall be a combination of assemblies that together have a total U x A no higher than a base case home described in section (C)(c), above. Trade-offs will be evaluated according to the thermal trade-off procedure in Oregon Residential Specialty Code Chapter 11, Energy Efficiency, Table N1104.1(1).¶¶
 - (B) Mechanical facilities will be evaluated for comparable annual energy use.¶¶
- (k) Shall be a detached single-family dwelling unit or a single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.¶¶
- (36) "Homebuilder Installed Renewable Energy Facility" is defined in ORS 469B.130. The amount of the tax credit for homebuilder installed renewable energy facilities shall be capped at \$9,000 per high performance home. For purposes of this section, renewable energy resource facilities may include: photovoltaic, solar domestic water heating, active solar space heating, passive solar, and ground source heat pumps. The following requirements must be met:¶¶
- (a) Photovoltaic: The credit amount is based on \$3 per watt of installed capacity as determined by the Department. Eligible installations have a Total Solar Resource Fraction of at least 75 percent using the Total Solar Resource Fraction (TSRF) method as described in the BETC application. Installations must be verified by a Tax Credit Certified Solar PV Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor for two years.¶¶
 - (b) Solar domestic water heating: The credit amount is equal to \$0.60 per kWh saved annually. The savings are based on values published by the Solar Rating and Certification Corporation (SRCC) plus 100 kWh, which are added to represent Oregon water heating loads. Solar thermal domestic water heating installations must have a

Total Solar Resource Fraction (TSRF) of at least 75 percent and be designed to provide no less than 25 percent but not more than 70 percent of the annual domestic water heating load. Installations must be OG-300 certified. Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.¶¶

(c) Active solar space heating: The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by Department staff. Active solar space heating installations must demonstrate a whole building annual energy savings of at least 15 percent to be eligible. Installations that combine space heating and domestic water heating are allowed providing that the solar storage tank is not heated by a backup heat source (e.g. gas or electric water heater). Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.¶¶

(d) Passive solar: The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space. Passive solar design strategies must demonstrate a whole building annual energy savings of at least 20 percent to be eligible. This can be achieved by either meeting the prescriptive requirements for a passive solar home under the Residential Energy Tax Credit or demonstrated with whole building energy modeling and certified by a professional engineer.¶¶

(e) Ground source heat pumps: Ground source heat pumps must have a coefficient of performance (COP) of 3.5 or greater. The savings is based on the incremental savings over the energy savings provided by the ground source heat pump with a COP of 3.0. The credit amount is equal to \$0.60 per kWh saved.¶¶

(f) Other: Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to \$0.60 per kWh saved. Facilities must be connected to home's main service panel and installers must provide a warranty covering all parts and labor of the facility for two years.¶¶

(37) "HVAC Equipment": Heating, Ventilation, and Air Conditioning (HVAC) systems are eligible for a 35 percent BETC.¶¶

(a) Eligible combustion equipment (furnaces, boilers, water heaters, and burners) must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating. An exception may be granted if the system efficiency is proven to be higher due to application of a different distribution system (e.g.: radiant systems in high infiltration spaces), control strategies (e.g.: pony boilers), or reduced stand-by losses (e.g.: low-mass boilers).¶¶

(b) Heat pumps must have an energy input that is entirely electric and be rated with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows or higher:¶¶

(A) Air source heat pumps: 8.5 HSPF¶¶

(B) Water source heat pumps: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(2)¶¶

(C) Air Conditioning: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(1)¶¶

(38) "Hybrid Electric Vehicle": An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A vehicle purchased after January 1, 2010 is not eligible to receive a BETC.¶¶

(39) "Individualized Travel Behavior Change Program": A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.¶¶

(40) "Lease Contract": A contract between a lessor and a lessee of a facility.¶¶

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

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

(41) "Lighting Facility": An energy facility that will reduce the affected lighting energy use by at least 25 percent or by at least 10 percent for a new facility. For non-residential structures, an eligible facility must also report whether there will be any lamps in the facility that will be subsequently replaced and if those lamps will be recycled, how.¶¶

(42) "Low Interest Loan":¶¶

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.¶¶

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned

under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.¶¶

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.¶¶

(43) "Mass Transit District": A mass transit district included in ORS 184.675(7).¶¶

(44) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).¶¶

(45) "Necessary Feature": A necessary feature does not qualify as an eligible cost and is a feature for which the primary purpose is:¶¶

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;¶¶

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted under the definition of "Recycling Facility" in ORS 469B.130; or¶¶

(c) Routine maintenance or repair, such as replacing water damaged insulation, a broken window, dry-rotted wood siding or trim.¶¶

(46) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140. This is also referred to as the "pass-through rate."¶¶

(47) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.¶¶

(48) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.¶¶

(49) "Pass-through Partner": A personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.¶¶

(50) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.¶¶

(51) "Premium Efficient Appliance": An energy facility that is an appliance that has been certified by the Department to have premium energy efficiency characteristics. Residential appliances are listed in the Department's Alternative Energy Devices Systems Directory. Commercial appliances are listed in the Department's Premium Efficient Commercial Appliances Directory.¶¶

(52) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.¶¶

(53) "Qualified Transit Pass Contract": is defined in ORS 469B.130.¶¶

(54) "Recycling": A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an "Energy Facility" or "Waste to Energy Facility" where they include characteristics required to meet those definitions.¶¶

(55) "Recycling Facility": is defined in ORS 469B.130.¶¶

(56) "Recycling Market Development Facility": Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:¶¶

(a) The facility uses recycled materials as feedstock to produce new products; or¶¶

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or¶¶

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or¶¶

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

(57) "Renewable Diesel": A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:¶¶

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and¶¶

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and¶¶

(c) Has a producer's Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.¶¶

(58) "Renewable Energy Resource": is defined in ORS 469B.130.¶¶

(59) "Renewable Energy Resource Facility": means an energy facility used in the processing utilization, or storage

of renewable energy resources to:¶¶

- (a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;¶¶
- (b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;¶¶
- (c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;¶¶
- (d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or¶¶
- (e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.¶¶

(60) "Renewable Energy Storage Device": A facility that enables the storage of energy derived from Renewable Energy Resources as defined in ORS 469B.130. To qualify as a renewable energy storage device a facility does not need to be directly connected to a renewable energy resource, but a beneficial relationship must be demonstrated between the energy output of the resource or resources and the charge and discharge capabilities of the facility. A Renewable Energy Storage Device includes, but is not limited to, batteries or similar devices used to provide propulsive energy in electric vehicles. The storage device may be designed to store energy for transmission lines provided that the transmission lines serve, at least in part, renewable energy resources.¶¶

(61) "Rental Dwelling": means any property that meets the requirements of the state building codes and contains a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.¶¶

(62) "Rental Weatherization": means energy conservation and efficiency measures that improve the energy efficiency of a rental dwelling. In order to qualify for a BETC, an applicant must meet requirements (a) through (c):¶¶

(a) An applicant must be planning to perform a minimum of two weatherization measures on the rental dwelling if one of the measures is to replace windows on the rental dwelling. Eligible second measures include one of the following:¶¶

- (A) Adding floor insulation to R-21,¶¶
- (B) Attic/ceiling/roof insulation to R-38 or cavity fill,¶¶
- (C) Wall insulation to R-13 or cavity fill,¶¶
- (D) Replacing exterior doors to R-5,¶¶

