



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 for Renewable Energy Resource Equipment Manufacturing 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. Oregon Laws 2011, Chapter 474 (HB 2523) transferred the administration of the Business Energy Tax Credit for renewable energy resource equipment manufacturing program from the Oregon Department of Energy to the Oregon Business Development Department on January 1, 2012. ODOE's rules remained in effect until they were replaced by rules adopted by the Oregon Business Development Department. Chapter 123 Division 600 details Oregon Business Development Department administrative rules for the program, which came into effect June 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 This rulemaking repeals rules that are no longer applicable due to the transfer of administration of the BETC for Renewable Energy Resource Equipment Manufacturing to the Oregon Business Development Department.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 for Renewable Energy Resource Equipment Manufacturing 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 for Renewable Energy Resource Equipment Manufacturing 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 for Renewable Energy Resource Equipment Manufacturing 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 for Renewable Energy Resource Equipment Manufacturing 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:

330-091-0100, 330-091-0105, 330-091-0110, 330-091-0120, 330-091-0130, 330-091-0133, 330-091-0140, 330-091-0150, 330-091-0450

REPEAL: 330-091-0100

RULE SUMMARY: Repeals the rule transferring the program to Oregon Business Development Department.

CHANGES TO RULE:

~~330-091-0100~~

~~Transfer of program to Oregon Business Development Department~~

~~House Bill 2523 (2011) transfers the duties of the Business Energy Tax Credit for renewable energy resource equipment manufacturing program from the Oregon Department of Energy to the Oregon Business Development Department on January 1, 2012. These rules remain in effect until replaced by rules adopted by the Oregon Business Development Department; any references to statute deleted by HB 2523(2011) become references to the replacement portion of statute adopted under the bill.~~

~~Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 – 469.225, OL 2011, Ch. 474 HB2523~~

~~Statutes/Other Implemented: OL 2011, Ch. 474 HB2523~~

REPEAL: 330-091-0105

RULE SUMMARY: Repeals the rule describing a Business Energy Tax Credit for Renewable Resource Equipment Manufacturing (Manufacturing BETC).

CHANGES TO RULE:

~~330-091-0105~~

~~What a Business Energy Tax Credit for Renewable Resource Equipment Manufacturing (Manufacturing BETC) Is~~
~~(1) A Business Energy Tax Credit for up to 50 percent of the eligible cost of qualifying renewable energy resource equipment manufacturing facilities may be offset against owed Oregon income and corporation excise taxes. 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 469.215 before the tax credit can be claimed. These rules apply to Business Energy Tax Credit applications for renewable energy resource equipment manufacturing facilities. These rules apply to all applications pending as of the effective date of these rules.~~

~~Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 – 469.225, OL 2011, Ch. 474 HB2523~~

~~Statutes/Other Implemented: OL 2011, Ch. 474 HB2523~~

RULE SUMMARY: Repeals the definitions in the Manufacturing BETC rules.

CHANGES TO RULE:

~~330-091-0110~~

~~Definitions-~~

~~The following definitions apply unless the context requires otherwise:¶¶~~

~~(1) "Applicant": An applicant means:¶¶~~

~~(e) A person who applies for a preliminary certification of a Manufacturing 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.¶¶~~

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

~~(g) 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.¶¶~~

~~(h) 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.¶¶~~

~~(2) "Certified cost": The cost certified in the final certification issued pursuant to ORS 469.215.¶¶~~

~~(3) "Completed Application": Contains all of the information required in these rules and payments under OAR 330-091-0150. All questions on the application must be answered. 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. No application for a final certification in which the facility owner has indicated a choice to transfer the tax credit under ORS 469.206 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.¶¶~~

~~(4) "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.¶¶~~

~~(5) "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.¶¶~~

~~(6) "Cost": The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a Manufacturing BETC. 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 330-091-0150, 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; and¶¶

(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.);¶¶

(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 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, 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) The Department may conduct inspections to verify eligible costs.¶¶

(e) Eligible facility costs are limited by costs for a facility, or portion thereof, that has previously received a Business Energy Tax Credit.¶¶

(f) The sum of any payments from federal grants or credits and the Manufacturing BETC may not exceed total costs.¶¶

