

**DEPARTMENT OF ENERGY  
DIVISION 210  
CONSERVATION ENERGY INCENTIVE PROGRAM**

**330-210-0000**

**Applicability of Rules in OAR 330, Division 210**

(1) These rules implement the incentive program for energy conservation projects established by House Bill 3672 (2011) and amended by House Bill 4079 (2012) and House Bill 2448 (2015). The rules also provide procedures for submission, agency review and selection of energy conservation projects for preliminary and final certification of tax credits.

(2) These rules apply to all applications for tax credits and certifications for energy conservation projects, as governed by ORS 315.331 and ORS 469B.270 to 469B.306.

Stat. Auth.: ORS 469.040, 469B.306, ~~OL 2015 Ch. 545~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, ~~OL 2015 Ch. 545~~

**330-210-0010**

**Definitions**

For the purposes of this division, the following definitions apply:

(1) "Applicant" means a person who has applied for or who has received a preliminary certificate for a conservation energy incentive program tax credit, who has submitted an informational filing for a small premium project, who has applied for or received a final certification for an energy incentive program tax credit, or who has entered into a performance agreement with the department.

(2) "Certified cost" means the cost ~~certified in the final certification~~ determined by the department during the review of the final application, used as the basis for calculating the tax credit documented on the final certificate.

(3) "Cost" has the meaning given in ORS 469B.270, the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the director of the department.

(6) "Energy conservation project" has the meaning given in ORS 469B.270, any capital investment for which the first year energy savings yields a simple payback period of greater than three years. "Energy conservation project" does not include:

(a) Recycling equipment, products and projects;

(b) Transportation projects;

(c) Energy recovery as that term is defined in ORS 459.005; or

(d) Alternative fuel vehicles.

(7) “Incremental cost” means the difference between the cost of doing the energy conservation project with the energy efficient features and the cost to construct a similar project at current Oregon energy code or documented industry standard.

(8) “Installation or construction” means the process of physical assembly of an energy conservation project or supporting infrastructure at its operating location.

~~(9) “New construction” means a building project that is newly constructed.~~

~~(109)~~ “Opportunity period” means the timeframe specified in an Opportunity Announcement for the department to accept applications for energy conservation projects.

~~(104)~~ “Qualified third party” means a third party, selected by the director, that provides recommendations to the director regarding a research and development energy conservation project.

~~(112)~~ “Qualifying ~~project~~ cost” means the amount of the energy conservation project’s proposed cost that ~~is may be eligible for the program used in calculating the amount of tax credit certified.~~

~~(123)~~ “Research and development project” means an energy conservation project that a qualified third party recommends to the department as one that demonstrates innovation.

~~(134)~~ “Service life” means equipment service life as established in the ~~2011-2015~~ 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 department receives a complete preliminary application or, for equipment not rated by ASHRAE, as determined by the department.

~~(145)~~ “Small premium project” means an energy conservation project with qualifying ~~project~~ costs of less than \$20,000 for which the department has identified prequalified measures.

~~(156)~~ “Total building retrofit” means a comprehensive building retrofit that includes energy efficiency projects for each energy-using system including the building envelope. A building retrofit that does not include each energy-using system may also apply as a total building retrofit; if the project meets the eligibility standards described in OAR 330-210-0070.

~~(167)~~ “Total project cost” means all costs directly associated with an energy conservation project, including costs that are not qualifying ~~project~~ costs.

Stat. Auth.: ORS 469.040, 469B.306, ~~OL 2015 Ch. 545~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, ~~OL 2015 Ch. 545~~

**330-210-0020**

## Opportunity Announcement

(1) The department will announce the availability of tax credits for energy conservation projects by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit caps specified in ORS 469B.303.

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to future Opportunity Announcements, including between categories.

(4) The Opportunity Announcement will include the following information:

(a) Objectives for the opportunity period;

(b) The approximate amount of tax credits available;

(c) Application requirements, as defined in OAR 330-210-0050;

(d) Dates of the application opportunity period;

(e) Instructions and directions to the required application forms and materials;

(f) Minimum technical standards based on relevant industry standards used to conserve or reduce energy use;

(g) The criteria to be applied in prioritizing applications for tax credits, as described in OAR 330-210-0060; ~~and~~

(h) The date of the sunset of the program; and

~~(i)~~ Other information the department considers necessary.

(5) The department may increase the amount of tax credits available for an Opportunity Announcement.

Stat. Auth.: ORS 469.040, 469B.306~~OL 2011, Ch. 730, Sec. 34 – 51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34 – 51~~

### 330-210-0030

#### Preliminary Certification Application

(1) Any person may apply for preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement. A preliminary certification application is not required for applicants submitting an informational filing under the small premium project process.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application “submitted” when the department receives the application accompanied by the fee specified in these rules.

