



OREGON  
DEPARTMENT OF  
ENERGY

## **Oregon Administrative Rules**

### **Business Energy Tax Credit**

**OAR 330-090-0105 to 330-090-0150**  
**(for ORS 469.185-469.228; 315.354; 315.356)**

Effective ~~March 21~~ **June 20**, 2008  
(Replaces ~~December 1, 2007~~ **March 21, 2008**)

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## DEPARTMENT OF ENERGY

### DIVISION 90

#### BUSINESS ENERGY TAX CREDITS (BETC)

##### 330-090-0105

###### What a BETC Is

A Business Energy Tax Credit 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 equipment manufacturing facilities, and renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 are eligible for a tax credit equal to 50 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities completed on or after January 1, 2007 are eligible for a tax credit of up to \$9,000 and qualifying high performance homes completed on or after January 1, 2007 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.

The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules Chapter 330, Division 90 applies to all Business Energy Tax Credit applications for facilities eligible for a 35 percent tax credit received by ODOE on or after December 1, 2007.

These rules also apply to applications for ~~renewable energy resource equipment manufacturing facilities~~; qualifying renewable energy resource facilities, including high efficiency combined heat and power facilities; qualifying homebuilder installed renewable energy facilities and high performance homes facilities received by ODOE on or after January 1, 2007. **These rules apply to renewable energy resource equipment manufacturing facilities approved for preliminary certification on or after January 1, 2008, and to tax years beginning on or after January 1, 2008.** These rules are effective ~~April~~ **June 20, 2008.**

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

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

##### 330-090-0110

###### Definitions

**(1) "Alternative Fuel":** A motor vehicle fuel, other than 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)":** A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles. This does not include vehicles leased by an investor-owned utility (IOU) to others.

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

(a) A person who applies for a preliminary certification of a Business Energy Tax Credit 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 pass-through partner, or commit to select such a partner prior to final certification.

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

(b) A person who applies for a final certification of a Business Energy Tax Credit under this section must be the facility owner.

(c) The tax credit certificate will be issued to a facility owner, 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, and

(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, and

(c) Ethanol ( $\text{CH}_3\text{CH}_2\text{OH}$ ) 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, and

(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.

**(7) "Building Code":** Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

**(8) "Building Automation Controls Facility":** Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 19(b)(D) of this rule.

**(9) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)":** A manual produced by and available from ODOE describing specific technical

requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

**(10) "Carpool Facility":** A facility in which riders share the same vehicle to commute between different communities or neighborhoods on a regular basis.

**(11) "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.

**(12) "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.

**(13) "Commissioning":** The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

**(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:
  - (i) Separate from the lease for the business premises.
  - (ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.
- (c) Owned by the employer.
- (d) Not located in a lot used primarily for business customers.



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

**(16) "Completed Application":** Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

**(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 which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

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

**(19) "Cost":** The actual capital costs and expenses the Director finds are needed to acquire, erect, build, modify, or install a facility under these rules. Ancillary costs that otherwise would be incurred (such as replacing wiring to meet current building code) are not eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions, other than costs financed by grants excluded by ORS 315.356(1) that are not 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;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the facility; and

(D) Work performed by employees of the applicant based on the following conditions:

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

(ii) Costs for employee's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

- (A) Interest and warranty charges;
- (B) Litigation-related legal fees and court costs;
- (C) Patent searches, application and filing payments;
- (D) Costs to maintain, operate, or repair a facility; or
- (E) Administrative costs to apply for a tax credit for a facility including, but not limited to, the Business Energy Tax Credit review charge and the cost paid to secure a pass-through partner for the facility.
- (F) 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. ODOE 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.

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

(B) In other 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 one to 15-year simple payback period unless specified below. 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 weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic eligible facility costs will be limited on a dollar-per-watt basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

- (i) The precertified eligible costs will be effective for 36 months for public facilities and 12 months for all other facilities from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(E) For solar thermal systems, the maximum eligible cost shall be limited on a capacity basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

- (i) The precertified eligible costs will be effective for 12 months from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(F) Sustainable Building, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities are exempt from simple payback requirements.