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

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

(9) "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.¶¶

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

(11) "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¶¶

(12) "Federal Grant": Any grant received from the federal government in connection with a facility.¶¶

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

(14) "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 Manufacturing 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 Manufacturing BETC.¶¶

(15) "Net Present Value": A cash payment equivalent to the net present value of the Manufacturing BETC as determined under OAR 330-091-0140. This is also referred to as the "pass-through rate."¶¶

(16) "Pass-through Option": An option that allows a facility owner to transfer all or a portion of 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.¶¶

(17) "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 all or a portion of the Manufacturing BETC.¶¶

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

(19) "Renewable Energy Resource Equipment Manufacturing Facility": means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Department in these rules.¶¶

(20) "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 qualified renewable energy resource equipment products or technologies that are likely to be manufactured in Oregon when commercialized. RD&D Manufacturing BETC 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. 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 new manufacturing or production capacity 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 or improve technology through pilot or production scale applications of technology;¶

(D) Facilities in the Director's determination are likely to achieve Department 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 equipment manufacturing will be eligible for a 50 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).¶

(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 tax credit 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.¶

(21) "Total Cost": The eligible cost of a facility not limited by ORS 469.200.¶

(22) "Year": Calendar year.¶

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

Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 – 469.225, OL 2011, Ch. 474 HB2523

Statutes/Other Implemented: OL 2011, Ch. 474 HB2523

REPEAL: 330-091-0120

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

CHANGES TO RULE:

330-091-0120

~~Preliminary Certificate Application Requirements~~

~~(1) Eligible facilities¶¶~~

~~(a) The Department may issue only one Manufacturing BETC for each separate and distinct facility under these rules.¶¶~~

~~(b) A proposed facility must meet applicable codes and standards.¶¶~~

~~(2) Required information¶¶~~

~~(a) Persons requesting a Manufacturing BETC shall apply on the Department-approved form for a preliminary certificate. In addition to the information required in ORS 469.205, 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 start date and date estimated for the commencement of operation. 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.¶¶~~

~~(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.¶¶~~

~~(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: the amount and type of jobs potentially created 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 and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is operational. If an applicant expects that a facility 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) Information that demonstrates that the facility will be used solely to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. An applicant shall provide sufficient information relating to the specific characteristics of the equipment, machinery or other products that demonstrate how such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes. In the case of a facility manufacturing Electric Vehicles under the all-terrain-vehicles standards, an applicant shall provide information that demonstrates that the vehicles will be used for agricultural, commercial, industrial or governmental purposes.¶¶~~

~~(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 when combined exceed the annual limit for a tax credit found in ORS 469.200.¶¶~~

~~(B) Applications will be considered a single facility unless each phase of development or each expansion of or addition to existing facilities or production lines can be demonstrated to meet, through increased production and number of jobs created, the requirements of ORS 469.197 (4) and these rules.¶¶~~

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

(d) The payment required by OAR 330-091-0150(3).¶¶

(e) For a proposed renewable energy resource equipment manufacturing facility:¶¶

(A) The applicant shall demonstrate that they can meet ORS 469.197(4)(c) through (f) by:¶¶

(i) Describing the minimum level of direct employment that will be provided by the facility during each of the tax years in which the tax credit will be claimed and by describing the anticipated average annual direct employment during each of those years, including the number of average hourly and annual wages of employees by employment classifications by geographic location. The applicant must also describe actions it will take to achieve cultural diversity in its work force.¶¶

(ii) Demonstrating its financial ability to construct and operate the proposed facility through documentation such as independent credit ratings; credit references, including letters from banks or other financial institutions attesting to the applicant's credit worthiness; and other documentation demonstrating the applicant's financial viability.¶¶

(iii) Demonstrating that the facility will achieve long-term operation and success by documenting the qualifications, capabilities and experience of the applicant in the construction and operation of such facilities, the long-term commercial and technical viability of the renewable energy resources manufacturing equipment and the renewable energy resource facilities for which the equipment is produced.¶¶

(iv) Certifying that allowance of the tax credit is integral to the decision to expand or locate the facility in Oregon.¶¶

(v) Before the Director will approve a final certification, the Department may require the applicant to enter into a performance agreement or other similar agreement for the facility. Failure to comply with the terms of the performance agreement or other similar agreement may be the basis for denial or revocation of the final certification pursuant to OAR 330-091-0133.¶¶