(c) The department will not ~~process-review~~ applications received outside of an opportunity period, and will return the application fee received.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) ~~The department will not accept amendments to applications during the opportunity period.~~ An applicant may withdraw an application and submit a replacement application during the opportunity period. Replacement applications may be submitted without an additional application fee during an open opportunity period. ~~The department will not process fees for applications withdrawn before the end of the opportunity period.~~

(4) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating in the partnership, joint venture or association. The department may use this information to ensure compliance with ORS 469B.288(3).

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation, or LLC and its parent corporations, members, and any close affiliates or subsidiaries. The department may use this information to ensure compliance with ORS 469B.288(3).

(C) If the applicant is a public or governmental entity, the application must include written authorization from the entity’s governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

- (c) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.
- (d) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the energy conservation project at the time of installation or construction of the project.
- (e) A description of the personnel and teams that will be working on the energy conservation project's development, implementation and operation.
- (f) If the applicant has received final certification of tax credits or payment of grants issued by the department within the last 5 years, the application must contain a statement about the operational status of the projects awarded such grants or tax credits.
- (g) The location of the energy conservation project.
- (h) A statement explaining how and in what amount the energy conservation project will reduce the consumption of purchased energy or use energy more efficiently.
  - (A) The statement must identify the annual energy use separated by fuel type of the energy conservation project at the following conditions: proposed conditions, baseline conditions, along with existing conditions, if the project involves a retrofit.
    - (i) Annual energy use at proposed conditions must be calculated using energy engineering methods as outlined in the Opportunity Announcement.
    - (ii) Baseline conditions and assumptions must be described in detail.
    - (iii) For retrofit projects, existing annual energy usage must be supported by a minimum of 24 consecutive monthly utility bills or a calculation approved by the department.
  - (B) If applicable, provide information about the expected level of sustainable building practices project performance.
    - (i) A detailed description of the energy conservation project, including information that demonstrates how the project will be technically feasible and how the project will operate for at least five years as represented in the application. This may require documentation in addition to the application form.
    - (j) The expected operational life of the energy conservation project.
    - (k) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits.

(L) The number and type of new jobs that will be created by the energy conservation project and the number of existing jobs that will be sustained throughout the construction, installation and operation of the project. Job estimates should be submitted in hours. These hours must directly relate to the energy conservation project.

(m) The energy conservation project's anticipated total project cost, including the energy conservation project's incremental cost, if applicable.

(n) The amount of anticipated or received incentives directly related to the energy conservation project.

(o) A project schedule.

(p) All research and development projects must include a recommendation from a qualified third party that the project demonstrates innovation.

(q) A description of the applicant's installation or construction financing plan.

(r) The dollar amount of tax credit requested by the applicant.

(s) If the applicant has already started installation or construction of the energy conservation project, a written description of the special circumstances that rendered the filing of an application prior to the start of construction or installation unreasonable.

(t) Other information the department considers necessary.

Stat. Auth.: ORS 469.040, 469B.306~~OL 2011, Ch. 730, Sec. 34 – 51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34 – 51~~

### **330-210-0040**

#### **Fees**

The department adopts the following schedule of fees as provided by ORS 469B.294 for applicants. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants, except those applying through the small premium project process, must submit an application fee of \$500 with their preliminary certification application.

(2) Applicants applying through the small premium project process must submit a fee of \$75 with their informational filing.

(3) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying ~~project~~-cost multiplied by 0.9 percent. Small premium projects are not subject to the technical review fee.

(4) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(5) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying ~~project~~ cost multiplied by 0.55 percent. All applicants seeking final certification for a project, including small premium projects, are required to apply for final review and pay the final review fee.

(6) Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant, except those using the small premium project process, in obtaining a pass-through partner or partners, the fee for that assistance is 1.25 percent of the tax credit amount plus \$200 per tax credit certificate issued.

(b) If the department does not assist the applicant, except those using the small premium project process, in obtaining a pass-through partner, the fee is \$200 per tax credit certificate issued.

(c) Applicants for small premium projects, the fee is \$200 plus \$100 per each additional tax credit certificate issued. The additional fee of \$100 per certificate issued does not apply to the first certificate.

(7) Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee. The fee for small premium project applicants is \$200 plus \$100 per each additional tax credit certificate issued and the fee for all other applicants is \$200 plus \$100 per tax credit certificate issued. The additional fee of \$100 per certificate issued does not apply to the first certificate for small premium project applicants.