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

(h) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(i) 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, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service, 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.

(j) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the facility cost based on similar facilities, but not exceeding 40 percent of the purchase cost.

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

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

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(l) Sustainable Building Facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building facilities OAR 330-090-0135.

(m) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

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

**(21) "Director":** The Director of the Oregon Department of Energy or designees.

**(22) "Energy Department":** The Department of Energy of the State of Oregon (ODOE).

**(23) Energy Facility":** means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization 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.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily

acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

**(24) “Facility”:** means an energy facility, recycling facility, rental 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, a renewable energy resource equipment manufacturing facility or Research, Development & Demonstration facility that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development or recycling facility.

(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 BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(19)(e), of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) A new electric motor that complies with the BETC Technical Requirements.

(e) 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.

(f) An energy facility does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

**(25) “Facility Eligible Square Footage”:** For the purpose of calculating the tax credit amount for a Sustainable Building Facility, facility eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area 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.

**(26) “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.

**(27) “Facility Owner”:** An applicant who purchases and owns a qualified facility.

**(28) “Facility Start”:** The date the applicant chooses to write on the preliminary certificate application that meets one of the following criteria:

(a) A non-refundable deposit is place on the facility equipment;

(b) A purchase order is placed for the equipment;

(c) A contract is executed for the design of the facility;

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

(e) The date facility information for a preliminary certification application is received by a cooperative agreement organization.

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

(30) **"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).

(31) **"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 Business Energy Tax Credit.

(32) **"High Efficiency Combined Heat and Power"**: 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. The fuel-chargeable-to-heat rate would need to be 5,440 Btu/kWh. (See BETC Technical Requirements for formula and other specifications.) This renewable energy resource facility would be eligible for a 50 percent Business Energy Tax Credit. Facilities that do not meet this requirement may be eligible for a 35 percent tax credit under Combined Heat and Power facilities or may qualify in part for a tax credit relating to the heat recovery portion of the facility.

(33) **"High Performance Home"**: is an energy facility that is a new dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code which has its own space conditioning and water heating systems, complies with the specifications listed in the BETC Technical Requirements and is intended for sale to an end-use homebuyer. A High Performance Home must include a Homebuilder Installed Renewable Energy System that produces at least 1 kWh per square foot of conditioned space on an annual basis for photovoltaics or the equivalent for other technologies as listed in the BETC Technical Requirements. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying High Performance Home features qualifying for the Business Energy Tax Credit.

(34) **"Homebuilder Installed Renewable Energy Facility"**: is a renewable energy resource facility in a single family dwelling that meets specified technical requirements as listed in the BETC Technical Requirements. The renewable energy resource facility must be approved by a technician certified by the Oregon Department of Energy. Renewable energy resource facilities must be connected to the home's main service panel and the installers must provide a two-year warranty covering all parts and labor. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying Homebuilder Installed Renewable Energy Facility features qualifying for the Business Energy Tax Credit.

Renewable energy resource facilities may include:

- (a) Photovoltaic - The credit amount is based on \$3 per watt of installed capacity.
- (b) Solar Domestic Water Heating - The credit amount is equal to \$0.60 per kWh saved as determined by the ODOE solar domestic water heating yield table.
- (c) Active Solar Space Heating -The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by ODOE staff.
- (d) Passive Solar - The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space.
- (e) 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 \$2.00 per kWh saved.

**(35) “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 list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

**(36) “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.

**(37) "Industrial Process Energy Facility":** An energy facility that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

- (a) An energy facility that provides substantial energy savings from conservation, or;
- (b) A renewable energy resource facility that provides substantial energy savings through the use of renewable resources; or
- (c) A renewable energy resource facility that provides substantial energy savings by recovering waste heat from cogeneration systems; or
- (d) A renewable energy resource facility that prepares or conditions alternative fuels for distribution or dispensing; or
- (e) An energy facility that increases industrial process efficiency through recycling market development; or
- (f) An energy facility that provides emergency replacement inventory of electric motors as defined in (20)(e) of this rule; but



(g) Does not include space conditioning for human comfort or general illumination.