(B) Any other information necessary to find that a proposed facility complies with ORS 469.185 to 469.225 and these rules.¶¶

(C) In considering such applications, the Director may consult with other state agencies.¶¶

(D) The Director must find that:¶¶

(i) The applicant has demonstrated that it has a reasonable likelihood of achieving the minimum level of employment proposed and that such employment will contribute to public benefit, based on the number of average hourly and annual wages of employees including benefits by employment classifications by geographic location, and actions to achieve cultural diversity in its workforce.¶¶

(ii) The applicant has a reasonable likelihood of being financially viable based on its credit ratings and references from banks and financial institutions attesting to its credit worthiness.¶¶

(iii) The applicant has the organizational expertise as demonstrated by qualifications and experience to construct and operate the proposed facility.¶¶

(iv) The renewable energy resource equipment and the renewable energy resource facilities for which the equipment is produced have the commercial and technical viability to have a reasonable likelihood to achieve long-term success.¶¶

(v) The facility will contribute to a diversified portfolio of renewable energy resource equipment manufacturing facilities.¶¶

(vi) The applicant has certified that allowance of the tax credit is integral to the decision to expand or locate in Oregon.¶¶

(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) Eligible Costs:¶¶

(a) A Manufacturing BETC may be granted based on the eligible costs of a facility that is used to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.¶¶

(b) Subject to the facility cost limitations of OAR 330-091-0150(1)(a) and the provisions of 330-091-0120(4), eligible costs include any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices, necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used to manufacture the equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.¶¶

(A) Eligible costs do not include any costs of any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-091-0150(1)(a) if such costs would exceed that cost limitation.¶¶

(B) Eligible costs do not include costs of a facility that is used to manufacture equipment, machinery or other

products not used exclusively for renewable energy resource facilities.¶

(C) An application must demonstrate compliance with these provisions to be accepted, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes and therefore why the costs of such of such equipment, machinery or other products are eligible costs.¶

(5) If the Department determines that the applicant qualifies for a Manufacturing 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 Manufacturing BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter into a performance agreement or other similar agreement as a condition of approval.

Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523

Statutes/Other Implemented: OL 2011, Ch. 474 HB2523

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

CHANGES TO RULE:

330-091-0130

How the Department Processes Application for a Manufacturing BETC

(1) General:¶¶

(a) The Director reviews an application for a Business Energy Tax Credit for Renewable Energy Resource Equipment Manufacturing 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 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.¶¶

(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 469.185 to 469.225 and any applicable rules or standards adopted by the Director.¶¶

(e) If the Department determines that the applicant qualifies for a Manufacturing 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 into a performance agreement or other similar agreement as a condition of approval.¶¶

(2) Preliminary Certification Review Process: Except as provided in OAR 330-091-0130(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.¶¶

(b) 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 469.185 to 469.225 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 Manufacturing 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 330-091-0133(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.¶¶

(3) Certifying Less than Total Eligible Costs: If under the provisions of ORS 469.200(2), the Director intends to certify less than the total or no amount of eligible costs of a renewable energy resource equipment manufacturing facility, the Director will notify the applicant in writing of that intent before approving the preliminary certification. The applicant will have 30 calendar days from the date notification was issued to inform the Director in writing whether it wishes to withdraw the application or suspend further consideration of the application until a future date specified or submit additional information in support of the application. If the Director has not received notification or additional information in support of the application within that period of time, the Director may certify less than the total or no amount of eligible costs of the renewable energy resource equipment manufacturing facility. Once eligible costs are certified and a preliminary certification is issued under this section, the certified eligible costs may be revised if conditions under ORS 469.200(2) change or upon notification from

the applicant or other information indicating that the scope of the project or the facility has changed in such a way to impact the preliminary certificate.¶¶

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

(c) 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 these rules.¶¶

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

(A) The request is in accord with these rules;¶¶

(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 1,825 days (5 years) after the preliminary certification was issued.¶¶

(b) Permits, waivers, and licenses required by these rules are not filed with the Department before facility development starts.¶¶

(c) The facility undergoes changes without the changes being approved under these rules.¶¶