(E) Duct sealing and testing by a contractor certified by the Residential Energy Tax Credit program, or¶¶

(F) An applicant can demonstrate that the measures (A) through (E) above have already been completed by providing an energy audit from the Energy Trust of Oregon or the applicant's utility, if unavailable the Department may approve another type of energy audit.¶¶

(b) Prior to being eligible to receive a BETC for installing a renewable facility on a rental dwelling, all standard weatherization measures, including roof insulation to a minimum of R-38, floor to minimum of R-21 and walls to a minimum of R-13 (where achievable on outside walls where no insulation is present) must be completed. An applicant shall provide appropriate documentation, such as an energy audit as described above in section (a)(F), to verify standard weatherization measures.¶¶

(c) For purposes of meeting the requirements of ORS 469B.151, when a utility audit is not available, a vendor-provided audit demonstrating substantial savings and approved by the Department will suffice. A self-audit based upon the following list may be substituted when accompanied by U-values, areas, and other appropriate general information regarding the measures, including:¶¶

(A) Caulking, weather-stripping and other prescriptive actions to seal the heated space and ducts in a dwelling;¶¶

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs and associated ventilation;¶¶

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

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

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

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least 10 feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;¶¶

(G) Double-glazed windows (including sliding doors) with a U-value of 0.30 or lower, when replacing single-glazed windows;¶¶

(H) Insulated exterior doors with a U-value of 0.20 or lower (R-5 or higher);¶¶

(I) Programmable thermostats; or¶¶

(J) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Department's Residential Energy Tax Credit technician certification program.¶¶

(d) If an applicant undertakes envelope measures, the following requirements apply:¶¶

(A) Replacement windows must have a U-value of 0.30 or less for residences.¶¶

(B) U-values must be 10 percent better (lower) than code requirements for commercial.¶¶

(C) Insulation that exceeds code requirements or when not required by code is an eligible measure if substantial savings and economic criteria required in the OARs are met.¶¶

(63) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (f):¶¶

(a) A facility that is not standard practice and that is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized. BETC RD&D applicants' total lifetime project costs will be determined for a defined period established at the time of the initial application and will be capped at \$20,000,000 for renewable energy RD&D and high efficiency CHP RD&D and \$10,000,000 for all other RD&D project types. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:¶¶

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;¶¶

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;¶¶

(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;¶¶

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs;¶¶

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment; or¶¶

(F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy goals.¶¶

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.¶¶

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent BETC; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.¶¶

(d) Eligible costs for a Research, Development or Demonstration facility may include:¶¶

(A) Engineering, design and administrative costs¶¶

(B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:¶¶

(i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.¶¶

(ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.¶¶

(C) The following costs related to demonstration model(s) may be considered eligible:¶¶

(i) Materials for the demonstration model(s).¶¶

(ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).¶¶

(iii) Testing and monitoring the demonstration model(s).¶¶

(D) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110(20)(f).¶¶

(E) Other eligible costs defined by Oregon Administrative Rule.¶¶

(e) Ineligible costs for a Research, Development or Demonstration facility may include:¶¶

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.¶¶

(B) Other ineligible costs defined by Oregon Administrative Rule.¶¶

(f) A Research, Development or Demonstration facility is not eligible to receive a BETC when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.¶¶

(64) "Residential Dwelling": means a structure or the part of a structure that meets the requirements of the state building codes and is used as a permanent home, residence or sleeping place by one or more persons who maintain a household or by two or more persons who maintain a common household. A BETC may not be claimed for a

renewable energy facility located in, adjacent to, or on a one or two family home unless the home is used exclusively as a rental dwelling.¶¶

(65) "Residential Energy Tax Credit Qualifying Equipment": means equipment that qualifies under the standards and rules for the Residential Energy Tax Credit from the Department. The equipment is eligible for the BETC in either of the two following methods:¶¶

(a) A facility that consists solely of equipment that is on the qualifying equipment list at the time of the application submittal may apply as outlined in the Oregon Administrative Rules 330-090-0105 using operating schedules, capacity, efficiency and cost information to prove qualification; or¶¶

(b) The facility, made up of qualifying equipment may also effectively qualify what would otherwise be an eligible Residential Energy Tax Credit facility through the BETC Program by using the following formula. Residential tax credit amount (from qualifying appliance list) $\times 0.35 =$ BETC eligible cost.¶¶

(66) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.¶¶

(67) "Service Life": Equipment service life is as established in the 2007 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook or as determined by the Director for equipment not rated by ASHRAE. The Department may prorate the eligible project cost based on the remaining service life of the equipment. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.¶¶

(68) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.¶¶

(69) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.¶¶

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.¶¶

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.¶¶

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.¶¶

(70) "Substantial Energy Savings": Means that the Department has determined that:¶¶

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;¶¶

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;¶¶

(c) The energy facility is a sustainable building practices facility as defined under "Sustainable Building Practices Facility" of this rule; or¶¶

(d) The facility measures are measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.¶¶

(71) "Sustainable Building Practices Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:¶¶

(a) Is rated and certified LEED-NC™, LEED-CS™, or LEED-CI™ under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party. In addition, a facility must:¶¶

(A) In achieving its LEED™ rating, the facility must earn at least two points under Energy & Atmosphere Credit 1 (Optimize Energy Performance).¶¶

(B) In achieving its LEED™ rating, the facility must earn at least one point under Energy & Atmosphere Credit 3 (Enhanced Commissioning).¶¶

(b) Each LEED-NC™ or LEED-CS™ facility must calculate and report the building's annual solar income in Btu (not the site income). The calculation must account for the contribution from each face (orientation with surfaces exposed to direct sunlight) and must take into account any existing or reasonably expected shading (by other buildings or vegetation, e.g.) of these surfaces. Calculations may ignore such things as rooftop or wall-mounted mechanical facility components.¶¶

(c) Facilities using on-site renewable energy production technologies such as photovoltaic or wind technologies may treat these elements as a separate renewable energy resource facility for tax credit purposes, provided that any points earned for such features in the LEED™ rating are not required to achieve the rating on which the Sustainable Building facility credit is to be based. In cases where subtracting such points would result in a lowering

of the LEED™ rating (e.g. from Gold to Silver), the tax credit will be awarded on the basis of the lower rating. The rating point total, net of renewable generation credits, can never be less than that required for a Silver rating.¶¶

(72) "Total Cost": The eligible cost of a facility not limited by ORS 469B.142.¶¶

(73) "Transportation District": A transportation district included in ORS 184.675(7).¶¶

(74) "Transportation Facility": A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:¶¶

(a) Telework defined as working from home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.¶¶

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.¶¶

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes the purchase or cost of the vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs.¶¶

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility. Applicants must subtract any employee contributions for transit passes from eligible costs.¶¶

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Maximum eligible costs of \$800 include purchase of bicycles and equipment used to store bicycles. Accessory items, such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.¶¶

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or nonprofit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.¶¶

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.¶¶

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.¶¶

(i) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs. Applicants must subtract any farebox contributions from eligible costs.¶¶

(j) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.¶¶

(k) Vanpool Program is defined as a facility that is an employer-sponsored or organization-sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but do not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.¶¶

(l) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.¶¶

(A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served.¶¶

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.¶¶

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.¶¶

(m) The purchase of efficient truck technology for trucks and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011. Eligible efficient truck technology, such as an auxiliary power unit (APU), must be recognized as a verified technology by the U.S. Environmental Protection Agency (USEPA) SmartWay Transport Partnership to potentially qualify.¶¶