**(38) "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.

**(39) "Least Cost Plan":** A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

**(40) "Lighting Facility":** Means an energy facility that will reduce the affected lighting energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the facility or that will be subsequently replaced will be recycled and, if so, how.

**(41) "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.

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

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

**(44) "Necessary Feature":** A feature for which its 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 in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

**(45) “Net Present Value”:** A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b). Also referred to as the “pass-through rate.”

**(46) “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.

**(47) "Parking Cash Out"** means a facility that offers cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

**(48) “Pass-through Option”:** An option that allows a facility owner to transfer the facility’s tax credit eligibility to persons or businesses in return for a cash payment equivalent to the net present value.

**(49) “Pass-through Partner”:** A person or business or persons or businesses accepting 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 ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE's Premium Efficient Commercial Appliances Directory.

**(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":** A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

**(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":** means an energy facility with equipment used in a business for recycling in communities not subject to OAR 340-090-0030 (2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any facilities which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(b) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

**(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"** includes, but is not limited to:

(a) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, solar energy, wind power, water power or geothermal energy; or

(b) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(A) That does not exceed 10 megawatts of installed capacity; or

(B) Qualifies as a research, development or demonstration facility.

**(59) Renewable Energy Resource Facility:**” means an energy facility used in the processing or utilization 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 Resource Equipment Manufacturing Facility”:** means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Oregon Department of Energy in these rules. ~~a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Oregon Department of Energy pursuant to ORS 469.197(4).~~

**(61) "Research, Development, and Demonstration Facility (RD&D)":** A facility that complies with (a) through (e):

- (a) A facility that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized, and complies 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 though 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.

(F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy ~~Office~~ 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 Business Energy Tax Credit; 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 also include costs inherent in a research, development and demonstration facility which may not result directly in saved or produced energy. Such costs may include facility design, monitoring, assessment, evaluation and reporting, including development of standards, specifications, policies and procedures facilitating technology transfer and instruments, controls, and other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(e) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110 (19)(f),

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

**(63) "Rideshare Matching Services Program":** A facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis.

**(64) "Service Life":** Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

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

**(66) "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.

**(67) "Substantial Energy Savings":** Means that ODOE 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 facility as defined under "Sustainable Building" of this rule; or

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

**(68) "Sustainable Building 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

(b) 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.

(c) For a Sustainable Building Facility to be eligible for a tax credit it must also comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

**(69) "Transportation District":** A transportation district included in ORS 184.675(7).

**(70) "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 or from an office near home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new or used equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other

equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework 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 purchase of vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

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

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

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation 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) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) Transportation Service is defined as a 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.

(k) 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.

(l) Rideshare Matching Service is defined as a facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis. 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.

(m) Carpool/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 does 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.



(n) 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.

**(71) "Transportation Provider":** means a public, private, or non-profit entity that provides transportation services to members of the public.

**(72) "Transportation Services Contract":** A written contract or agreement that is related to a transportation facility.

**(73) "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.

**(74) "Vanpool Program":** A is defined as a facility that is 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.

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

**(76) "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.

**(77)"Year":** Calendar year.

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

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

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### **330-090-0120**

#### **What Qualifies for a BETC**

Both the party asking for a BETC and a facility must comply with these standards.

#### **(1) Standards for an Applicant -- An applicant must:**

- (a) Be an applicant as defined by these rules; and
- (b) Own or contract to buy a facility; or
- (c) Own or contract to buy or lease an Oregon firm that will use or lease the facility or sell power from the facility.

#### **(2) Standards for a Facility -- A facility must:**

- (a) Be a facility as defined by these rules; and
- (b) Comply with or have a variance from the land use laws of the city or county where the facility will be located; and
- (c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) 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). Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

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

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

(d) Include only costs allowed by these rules.