(d) Any other reason allowed by the amendments to ORS 469.210 (3) in Oregon Laws, 2010, Chapter 76, Section 11.¶¶

(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 469.185 to 469.225 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) 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.¶¶

(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 provides evidence to the Department that the owner has received the pass-through payment in full.¶¶

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

(a) Evidence to demonstrate that:¶¶

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

(B) 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¶¶

(C) 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.¶¶

(A) 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.¶¶

(B) 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.¶¶

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

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

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

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

(g) 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, 469.185 – 469.225, OL 2011, Ch. 474 HB2523

Statutes/Other Implemented: OL 2011, Ch. 474 HB2523

RULE SUMMARY: Repeals the Final Certification guidelines.

CHANGES TO RULE:

~~330-091-0133~~

~~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 469.220 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the department on the complete application containing all of the required information shall be considered the received date.¶¶~~

~~(A) When a facility owner chooses to transfer the tax credit under ORS 469.206, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department.¶¶~~

~~(B) 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.¶¶~~

~~(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 469.185 to 469.225 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. The Director will process a complete final certification application received prior to the date of the expiry of the preliminary certificate provided under ORS 469.205. Applications received after the expiry of the preliminary certificate are not eligible.¶¶~~

~~(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs, reduced as applicable by any federal grants received, 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.¶¶~~

~~(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 469.215(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 469 and these rules.¶¶~~

~~(3) Basis for Revoking Tax Credit Benefits¶¶~~

~~(a) The Director may revoke certificates as provided in ORS 469.225 and 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 469.225, upon receiving information that a Manufacturing 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.¶¶

(e) Revocation of the certificate due to misrepresentation, fraud or failure to construct or operate the facility in compliance with the certificate results in the loss of all prior and future tax credits. If all or a part of the tax credit certificate has been transferred to a pass-through partner under ORS 469.206, 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.¶¶

(4) Sale or Disposition of the Facility after Final Certification:¶¶

(a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as of the date of the disposition of the facility, unless the Manufacturing BETC for the facility has already been transferred under 469.206.¶¶

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-091-0130(10) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354(5).¶¶

(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 469.205 or ORS 469.215 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.

Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 – 469.225, OL 2011, Ch. 474 HB2523

Statutes/Other Implemented: OL 2011, Ch. 474 HB2523

REPEAL: 330-091-0140

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

CHANGES TO RULE:

~~330-091-0140~~

~~Pass-through Option Facilities~~

~~A pass-through partner may purchase a Manufacturing 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:¶¶~~

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

~~(2) For original preliminary certifications issued on or before December 31, 2009: 50 percent BETC more than \$20,000 in eligible costs – 33.5 percent pass-through rate.¶¶~~

~~(3) 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.~~

~~Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 – 469.225, OL 2011, Ch. 474 HB2523~~

~~Statutes/Other Implemented: OL 2011, Ch. 474 HB2523~~

REPEAL: 330-091-0150

RULE SUMMARY: Repeals budget limits and payments.

CHANGES TO RULE:

~~330-091-0150~~

~~Budget Limits and Payments~~

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

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

~~(A) \$40 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility, not including those used to manufacture electric vehicles;~~

~~(B) \$2.5 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility used to manufacture electric vehicles;~~

~~(2) Return of Review Charge for Returned Incomplete Applications: If 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 469.217 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. The payment will be 0.0060 multiplied by the facility eligible cost not to exceed a payment amount of \$75,000.~~

~~(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:~~

~~(D) Denial of a application for preliminary certification; or~~

~~(E) Denial of a portion of costs requested in an application for preliminary certification; or~~

~~(F) 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) No facilities will be exempt from these requirements including applications for Manufacturing BETC pass-through under OAR 330-091-0140.~~

~~(e) The payment is a required part of a completed preliminary certification application. 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.~~

~~Statutory/Other Authority: ORS 469.040 & 469.165, 469.185 - 469.225, OL 2011, Ch. 474 HB2523~~

~~Statutes/Other Implemented: OL 2011, Ch. 474 HB2523~~

REPEAL: 330-091-0450

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

CHANGES TO RULE:

~~330-091-0450~~

~~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, 469.185 – 469.225, OL 2011, Ch. 474 HB2523~~

~~Statutes/Other Implemented: OL 2011, Ch. 474 HB2523~~