(A) Eligible projects must meet the following requirements:¶¶

(i) Retrofit a truck or add to a newly manufactured truck one or more USEPA SmartWay efficiency measures. With a newly manufactured truck, a new trailer with one or more SmartWay efficiency measures may also be included with this project. The new trailer and newly manufactured truck must independently qualify for tax credits; and¶¶

(ii) Eligible vehicles must demonstrate Oregon registration with a current Cab Card as part of the Application for Preliminary Certification by:¶¶

(I) Commercial (Oregon-only registration operated solely in Oregon) with a red Oregon-only commercial "YC" plate from the Oregon Commerce and Compliance Division (CCD); or¶¶

(II) International Registration Plan (IRP), also referred to as Apportioned registration, with a red Apportioned "YA" plate from the Oregon CCD. For IRP vehicles, eligible facilities must meet the following requirements as part of the application for preliminary certification:¶¶

(II-a) Provide the two most recent calendar year IRP billing notices that document the percentage of a vehicle's annual mileage that was driven in Oregon.¶¶

(II-b) For proposed eligible facilities that have no recent calendar year IRP billing notice documentation, provide a signed project owner statement indicating the anticipated percentage of miles that will be driven in Oregon over the next two years.¶¶

(B) Applicants that can document that 15 to 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit equal to 35 percent of 71.5 percent of the facility's otherwise eligible certified costs.¶¶

(C) Applicants that can document that more than 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit of 35 percent of the facility's eligible certified costs.¶¶

(D) Proof that the applicant has a sufficient nexus with the state of Oregon. This includes a dedicated location in Oregon for maintenance, dispatch, and monitoring of facilities.¶¶

(E) The facility's simple payback period must be between more than one and fifteen years.¶¶

(75) "Transportation Provider": is defined in ORS 469B.130.¶¶

(76) "Transportation Services Contract": is defined in ORS 469B.130.¶¶

(77) "Utility": Gas or electric utilities as defined below.¶¶

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or¶¶

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.¶¶

(78) "Vanpool Program": means a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.¶¶

(79) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.¶¶

(80) "Waste-to-Energy Facility": means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery

of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:¶¶

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.¶¶

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.¶¶

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.¶¶

(d) The facility does not divert materials from a higher value use.¶¶

(e) The facility has an acceptable energy balance as determined by the Director.¶¶

(81) "Wind Facility": means a facility that converts wind power into another energy resource.¶¶

(82) "Year": Calendar year.¶¶

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

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

Statutory/Other Authority: ORS 469.040, 469.165

Statutes/Other Implemented: ORS 469.185–469.225

RULE SUMMARY: Repeals the preliminary certificate application requirements for a BETC.

CHANGES TO RULE:

330-090-0120

Preliminary Certificate Application Requirements for a BETC

(1) Eligible facilities¶¶

(a) The Department may issue only one BETC for each separate and distinct facility under these rules. The following facilities, as further defined in these rules, are eligible for a BETC: An energy facility, recycling facility, rental dwelling weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system or a research development & demonstration facility that complies with these rules.¶¶

(b) A proposed facility must meet applicable codes and standards, must include a warranty and must be serviceable locally.¶¶

(2) Required information¶¶

(a) Persons requesting a BETC shall apply on the Department-approved form for a preliminary certificate. In addition to the information required in ORS 469B.145, the applicant shall provide the following information:¶¶

(A) The name, address, and phone number of the applicant, owners of the facility, and the developers of the project.¶¶

(B) The applicant's federal tax identification number or social security number which may be shared with the Department of Revenue to facilitate the administration of the state tax law.¶¶

(C) Proposed facility construction and operational start and finish dates. A facility's start date is the date that the project applicant financially commits to the project. Financial commitment includes, but is not limited to: making a down-payment or deposit, signing a contract with a vendor, ordering material or equipment, beginning construction or installation.¶¶

(D) The proposed facility location within the geographical confines of Oregon or in the case of an alternate fuel vehicle demonstrated intent that the vehicle will be titled in the State of Oregon.¶¶

(E) Information demonstrating that the proposed facility will comply with or have a variance from the land use laws of the city or county where the facility will be located;¶¶

(F) Information demonstrating that the proposed facility will comply with all other local, federal, and state laws, including but not limited to the following:¶¶

(i) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Proof of permits, licenses, or exemptions from DWR and the FERC must be submitted to the Department before a facility is eligible to receive final certification. Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power and Conservation Council's Fish and Wildlife Program.¶¶

(ii) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.¶¶

(iii) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).¶¶

(G) A list of appropriate authorizations for all work performed including but not limited to appropriate licenses, permits, or other authorizations that are required by state or local jurisdiction for the facility.¶¶

(H) Information demonstrating the intended operation, maintenance and use of the facility, including but not limited to, where appropriate, the amount and type of jobs potentially created or eliminated in the construction, installation and operation of the facility in Oregon, the benefits of the facility with regard to overall economic activity in this state, the amount of projected energy saved, generated or transmitted and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is operational. Except that, as a condition of the preliminary and final certificate, the following facilities must remain in operation for one year: Tele-working equipment, transit passes, transportation services, incentive programs, car-share programs and individualized travel behavior change programs, and van-pool programs. If an applicant expects that a facility not listed in this subsection will operate less than five years, the applicant may submit a request for approval of the shorter operating period as part of their application for preliminary certification. This request shall include information describing the proposed facility and supporting the proposed operating period. The Director will determine whether to approve the shorter operating period and may include conditions, reductions or other limits on any potential tax credits.¶¶

(I) A declaration from the applicant that all property taxes for the facility have been paid and there are no delinquent property taxes associated with the facility.¶¶

(J) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130 shall provide all information required as part of the tiered priority system under OAR 330-090-0350.¶¶

(b) The Department may request additional information from the applicant in order to determine whether multiple applications have been made for the same facility. The department will make its determination based on the following:¶¶

(A) All applications under consideration will be reviewed against other current applications, facilities that have received preliminary certification and facilities that have received final certification within the past 12 months. Further review shall be given to applications which:¶¶

(i) when combined exceed the annual limit for a tax credit found in ORS 469B.142.¶¶

(ii) are individually below the threshold for one year tax credit found in ORS 315.354, but if combined exceed this threshold; or¶¶

(iii) when combined, result in assessment within a different category or tier, or against different criteria or cost allowances.¶¶

(B) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130 will be determined to be a single facility, despite the number of applications, owners or construction phases, if three or more of the following apply:¶¶

(i) The facility is located on one or more adjacent parcels of land or parcels;¶¶

(ii) The facility has been recognized in a license or permit as a single facility by a federal, state, county, city or local authority including, but not limited to siting council, state or local boards or commissions, or the facility has obtained or applied for siting or land use approval and other applicable permits, licenses or site certificates as a single facility or on a single application;¶¶

(iii) When the facility is designed to generate energy, the construction of the facility is performed under the same contract with a general contractor licensed under ORS 701 or multiple contracts entered into within one year of each other with one or more general contractors licensed under ORS 701. If facilities will be completed in phases over time, the applicant must demonstrate that each of the phases of the facility would independently qualify as an eligible facility and that each phase of the facility is not interdependent in purpose or the manner in which it will be owned, financed, constructed, operated, or maintained or the facilities or phases of the facility will be determined to be one facility for the purposes of these rules;¶¶