**(3) Standards for a Leased facilitiesFacility:** A BETC may be granted to the owner of a facility ~~which~~ who leases the facility for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

~~Eligible Costs of a A BETC may be granted based on the eligible costs of a Eligible costs do not include costs of a and therefore why the costs of such of such equipment, machinery or other products are eligible costs~~

**(4) Standards for a Renewable Energy Resource Equipment Manufacturing Facility:** To be eligible for a Business Energy Tax Credit, the applicant must demonstrate that the facility will be used solely to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. A facility that is used to manufacture equipment, machinery or other products that will not be used exclusively for renewable energy resource facilities is not eligible for the credit as a renewable energy resource equipment manufacturing facility. An application for a Business Energy Tax Credit for a renewable energy resource equipment manufacturing facility must provide sufficient information to allow the Director to find that the facility is used exclusively for a renewable energy resource facility, 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.

~~(55) Standards for Determining What Constitutes a Single Renewable Energy Resource Equipment Manufacturing Facility:~~ In determining whether to grant a BETC for a renewable energy resource manufacturing facility, the director will consider the criteria established in OAR 330-090-0120 (6) (C).

**(466) Standards for Distinct Facility Characteristics:** A facility must have distinct essential characteristics to be considered a facility separate from another facility subject to the facility cost limitation imposed OAR 330-090-0150 (1)(a). Facilities that are not clearly distinguishable will be considered as one facility subject to the facility cost limitation.

(a) If an applicant is applying for a preliminary certification for a facility qualifying under the same specific facility definition under OAR 330-090-0110 as any other facility for which the applicant has received preliminary or final certification, the applicant must demonstrate that the facility has distinct essential characteristics or the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150 (1)(a), except as otherwise provided in OAR 330-090-0120 (4)(B) and (4)(b). In its application, the applicant must specifically address each of the essential characteristics **criteria** cited for the facility and clearly state the basis on which it believes the facilities have distinct essential characteristics. The applicant may also cite any other essential characteristics it believes are applicable and clearly state the basis on which it believes the facilities have distinct essential characteristics.

(A) Except as provided in subsection (B) of this section, ~~questions-criteria~~ to be considered in determining essential characteristics of a renewable energy resource facility include but are not limited to:

- i. What is the purpose or end-use application of the facilities and how are those purposes or end-use applications distinct?
- ii. What are the applicable permits, licenses or site certificates and how are they distinct?
- iii. Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?
- iv. How, when, and from whom was the generating equipment procured for the facility and how is the procurement distinct?
- v. What are the net metering or power purchase agreements and how are those agreements distinct?
- vi. Where and how will the facilities connect to the grid and how will that connection be distinct?
- vii. What will be the applicable transmission agreements and how will those agreements be distinct?
- viii. What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?
- ix. What will be the operation, including dispatch if applicable, and maintenance agreements or arrangements and how are those agreements or arrangements distinct?

- x. What will be the financing arrangements and how are the financing arrangements distinct?

(B) For renewable energy facilities that qualify as small power production facilities under Oregon Public Utility Commission docket number UM1129 definition of separate site, each small power production facility may qualify for a Business Energy Tax Credit ~~with the following provisions:~~based on the following criteria:

- i. Each applicant will only be allowed to take the applicant's proportion of any shared interconnection infrastructure.
- ii. Each applicant must identify other entities that share the applicant's interconnection infrastructure.

(C) Essential characteristics of a renewable energy resource equipment manufacturing facility include but are not limited to the following criteria:

- i. How is the land, structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-090-0150 (1)(a)(A) distinct from a facility that has received preliminary or final certification?
- ii. What is the purpose or end-use product of the facilities and how are those purposes or end-use applications distinct?
- iii. What are the applicable permits, licenses or site certificates and how are those permits, licenses or site certificates distinct?
- iv. Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?
- v. What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?
- vi. What are the operating characteristics and will the facilities have distinct operating characteristics?
- vii. What will be the financing arrangements and how are the financing arrangements distinct?

(D) ~~Questions-Criteria~~ to be considered in determining the essential characteristics of all other facilities include but are not limited to:

- i. What is the purpose or end-use application of the facilities and how are those purposes or end-use applications distinct?
- ii. What are the applicable permits, licenses or site certificates and how are they distinct?
- iii. Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?
- iv. How, when and from whom was the generating equipment procured for the facility and how is the procurement distinct?
- v. What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?
- vi. What will be the operation and maintenance agreements or arrangements and how are those agreements or arrangements distinct?
- vii. What will be the financing arrangements and how are the financing arrangements distinct?

(b) If facilities will be completed in phases over time, the applicant must demonstrate that the facilities would independently qualify as an eligible facility and that the facilities are not interdependent in purpose or the manner in which they will be owned, financed, constructed, operated, or maintained or the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150 (1)(a).

(c) If the applicant does not demonstrate that the facilities are clearly and substantively distinguishable, the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150 (1)(a) ), except as otherwise provided in OAR 330-090-0120 (4)(b).

**(57) Standards When Replacing a Facility:** If a facility is replaced or reconstructed and a preliminary certification is filed for a tax credit on the replacement or reconstructed facility, the tax credit for the replacement or reconstructed facility may be reduced by the amount of the original tax credit remaining for the original facility.

**(8) Eligible Costs of a Renewable Energy Resource Equipment Manufacturing Facility:** A 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.

- a. Subject to the facility cost limitations of OAR 330-090-0150 (1)(a)(C) and the provisions of OAR 330-090-0120 (5), eligible costs for a renewable energy resource equipment manufacturing facility 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 330-090-0150 (1)(a)(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 for a renewable energy resource equipment manufacturing facility 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.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f.12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

### **330-090-0130**

#### **How ODOE Handles a BETC**

##### **(1) General:**

- (a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.
- (b) To begin the review process for each stage, or to change the facility during the review process, an applicant must notify ODOE in writing.
- (c) A facility owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(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.

**(2) Preliminary Certification Preapproval:** The Director may preapprove a preliminary certification for facilities that ODOE has reviewed and determined to be otherwise qualified under these rules. Such facilities may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a facility owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Pre-qualified hybrid-electric vehicles.

(c) Facilities that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

**(3) Preliminary Certification Review Process:** Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on a facility begins.

(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 469.185 to 469.225 and any applicable rules or standards adopted by the Director. If it is not complete, the incomplete application will not be accepted and will be returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, **except as otherwise provided in subsection (c)**, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the 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 final certification. If an



application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

- (c) 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 will not be revised if conditions under ORS 469.200(2) change.

**(4) A Completed Preliminary Certification Application Must Contain:**

- (a) The name, address, and phone number of the applicant and other parties involved in the facility.
- (b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.
- (c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).
- (d) Facts that show the proposed use is a facility under these rules.
- (e) Facility start and finish dates.
- (f) Facts that describe the facility, its costs, its expected life, and its simple payback in the detail required by ODOE.
- (g) The facts documenting substantial energy savings or a description of products that will result from the facility.
- (h) The applicant's signature on the application attesting that it is correct.
- (i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.
  - (A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before facility development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable 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.

(B) For a wind energy facility:

(1) 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

(2) 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

(3) 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

(4) 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.

(5) In the event that estimated wind resource data are used as described under section (3) and (4) above, the project owner shall provide to ODOE 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 of the wind energy facility's site.

(C) For a geothermal energy facility (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy needs.

(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 g/hr for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(k) The payment required by OAR 330-090-0150(2).

(l) For wind facilities:

(A) Equipment must meet the following:

(1) Each 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

(2) Proof that the 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 as of March 20, 2008; or

(3) The 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).

(B) The Oregon Department of Energy 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 generator.

(m) For alternative fuel vehicle facilities: proof that the 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).

(n) For alternative fuel vehicle facilities: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling station facilities: a description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) For transportation facilities: required documentation for each category specified by OAR 330-090-0110 (62) (a through n).

(q) For a waste-to-energy renewable energy resource facility that meets the definition of waste stream, includes the percentage of waste stream product to be recovered and a remediation plan for emissions and byproducts.

(f) For a 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 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.