(iv) The facility owners have entered into or expect to enter into agreements to share project expenses, personnel, capital investments including generating equipment or other resources related to the facility;¶¶

(v) The generating equipment for the facility and the related facility was purchased by the same person or persons who own or operate the facility or have taken action under any of the above factors;¶¶

(vi) A facility is connected to the grid through a single connection or multiple connections when there is a shared net metering, power purchase or other applicable transmission agreement; or¶¶

(vii) Other factors or considerations which demonstrate that the facility is not a separate and distinct facility based on its construction, operation, maintenance and output.¶¶

(C) Applications other than those described in subsections (B) will be considered a single facility if three or more of the following apply:¶¶

(i) shared ownership of facilities;¶¶

(ii) shared location of facilities;¶¶

(iii) project permits are issued to a common entity or at the same time or¶¶

(iv) a shared contract to construct the facilities.¶¶

(c) Anticipated capital expenditures and other costs as defined in these rules for the erection, construction, installation or acquisition of the proposed facility, its expected operational life, and its simple payback as defined in ORS Chapter 469B and these rules.¶¶

(d) Information demonstrating anticipated substantial energy savings or a description of products that will result from the facility and how those products will result in substantial energy savings.¶¶

(e) For a proposed renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.¶¶

(A) For a solar energy facility: A sun chart and solar insolation data for the site. Facilities must have a Total Solar Resource Fraction of at Least 75 percent.¶¶

(B) For a wind energy facility:¶¶

(i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or¶¶

- (ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or¶¶
- (iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or¶¶
- (iv) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.¶¶
- (v) In the event that estimated wind resource data are used as described under section (iii) and (iv) above, the project owner shall provide to the Department not later than 14 months after the start-up date, one year of actual monthly energy production data and, if available, actual monthly average wind speed data at wind energy facility's site.¶¶
- (vi) Proposed equipment must meet the following:¶¶
 - (I) Each proposed model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or¶¶
 - (II) Proof that the proposed wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSERDA) in effect on April 30, 2010; or¶¶
 - (III) The proposed manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).¶¶
- (vii) The Department reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented, lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generation.¶¶
- (C) For a geothermal energy facility (except a heat pump system): A plot of well temperature versus time at the design flow rate at steady state temperature.¶¶
- (D) For a water power facility: One year of actual or predicted average monthly stream flows. If flows are predicted, describe the method used to predict flows.¶¶
- (E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy requirements for a period of a minimum of five years.¶¶
- (F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.¶¶
- (G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 grams per hour for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).¶¶
- (f) The payment required by OAR 330-090-0150(3).¶¶
- (g) For proposed alternative fuel vehicle facilities: proof that the proposed vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).¶¶
- (h) For proposed alternative fuel vehicle facilities: the proposed number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.¶¶
- (i) For proposed alternative fuel fueling station facilities: a description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.¶¶
- (j) For proposed transportation facilities: required documentation for each category specified under the definition of "Transportation Facility" in these rules.¶¶
- (k) For a proposed waste-to-energy renewable energy resource facility that meets the definition of waste stream includes the anticipated percentage of waste stream product to be recovered and a remediation plan for anticipated emissions and byproducts.¶¶
- (3) Standards When Reconstructing a Facility: If a facility is reconstructed and an application for preliminary certification is filed seeking a tax credit on the reconstructed facility, any tax credit certified for the reconstructed facility will be reduced by the amount of the original tax credit remaining for the original facility.¶¶
- (4) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of

facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

Statutory/Other Authority: ORS 469.040, 469.165

Statutes/Other Implemented: ORS 469.185 - 469.225

RULE SUMMARY: Repeals how the Oregon Department of Energy Processes a BETC Application.

CHANGES TO RULE:

330-090-0130

How the Oregon Department of Energy Processes a BETC Application

(1) General:¶¶

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the BETC final certificate.¶¶

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department. Applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources as defined under ORS 469B.130, must be submitted under the tiered priority system described in OAR 330-090-0350 and include any additional requirements under this section.¶¶

(c) A facility owner planning to use a Pass-through Partner will select the pass-through option on the Application for Preliminary Certification.¶¶

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director.¶¶

(e) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.¶¶

(2) Pre-Approval of Preliminary Certifications: The Director has pre-approved preliminary certifications for the following facilities that the Department has reviewed and determined to be otherwise qualified under these rules:¶¶

(a) Alternate energy devices qualifying for a tax credit under the Residential Energy Tax Credit Program, OAR 330-070-0010 through 330-070-0097, for which the Department has determined qualified costs, energy savings, and eligible tax credits. A facility owner may file for a preliminary certification to present documentation supporting different determinations for review and approval.¶¶

(b) Pre-qualified hybrid-electric vehicles.¶¶

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(1) and (2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.¶¶

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.¶¶

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.¶¶

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a BETC up to the maximum amount of certifiable costs under ORS 496.200. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.¶¶

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0133(4).¶¶

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a preliminary certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.¶¶

(4) Preliminary Certification After Start of a Facility:¶¶

(a) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0120 and OAR 330-090-0130(5)(b).¶¶

(b) The Director may approve preliminary certification after facility start if:¶¶

(A) The request is in accord with OAR 330-090-0120;¶¶

(B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and¶¶

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.¶¶

(D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.¶¶

(5) How Preliminary Certification Can be Revoked: The Director may alter, condition, suspend, deny or revoke a preliminary certification for a reason listed in this section¶¶

(a) A facility is not completed and a complete final certification application received before 1,095 days (3 years) after the preliminary certification was issued or a further 730 days (2 years) if an extension has been approved.¶¶

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Department before facility development starts.¶¶

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).¶¶

(d) Any other reason allowed by ORS 469B.157(3).¶¶

(6) Amendments to Preliminary Certifications: To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.¶¶

(a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, the location, or other matters that demonstrate substantial change in the project's scope. The request must be accompanied by the appropriate fee.¶¶

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director, the department will provide the applicant a written notice relating to the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no changes will be made to the preliminary certification.¶¶

(c) Preliminary certifications issued for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130, shall not be eligible for consideration of amendments other than those listed below in (A) through (C). An eligible amendment cannot change the tier within which the application was reviewed.¶¶

(A) Equipment capacity within 10 percent of the approved specification;¶¶

(B) Amendments to the facility that do not result in an increased potential tax credit amount, but increase output or otherwise improve the facility; or¶¶

(C) Changes in ownership.¶¶

(d) Amendment requests received after January 13, 2012, will not be approved if the amendment would result in an increased tax credit.¶¶

(e) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules.¶¶

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.¶¶

(B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.¶¶

(f) The amendments to ORS 315.354, 315.356 and 469.220 [renumbered 469B.167] by Oregon Laws, 2011, Chapter 693 do not provide a basis for applicants to obtain amendments to certifications issued under ORS 469.210 [renumbered 469B.157] or 469.215 [renumbered 469B.161].¶¶

(7) If the facility does not proceed: The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.¶¶

(8) Pass-through Option Process and Application:¶¶

(a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a Pass-through Partner must complete and file the Pass-through Option Application form supplied by the Department.¶¶

(b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the

facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.¶¶

(c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner pays the pass-through fee and provides evidence to the Department that the owner has received the pass-through payment in full.¶¶

(9) Extension of Preliminary Certification: Applicants who have not previously extended their certification and whose preliminary certification is anticipated to expire prior to completion of the facility may apply for an extension of an additional two years from the current expiry of the preliminary certification.¶¶

(a) Applicants must submit a written request to the department, accompanied by the appropriate fee, describing the progress made in developing the facility since the department issued the preliminary certification and verifying that the project will be developed in accordance with the initial approval, within two years from the current end of the preliminary certification and prior to the sunset date of the program. The request shall include the new proposed facility completion date. Requests may be made no earlier than 6 months prior to the expiration of the existing preliminary certification.¶¶

(b) If an applicant wishes to make changes other than to the completion date, the applicant must submit a request for amendment as described in ORS 330-090-0130(7).¶¶

(c) If a request or original application does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185469B.130 to 469.225469B.169 and any applicable rules or standards adopted by the Director the department will provide the applicant a written notice specifying the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no extension will be made to the preliminary certification expiration date.¶¶

(d) The department will review the previously approved application against current statute and rules. Within 60 days after the department receives the extension request, the Director will decide if the request complies with these rules.¶¶

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.¶¶

(B) If it does not comply, the Director will issue an order that denies the extension and provide written reasons for the denial.¶¶

(10)(a) Final Certification Review Process and Application: An application for final certification must be filed after the facility is completed as defined in these rules.¶¶

(b) An application for final certification must include:¶¶

(A) Evidence to demonstrate that:¶¶

(i) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469B and the rules adopted thereunder;¶¶

(ii) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval; and¶¶

(iii) The facility will be maintained and operated for at least five years after the facility is placed into operation, or a lesser period if approved and specified on the preliminary certification.¶¶

(B) An account of the facility costs, including prorated costs.¶¶

(i) If facility costs are less than \$50,000, the account may be records of facility costs paid or incurred based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required under these rules unless required by the Director to supply verification from a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner. If an applicant has an outstanding binding contract or loan agreement, the account shall demonstrate that payments on contract or loan are not in default; or¶¶

(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules. If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default.¶¶

(iii) The application must include information regarding any federal grants applied for or received in connection with the facility including, without limitation, the grant(s) applied for, the date of each application, the amount of the requested grant(s), when applicant expects to receive notice of grant approval or denial and any other information that may be required by the director. Final total costs will be reduced dollar for dollar by any federal grant amount received by a taxpayer in connection with the facility.¶¶

(C) For a Sustainable Building Practices Facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and

Atmosphere Credit 1, Annual Solar Income as described in the rules and method of calculation will be accepted in lieu of facility cost receipts.¶¶

(D) Proof the facility is completed and operating.¶¶

(E) If the facility is leased or rented, a copy of the lease or rental agreement.¶¶

(F) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.¶¶

(G) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and¶¶

(H) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate¶¶

(I) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

Statutory/Other Authority: ORS 469.040, 469.165

Statutes/Other Implemented: ORS 469.185 – 469.225

RULE SUMMARY: Repeals the Final Certification guidelines.

CHANGES TO RULE:

330-090-0133

Final Certification

(1) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.¶¶

(a) Applications shall be considered received for the purposes of ORS 469B.167 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date on which all of the required information has been received is the date upon which the department will consider a completed application received by the department.¶¶

(A) When a facility owner chooses to transfer the tax credit under ORS 469B.148, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, any application in which the facility owner has indicated a choice to transfer the tax credit under 469B.148 is not a "completed application" until the Department receives both the completed final certification application form from the facility owner, the pass-through fee and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner. The receipt of the completed application by the Department begins the certification period, as provided in 469B.167.¶¶

(B) As provided in ORS 469B.167(2)(c), a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469B.161 after January 1, 2010, a final certification application shall be considered complete without the identification of a transferee for purposes of ORS 469B.148 or 469B.154.¶¶

(C) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18 months from the date the first pass-through partner agreement form was received by the Department.¶¶

(D) For purposes of administering the sunset of the program, the Department may issue a Final Certificate to a facility owner who previously indicated a choice to transfer a tax credit to a pass-through partner under ORS 469B.148, if the Department has not received a completed application that includes the pass-through fee and the signed pass-through partner agreement form at least sixty days prior to the sunset date for the BETC program provided under ORS 315.357. The Final Certificate will be issued to a facility owner if the only piece causing the application for final certification to be incomplete is the pass-through partner(s) agreement form and pass-through fee.¶¶

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification.¶¶

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.¶¶

(d) For efficient truck technology facilities the department may, upon the request of the applicant, issue no more than two final certificates for each preliminary certification, up to the amount of the preliminary certification.¶¶

(2) Basis for Denying Tax Credit Benefits¶¶

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.¶¶

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which

final certification review occurs starts over.¶¶

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469B.161(4).¶¶

(d) The Director may deny a final certificate if:¶¶

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;¶¶

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;¶¶

(C) The applicant misrepresents or fails to construct or operate the facility;¶¶

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;¶¶

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or¶¶

(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469B and the rules adopted thereunder.¶¶

(3) Basis for Revoking Tax Credit Benefits¶¶

(a) The Director may revoke certificates as provided in ORS 469B.169 and ORS 315.354 (5). For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.¶¶

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:¶¶

(A) The facility has been moved;¶¶

(B) Title to the facility has been conveyed;¶¶

(C) The facility is subject to or part of a bankruptcy proceeding;¶¶

(D) The facility is not operating; or¶¶

(E) The term of a leased facility has ended.¶¶

(c) Pursuant to ORS 469B.169, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.¶¶

(d) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that facility. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469B.148, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.¶¶

(e) The revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469B.148, the certificate is not considered revoked as to the Pass-through partner.¶¶

(4) Sale or Disposition of the Facility after Final Certification: As provided in ORS 315.354(5), the department may issue a new tax credit final certificate after the sale, termination of the lease or contract, exchange or other disposition of the facility where the original facility owner did not transfer the tax credit to a pass-through partner.¶¶

(a) The original facility owner or representative must give notice to the department of the sale or transfer of the facility and the department will revoke the certificate covering the facility as of the date of such disposition. The original facility owner or representative must provide.¶¶

(A) The name of the new owner or new lessor who will be applying for any previously unclaimed portion of the tax credit.¶¶

(B) A signed power of attorney authorizing the Oregon Department of Revenue to disclose to the Oregon Department of Energy information regarding the portion, if any, of the tax credit already claimed.¶¶

(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new final certificate under ORS 469B.161 by submitting:¶¶

(A) Satisfactory evidence of facility ownership by the new owner or the new lessor, along with information demonstrating that the facility is currently operating and will continue to operate during the remainder of the tax credit period, unless continued operation is waived by the department.¶¶

(B) A Tax Credit Recipient Statement, on a form prescribed by the department, which includes the new owner or lessor's name, tax identification number and address.¶¶

(c) To be eligible to receive a new final certificate, the facility must meet the requirements of ORS 469B.130 to 469B.169, and any applicable administrative rules, and the new owner or lessor may claim a tax credit under this

section only if all moneys owed to the State of Oregon have been paid, the facility continues to operate, unless continued operation is waived by the department, and all conditions in the new final certification are met.¶¶

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amendment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.¶¶

(6) Inspections: After an application is filed under ORS 469B.145 or ORS 469B.161 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.¶¶

(7) Energy Performance Reporting Requirements: The department may require a facility owner to report on a project's energy performance after receiving final certification. This requirement will apply to projects receiving final certification on or after January 1, 2014.¶¶

(a) The department will select projects to report energy performance when the operational data would further the energy goals of the department and the legislative policy described in ORS 469B.133. Facilities required to report energy performance may include those that use or produce renewable energy resources, sustainable building practices facilities and new technologies.¶¶

(b) If required to report, an energy performance reporting agreement will be included as a condition of the final certification.¶¶

(c) The energy performance reporting agreement will require facility owners to report on an annual basis for up to five years after receiving final certification.¶¶

(d) The energy performance reporting agreement will specify the data the facility owner must provide annually. The agreement may also specify energy performance goals.¶¶

(e) The department will not require facilities receiving one year tax credits to enter an energy performance reporting agreement.