(B) In considering such applications, the Director may consult with other state agencies and will consult with the Oregon Economic & Community Development Department.

(C) 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 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) ~~and~~ 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 the 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 the facility in Oregon.

(s) Other ~~data information and assurances~~ the Director requires to ~~assure-find that~~ a facility complies with these rules.

#### **(5) 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 preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

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

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

(B) Special circumstances make application for preliminary certification before facility start up a hardship. 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.

**(6) How Preliminary Certification Can be Revoked:** The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A facility, ~~other than a renewable energy resource equipment manufacturing facility~~, -is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved. ~~A renewable energy equipment manufacturing facility is not started before 1,825 days (5 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.~~

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

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

**(7) Changes Between Preliminary Certification and Final Certification:** To change a facility that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, facility design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed facility complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the 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 planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the 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 tax credit may not be transferred until the facility owner has received the pass-through payment in full and notified ODOE.

**(9) Final Certification Review Process and Application:** An application for final certification must be filed after the facility is complete.

(a) Within 30 days after a final certification application 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. If it is not complete, the incomplete application will not be accepted and will be returned to the applicant and the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(17)(b). For a Research, Development & Demonstration facility, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within six months after the facility begins to operate; and, if needed to make the facility work better. **Also, the final certification may state any conditions that must be met in order to retain tax credit benefits or the tax credit may be subject to revocation.**

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

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

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The facility complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the facility remains in accord with local, state, and federal laws. This includes local land use laws.

(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 based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner; or

(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or

receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19); or

(iii) For a sustainable building 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 BETC Technical Requirements and method of calculation will be accepted in lieu of facility cost receipts.

(C) Proof the facility is completed.

(D) If the facility is leased, a copy of the lease.

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

(F) Other data the Director finds are needed to assure a facility complies with these rules.

**(10) Changes After Final Certification:**

(a) The applicant must inform the Director in writing within 60 days and before another tax credit is claimed if a facility that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased facility has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a facility may apply for final certification. The request must comply with OAR 330-090-0130(9). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

**(11) Basis for Revoking Tax Credit Benefits:** For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a facility owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The facility has been moved; or

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

(C) The facility is not operating; or

(D) The term of a leased facility has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.



(c) The applicant does not provide information about the facility in a reasonable time after the Director requests it.

(d) Other changes in the facility or its owner or lessor that violate these rules in the years for which the credit is claimed.

(e) The applicant does not conform to the conditions established in the final certification.

**(12) Loss of Tax Credit Benefits:** If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the facility owner may not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the facility owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(c) If a final certification issued for a renewable energy resource equipment manufacturing facility is revoked, the Director shall notify the Oregon Department of Revenue which will proceed to collect:

(A) From the applicant or any successor in interest to the business interests of that person, in the case of a tax credit that has not been transferred to a pass-through partner, the full amount of the tax credit claimed. Unclaimed credits shall be forfeited.

(B) From the applicant or any successor in interest to the business interests of that person, in the case of a tax credit has been transferred to pass-through partners, the full amount of the tax credit. Pass-through partners may continue to claim all remaining amounts of the tax credit issued to them.

**(13) Request for Reconsideration:** An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

**(14) Inspections:** After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the facility. ODOE will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

**(15) Public Access to Program Records:**

(a) ODOE will not disclose data about a facility, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

### **330-090-0135**

#### **Business Energy Tax Credit Sustainable Building Facility Rules**

(1) To be eligible for a tax credit, sustainable building 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 BETC Technical Requirements, 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 ODOE. Sustainable building facilities must also comply with all applicable BETC Technical Requirements.

(2) All Sustainable Building Facilities must acquire a preliminary certification from ODOE 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 LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify ODOE in writing, and provide a statement of intent to apply for a tax credit as an energy 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) ODOE may, at its discretion, convert a preliminary certification for an Energy Facility to a preliminary certification as a Sustainable Building Facility, or accept a statement of intent to register as a Sustainable Building Facility, provided that a certified copy of the U.S. Green Building Council facility registration certificate is provided to ODOE within 30 days of the new preliminary certification date.