Statutory/Other Authority: ORS 469.040, 469B.161

Statutes/Other Implemented: ORS 469B.130–469B.171, 315.354–315.357

REPEAL: 330-090-0135

RULE SUMMARY: Repeals the BETC sustainable building practices facility rules.

CHANGES TO RULE:

~~330-090-0135~~

~~Business Energy Tax Credit Sustainable Building Practices Facility Rules~~

~~(1) To be eligible for a tax credit, Sustainable Building Practices Facilities must achieve a minimum rating of "Silver" using the LEED-NC, LEED-CS, or LEED-CI path of the U.S. Green Building Council's rating systems, listed in the rules, in effect as of the facility registration date. Facilities receiving a "Gold" or "Platinum" rating will be awarded proportionally larger tax credits, as calculated by the Department. Sustainable Building Practices Facilities must also comply with all applicable rules.~~

~~(2) All Sustainable Building Practices Facilities must acquire a preliminary certification from the Department in accordance with OAR 330-090-0130(3). For these facilities, the facility owner must submit a certified copy of the Facility Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEEDTM rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify the Department in writing, and provide a statement of intent to apply for a tax credit as an energy facility, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).~~

~~(3) The Department may, at its discretion, convert a preliminary certification for an Energy Facility to a preliminary certification as a Sustainable Building Practices Facility, or accept a statement of intent to register as a Sustainable Building Practices Facility, provided that a certified copy of the U.S. Green Building Council facility registration certificate is provided to the Department within 30 days of the new preliminary certification date.~~

~~Statutory/Other Authority: ORS 469.040, 469.165~~

~~Statutes/Other Implemented: ORS 469.185 - 469.225~~

RULE SUMMARY: Repeals the pass-through option facilities guide.

CHANGES TO RULE:

330-090-0140

Pass-through Option Facilities

(1) A pass-through Partner may purchase a BETC certificate from an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass through payment equivalent to the net present value of the transferable tax credit. For the purposes of these rules, the net present value of the credit for purposes of the pass through payment is calculated based on the formulas below:¶¶

(a) For original preliminary certifications issued on or after January 1, 2010:¶¶

(A) For a five year tax credit the net present value is determined by taking the total tax credit amount divided by 1.3579. Tax Credit/1.3579¶¶

(B) For a one year tax credit the net present value is determined by taking the tax credit amount divided by 1.0309. Tax Credit/1.0309¶¶

(b) For original preliminary certifications issued on or before December 31, 2009:¶¶

(A) 50 percent BETC more than \$20,000 in eligible costs—33.5 percent pass-through rate.¶¶

(B) 50 percent BETC \$20,000 or less in eligible costs—43.5 percent pass-through rate.¶¶

(C) 35 percent BETC more than \$20,000 in eligible costs—25.5 percent pass-through rate.¶¶

(D) 35 percent BETC \$20,000 or less in eligible costs—30.5 percent pass-through rate.¶¶

(E) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits—87 percent of tax credit amount.¶¶

(c) If an applicant elects to use the pass through option, the net present value of the credit (the pass through payment) for a facility is determined by the date the department issues the initial preliminary certification for the project.¶¶

(2) An Investor-Owned Utility may choose to become a utility Pass-through Partner under the provisions of this section or participate as a Pass-through Partner under other Provisions of these rules that would apply to any other Pass-through Partner.¶¶

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-through Partner.¶¶

(b) Preliminary certification standards and process:¶¶

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.¶¶

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.¶¶

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise the application has been denied.¶¶

(D) The application for preliminary certification of the pass-through must include a detailed work plan. The applicant and ODOE must mutually agree upon the work plan and program. The detailed work plan must include:¶¶

(i) A copy or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered,¶¶

(ii) A not to exceed estimate of the total eligible costs that will be incurred for that calendar year with an estimate of the number of rental dwellings that will be affected, and¶¶

(iii) An agreement that upon submitting the complete final certification application the applicant will provide a detailed description of each facility owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through.¶¶

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(11) of these rules.¶¶

(A) An application must contain:¶¶

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, and the total facility costs made that period for which the applicant is applying for credit.¶¶

(ii) The nominal value of credits for which the applicant applies, not to exceed the total eligible costs multiplied by

the existing net present value of the tax credit for the pass-through payment as defined in OAR 330-090-0140(1).¶¶

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i). A sample selected by the Department of individual weatherization location audit reports will be submitted for at least 15 percent of the facility sites.¶¶

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).¶¶

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s).¶¶

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.¶¶

(vii) If costs associated with an individual rental dwelling are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by these rules.¶¶

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.¶¶

(B) Within 60 days after a complete final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0133(5). The Director will approve final certification if:¶¶

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:¶¶

(I) A low interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv);¶¶

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment must be a percentage of the cost-effective portion of the energy conservation measures as approved by the Oregon Public Utility Commission, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; including the net present value of the tax credit for the pass-through payment as defined in 330-090-0170(1) for the EMCs at that specific site address the IOU may claim; or¶¶

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the net present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.¶¶

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.¶¶

(3) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3). For the purposes of transferring the tax credit, a tax credit is considered used when any portion of the tax credit reduces or offsets any portion of the applicant's tax liability.

Statutory/Other Authority: ORS 469.040, 469B.148

Statutes/Other Implemented: ORS 469B.130 - 469B.171, 315.354 - 315.357

REPEAL: 330-090-0150

RULE SUMMARY: Repeals budget limits and payments for BETC.

CHANGES TO RULE:

~~330-090-0150~~

~~Budget Limits and Payments for BETC~~

~~(1) Amount of Credits Allowed for a Facility:~~

~~(a) During any calendar year, a BETC preliminary certification will not be issued for more than:~~

~~(A) \$20 million in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility, not including wind facilities with an installed capacity of more than 10 megawatts;~~

~~(B) \$7 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2010;~~

~~(C) \$5 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2011;~~

~~(D) \$3 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification on or after January 1, 2012;~~

~~(E) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder installed renewable energy facility and high performance home BETC subject to subsection (b);~~

~~(b) A final certification for a BETC will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.~~

~~(2) Return of Review Charge for Returned Incomplete Applications: This section does not apply to applications subject to the tiered priority system under OAR 330-090-0350. If under 330-090-0130, the Department does not accept and returns an incomplete application for preliminary certification, the Department will also return the review charge submitted by the applicant.~~

~~(3) Cost of Reviews: ORS 469B.164 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement the Department has established the following schedule for payments to accompany an application.~~

~~(a) Included with each application for preliminary certification must be a payment payable to the Department, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification.~~

~~(A) Applicants within tier two or three of the tiered priority system under OAR 330-090-0350 shall include with their initial application a payment to the department of \$500 for the costs of step one. Applicants who are notified that their application is approved for step two will be required to submit an additional fee as calculated under (B) prior to review.~~

~~(B) For all facilities except Sustainable Building Facilities or facilities qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost, or \$30 whichever is greater. The maximum payment amount is \$35,000.~~

~~(C) For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules.~~

~~(D) For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.~~

~~(b) A refund of up to 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification application was received by the Department. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:~~

~~(A) Denial of a application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or~~

~~(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,~~

~~(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.~~

~~(c) Requests for amendments or changes to a preliminary certification must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project. If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (3)(a) of this rule.~~

~~(d) Requests for extension of a preliminary certification under ORS 469B.145 must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project.~~

(e) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.¶¶

(f) The payment is a required part of a completed preliminary certification application per 330-090-0130, except for facilities that qualify under 330-090-0130(2). Preliminary certifications will only be issued if the application is complete. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of the Department determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.¶¶

(4) Cost of Pass-through: Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department can issue a tax credit certificate.¶¶

(a) If the department assists the applicant in obtaining a pass-through partner or partners, the fee for that assistance is 0.25 percent of the tax credit amount, up to \$25,000 maximum, but no less than \$100 minimum.¶¶

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$100 per tax credit certificate issued.¶¶

(5) Cost of Transfer: Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee, the fee for that service is \$200, plus \$100 per tax credit certificate issued. In this section, a transferee means an individual or business that pays the pass-through amount to an applicant, that previously was issued the tax credit certificate, and receives a re-issued tax credit certificate in place of the original applicant. The transfer must occur within 24 months of the issuance of the original tax credit certificate and after the applicable sunset date for the related facility in ORS 315.357. Prior to the applicable sunset date for the related facility, applicants may use the pass-through to transfer their tax credit.

Statutory/Other Authority: ORS 469.040, 469B.161, 469B.164

Statutes/Other Implemented: ORS 469B.130-469B.171, 315.354-315.357

RULE SUMMARY: Repeals the sunset of the BETC program.

CHANGES TO RULE:

330-090-0160

Sunset of the Business Energy Tax Credit Program

(1) ORS 315.357 contains the sunset of the Business Energy Tax Credit Program. Applicants must meet the deadlines that apply to their project.¶¶

(a) Applicants with a preliminary certification that are unable to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before January 1, 2013. The Director does not guarantee that a complete final certification application received on or after November 1, 2012 will be processed before January 1, 2013.¶¶

(b) Applicants with a preliminary certification that are able to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before July 1, 2014. The Director does not guarantee that a complete final certification application received on or after May 1, 2014 will be processed before July 1, 2014.¶¶

(c) Applicants with a preliminary certification that expires before the July 1, 2014, sunset must request an extension for the preliminary certification pursuant to OAR 330-090-0130(9) or submit the final certification application before the expiration date of the preliminary certificate. There is no automatic extension or waiver for preliminary certifications that expire before the sunset date.¶¶

(2) Applicants with a preliminary certification may apply to the department to demonstrate that construction of the facility began before April 15, 2011.¶¶

(a) An application must include at least these items:¶¶

(A) A brief update on the progress of the facility.¶¶

(B) A construction schedule showing the anticipated completion date.¶¶

(C) A statement that the facility will be completed as approved in the preliminary certification.¶¶

(D) Evidence of beginning construction, including but not limited to:¶¶

(i) A copy of an approved building, grading or other permit issued for the facility, dated prior to April 15, 2011.¶¶

(ii) Evidence of site-specific construction activity, for the period on or after the later of preliminary certification or building permit approval and before April 15, 2011.¶¶

(iii) Evidence of facility-specific construction activity, for the period on or after preliminary certification and before April 15, 2011.¶¶

(b) Evidence of site-specific construction activity may include, but is not limited to:¶¶

(A) Paid invoices for completed construction activity.¶¶

(B) Timesheets for construction activities linked to the facility site.¶¶

(C) Paid rental documentation for construction equipment.¶¶

(D) A written report from the project engineer or installer signed under penalties of perjury describing the work that had commenced before April 15, 2011.¶¶

(c) Evidence of facility-specific construction activity may include, but is not limited to:¶¶

(A) Paid invoices for facility-specific assembly or manufacturing activity.¶¶

(B) Timesheets for assembly or manufacturing activities linked to the facility.¶¶

(C) A written report from the project engineer or manufacturer signed under penalties of perjury describing the work that had commenced before April 15, 2011.¶¶

(d) Applications must be received by the department before October 1, 2012.¶¶

(e) The Department will review the provided information and respond to the application within 60 days. As part of its determination, the department may request additional information from the applicant and may perform inspections.¶¶

(A) The department will issue a written acceptance letter to applicants who are able to demonstrate evidence of beginning construction. The acceptance letter will state the date by which the applicant must receive final certification to be allowed a credit under ORS 315.354.¶¶

(B) The department will issue a letter to applicants who have not provided sufficient evidence of beginning of construction providing reasons for the denial.¶¶

(3) Transfer of tax credits issued to an applicant. In this section, a transferee means an individual or business that pays the pass-through amount to an applicant that has been issued the tax credit certificate, and receives a re-issued tax credit certificate in place of the original applicant.¶¶

(a) An applicant who has been issued a tax credit certificate may transfer the tax credit to an eligible transferee through the department process provided by these rules, provided the transfer occurs within 24 months of the issuance of the original tax credit certificate and after the applicable sunset date for the related facility in ORS 315.357. Prior to the applicable sunset date for the related facility, applicants may use the pass-through to

transfer their tax credit.¶¶

(b) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3). For the purposes of transferring the tax credit, a tax credit is considered used when any portion of the tax credit reduces or offsets any portion of the applicant's tax liability.¶¶

(c) The department will provide assistance in locating a transferee, however the department does not guarantee that a transferee will be located or obtained.¶¶

(d) A tax credit certificate may only be re-issued once, upon a transfer from the applicant to the transferee.¶¶

(e) A tax credit certificate may be re-issued in the name of the individual or entity transferee only.¶¶

(f) The transferee may not claim the credit for a tax year prior to the year in which the transferee pays for the credit.¶¶

(g) The applicant holding the tax credit certificate must submit a complete tax credit transfer application and the required fee to the department. The tax credit transfer application must:¶¶

(A) Include an affidavit from the applicant holding the tax credit certificate affirming that no portion of the tax credit has been claimed and that the applicant has received a cash payment equal to the present value of the credit from the transferee, as calculated under these rules.¶¶

(B) Provide power of attorney to authorize the department to confirm with the Oregon Department of Revenue that no portion of the tax credit has been claimed.¶¶

(C) Include the original tax credit certificate issued to the applicant or affidavit from the applicant on the application form.¶¶

(h) Upon compliance with this rule and any other applicable requirements, the department will re-issue the tax credit certificate to the transferee.

Statutory/Other Authority: ORS 469.040, 469B.161

Statutes/Other Implemented: ORS 469B.130 - 469B.171, 315.354 - 315.357

RULE SUMMARY: Repeals the tiered prioritization system for renewable facilities.