Stat. Auth.: ORS Ch. 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

## 330-090-0140

### Pass-through Option Facilities

#### **(1) Accepting a Business Energy Tax Credit Certificate in Return for a Cash Payment Equivalent to Net Present Value of the Tax Credit.**

(a) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a facility that is otherwise eligible for the tax credit in return for a cash payment equivalent to the net present value of the tax credit.

(b) Net Present Value: The minimum tax credit required to be passed through, known as the net present value, to an otherwise eligible applicant who purchases and owns a qualified facility. The net present value is applied to the final certified cost of the facility to determine the amount of the pass-through payment.

(A) The net present value will be determined and published at least each year and may be periodically revised by the Director.

(B) The Director may establish different net present value amounts for facilities with final certifications of more than \$20,000 and for facilities with final certifications of \$20,000 or less.

- (a) 50% BETC more than \$20,000 in eligible costs – 33.5% pass-through rate
- (b) 50% BETC \$20,000 or less in eligible costs – 43.5% pass-through rate
- (c) 35% BETC more than \$20,000 in eligible costs – 25.5% pass-through rate
- (d) 35% BETC \$20,000 or less in eligible costs – 30.5 % pass-through rate
- (e) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits – 87% of tax credit amount

(C) In making a determination of the pass-through amounts, the Director may consider the inflation rates, opportunity costs, and tax consequences among other factors.

(D) The net present value for the facility is the amount in effect when ODOE receives the pass-through option agreement declaring a pass-through partner, without regard to when the final certification is issued.

#### **(2) An Investor-Owned Utility May Choose to Become a Utility Pass-Through Partner under the Provisions of this Section or Participate as a Pass-Through Partner under Other Provisions of These Rules that Would Apply to Any Other Pass-Through Partner.**

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

(b) Preliminary certification standards and process:

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

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

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

(D) The application for preliminary certification of the pass-through must include a supplemental work plan, which includes a copy, or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered. The applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each 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(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Director for final certification. An application must contain:

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

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

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

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

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

(vii) If the facility costs are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the 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 OAR 330-090-0110(19).

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

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).

(B) Within 30 days after a final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13). The Director will approve final certification if:

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

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

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment will be the lesser of 25 percent of the cost-effective portion of the energy conservation measures, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; or \$350 per rental dwelling unit, plus the present value of the tax credit accrued the IOU may claim; or,

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

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

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01

### **330-090-0150**

#### **Budget Limits and Payments for BETC**

**(1) Amount of Credits Allowed 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 ~~renewable energy resource equipment manufacturing facility~~ or high efficiency combined heat and power facility;

(B) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits subject to subsection (b).

(C) \$40 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility.

(b) A final certification for a Business Energy Tax Credit 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:** If under OAR 330-090-0130, ODOE does not accept and returns an incomplete application for preliminary certification, ODOE 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 ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification. For all facilities except Sustainable Building Facilities, ~~renewable energy resource equipment manufacturing facilities~~, or ~~facilities~~ qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or \$30 whichever is greater. The maximum payment amount is \$35,000. The 0.0060 payment rate up to \$35,000 will be applied to all facilities with eligible costs of \$1 million and more that were received on or after January 1, 2007. For facilities with eligible costs of less than \$1 million, the 0.0060 payment rate up to \$35,000 will be applied to applications received on or after December 1, 2007. ~~For renewable energy resource equipment manufacturing facility applications received on or after January 1, 2007, but before the effective date of these rules, the payment will be 0.0060 multiplied by the facility eligible costs requested in the preliminary certification application, or a request to amend the preliminary certification, not to exceed a payment amount of \$35,000. For renewable energy resource equipment manufacturing facility applications received on or after the effective date of these rules, the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, not to exceed a payment amount of \$75,000.~~ For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a

request to amend a preliminary certification. For 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 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Only refunds that are \$10 or greater will be issued. Amounts under \$10 will not 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) 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 (2)(a) of this rule.

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

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01