CHANGES TO RULE:

330-090-0350

Tiered Prioritization System for Renewable Facilities

- (1) **Applicability:** The tiered priority system applies to applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources, as defined under ORS 469B.130.¶
- (2) **Process:** The department will issue a BETC Opportunity Announcement (OA) detailing the availability of potential tax credits for renewable facilities, the criteria to be applied in selecting facilities for allocation of available potential credits, and soliciting applications within a set time period. Applications will be reviewed within tiers, differentiated by facility cost. The process and level of review differ between tiers as specified in these rules and the OA. The requirements for issuance of preliminary and final certifications within these rules will apply to all applications allocated potential tax credits through the tiered priority system.¶
- (a) Tier one application acceptance and review will be completed on an ongoing basis subject to the tax credit limitations published by the department. Complete applications will be processed in the order they were received and may be rejected once the department has received applications totaling all available credits for this tier.¶
- (b) Tier two application review will consist of an OA and three review steps:¶
- (A) OA: The department will issue an OA and collect applications.¶
- (B) Step one: Applications will be reviewed against initial standards, which will include criteria that will ensure those that advance are complete and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.¶
- (C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional non-refundable fee.¶
- (D) Step three: Technical review of proposed facilities will be completed, allocations of potential tax credits confirmed and announced, and preliminary certifications issued.¶
- (c) Tier three application review will consist of an OA and three review steps:¶
- (A) OA: The department will issue an OA and collect applications.¶
- (B) Step one: Applications will be reviewed against initial standards specified within the OA to include ensuring those that advance are complete, and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.¶
- (C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional fee.¶
- (D) Step three: Technical review of proposed facilities will be completed and allocations of potential tax credits confirmed prior to the issuance of a preliminary certification. If the department determines that it does not have the appropriate resources available to conduct the review, the department may notify the applicant that the department intends to use a third party to conduct the technical review. If a third party is used, the applicant will be required to submit payment to the department approved third party for the review.¶
- (3) **Tier Boundaries:**¶
- (a) Tier one shall consist of applications with projected facility cost less than \$500,000.¶
- (b) Tier two shall consist of applications with projected facility cost equal to or greater than \$500,000 but less than \$6,000,000.¶
- (c) Tier three shall consist of applications with projected facility cost equal to or greater than \$6,000,000.¶
- (d) For the purposes of determining tier assignment, facility cost shall not be limited as defined in ORS 469B.142.¶
- (e) Applicants may apply for less than the maximum eligible potential tax credit for their project, this shall not change the tier within which the application is reviewed.¶
- (4) **Allocation of tax credits between tiers and application periods**¶
- (a) The department shall announce the allocation of potential tax credits. The OA will specify the distribution of funding for the appropriate tiers and the amount allocated to the current application period. The department will continually monitor the rate of allocation of potential tax credits to ensure the total amount of potential tax credits does not exceed the limits provided in Oregon Laws, 2010, Chapter 76, Section 2.¶
- (b) If no applications are received within an application period for any tier, the allocated potential tax credits for that period and tier will be reallocated by the department. If the total request from all complete applications received for a period and tier is less than the allocated potential tax credits, the department will review all

applications to determine that they meet any applicable standards prior to allocating potential tax credits, and reallocating remaining potential tax credits. If allocated potential tax credits remain but are insufficient to satisfy the request of the next applicant, the Director may offer a reduced tax credit amount or reallocate the remaining potential tax credits.¶¶

(c) Potential tax credit amounts that are not allocated to a facility at the end of a limitation period specified in Oregon Laws, 2010, Chapter 76, Section 5 will expire.¶¶

(5) Application acceptance periods¶¶

(a) Tier one applications will be accepted at any time prior to the sunset, while allocated funds are available.¶¶

(b) Tier two and three applications will only be accepted during an application acceptance period specified in an OA. Applications for tier two and three received outside of an application acceptance period will not be accepted.¶¶

(6) Criteria. The department will announce specific standards and criteria that will be considered in determining eligibility in the OA. In addition to the criteria listed in Oregon Laws, 2010, Chapter 76, Section 6, criteria for tiered two and three potential tax credits may include:¶¶

(a) The completeness of the application and whether it was received within the time period specified in the OA;¶¶

(b) The appropriate application payment;¶¶

(c) The time frame in which actual construction will be started and completed and the ability to meet all regulatory requirements including program deadlines;¶¶

(d) Criteria established in statute or rules that apply to the BETC program;¶¶

(e) The simple payback period;¶¶

(f) The number of jobs created;¶¶

(g) Whether the renewable activities were aligned with conservation activities;¶¶

(h) The financing structure of the facility;¶¶

(i) The reliability of power created;¶¶

(j) Whether the facility is combined heat and power or co-gen system;¶¶

(k) If the applicant is a public body, whether a competitive bidding process was utilized;¶¶

(l) Nationally recognized standards or practices for the specified technology; and¶¶

(m) Any other factors listed in the OA.¶¶

(7) Incomplete applications¶¶

(a) The department will determine if an application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 149B.169 and any applicable rules, standards and criteria in the OA, rules or otherwise adopted by the Director.¶¶

(b) For tier one the department will provide a written notice to applicants that the application is incomplete, specifying the information needed to make the application complete. Applicants will be allowed 30 days from the time of notification by the department to provide specified information. The application expires if the applicant does not supply the information within 30 days.¶¶

(c) Incomplete applications for tier two or three will not be accepted for the current OA. Applicants may reapply and resubmit their application during the next OA.¶¶

(8) Prioritization within tiers¶¶

(a) Applications within tier one are not be subject to prioritization, but will be required to meet listed standards and other requirements of the BETC program. If the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the allocation for tier one, the Director will allocate potential tax credits in the order in which complete applications are received.¶¶

(b) Applications within tiers two and three will be ranked within each tier against required criteria specified within the OA in effect at the time of application acceptance, and must meet the requirements of the OA and the BETC program.¶¶

(9) Allocation of potential tax credits within tiers:¶¶

(a) Potential tax credits available within an application period will be allocated to applications in order of the priority established under section (8) and as determined by the procedure in the OA. Applicants may be offered less potential tax credit than requested in their application.¶¶

(b) For tiers two and three, applicants will have 10 business days to respond in writing to the department's written notification of the offer of preliminary certification. Applicants who do not respond during this period will be considered to have rejected the offer of the preliminary certification. If an applicant does not accept an allocation, the potential tax credits may be issued to other applications within the period or to future periods or tiers. Upon written acceptance from the applicant, the department will issue a preliminary certification under ORS 469B.145.¶¶

(10) Applications allocated potential tax credits: Applicants who are issued a preliminary certification under this section must follow all department procedures and obtain final certification prior to issuance of tax credits.

Allocation of potential tax credits through the issuance of a preliminary certification does not guarantee issuance

of final certification.

(11) Applications not issued preliminary certification: Applications reviewed under this section and not allocated potential tax credits will be notified by the department. Applicants may make application for the same facility within a future application period but will not be eligible to carry forward applications or fees.

Statutory/Other Authority: ORS 469.040, 469.165

Statutes/Other Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.

REPEAL: 330-090-0450

RULE SUMMARY: Repeals the prioritization system for renewable resources equipment manufacturing facilities.

CHANGES TO RULE:

~~330-090-0450~~

~~Prioritization System for Renewable Resource Equipment Manufacturing Facilities~~

~~Applications in excess of Biennial limits: In the event that the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitations in Oregon Laws, 2010, Chapter 76, the Director shall allocate the potential tax credits according to the order in which the applications are received.~~

~~Statutory/Other Authority: ORS 469.040, 469.165~~

~~Statutes/Other Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.~~