(8) Applicants subject to recertification must submit a fee of \$750 with each application for recertification.

(9) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 469.040, 469B.294, ~~&~~ 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306, ~~&~~ 315.331, ~~OL 2015 Ch. 545~~

### **330-210-0045**

#### **Small Premium Project Review Process**

(1) Projects with qualifying ~~project~~ costs of less than \$20,000 may utilize the small premium project informational filing process, instead of the preliminary certification and competitive review process, if the project complies with the minimum department-established standards.

(a) Qualifying costs for the purposes of the small premium project informational filing process are determined by the predetermined tax credit amounts based on savings and cost. The department will

post the predetermined tax credit amounts. Based on the estimated predetermined tax credit, the department will calculate the qualifying cost for the project.

(b) Based on the requested predetermined tax credit amount in the informational filing, the department will reserve a tax credit for the project.

(c) Energy conservation projects with qualifying ~~project~~ costs of less than \$20,000 may participate in the preliminary certification ~~and competitive review~~ process. Applicants may not receive an energy conservation tax credit for the same project from both processes.

(2) The department will issue an Opportunity Announcement for small premium projects. The opportunity period will remain open from the date the department issues the Opportunity Announcement until stated in the Opportunity Announcement and could end sooner if funds are exhausted. The Opportunity Announcement will list the types of technologies with the minimum standards as defined by the department. The types of technologies may include:

(a) Adjustable Flow Irrigation Pumping,

(b) Agricultural Irrigation System Improvement,

(c) Boiler-Vent Dampers,

(d) Building Envelope Thermal Improvement,

(e) Commercial Indoor Lighting,

(f) Compressed Air Systems Components,

(g) Direct-fired Radiant Heating in High Volume Spaces,

(h) Ductless Heat Pumps with Variable Refrigerant Flow,

(i) Energy Improvements to Commercial Greenhouses,

(j) High Performance Homebuilding,

(k) Heat Pump Service Hot Water Heating,

(l) Industrial Piping Insulation,

(m) LED Outdoor Lighting,



~~(1A)~~ Premium Efficiency Electric Air Conditioning Equipment,

~~(2A)~~ Solar Thermal Water Heating, and

~~(3E)~~ Technology offerings approved by the department under section (9).

(3) Applicants must submit a complete informational filing prior to the project's installation or construction on the form specified in the Opportunity Announcement and include:

(a) The required filing fee; and

(b) Information demonstrating that the project meets the definition of an energy conservation project and is located in Oregon.

(4) The required fee to submit an informational filing is non-refundable, even if the informational filing is denied. The fee will be returned if tax credits for small premium projects have been fully allocated.

(45) Small premium projects are eligible for predetermined tax credit amounts based on savings and cost. During final certification, the department will determine the tax credit amount based on the certified cost, but the tax credit cannot exceed the lesser of: but the tax credits cannot exceed 35 percent of certified costs. The department will post the predetermined tax credit amounts in the Opportunity Announcement.

(a) 35 percent of the cost actually incurred that are eligible for the energy conservation project as described in OAR 330-210-0070(4); or

(b) The credit reserved on the acknowledgment of the informational filing form.

(6) The sum of any incentives, grants, credits and the energy conservation tax credit may not exceed total project costs.

(7) The department will determine whether the project is a single energy conservation project, or is part of a larger project when considered in combination with other applications as described in OAR 330-210-0070(5).

(a) For small premium projects, the department considers a single energy conservation project as one or more projects that are applied for in response to the same Opportunity Announcement, for the same technology sector, owned or controlled by the same person and located at the same building or structure.

(b) The department may reduce the potential tax credit award or deny the application if the department finds that the proposed project is not a single energy conservation project as described in subsection (a).

(58) If the tax credits available for small premium projects have been fully allocated before the department receives a complete informational filing from an applicant, the applicant will not be eligible for any tax credits for the project under the small premium review process but may participate in the preliminary certification competitive review process.

(69) If the department finds that the informational filing is complete, the department will confirm in writing the receipt of the informational filing. The department will not process incomplete filings, and will provide written notification to the applicant of the fact that the filing is incomplete.

(710) Receipt of an informational filing does not guarantee eligibility and issuance of a final certification for the tax credit. Applicants must also comply with all applicable statutory requirements and requirements listed these rules in order to receive tax credits. The department will determine the eligibility of the small premium project prior to issuing a final certificate.

(11) Informational filings for small premium projects may not be amended.

(812) Small premium project informational filings will expire 12 months after the date the department receives the informational filing or the sunset of the program, whichever comes first. ~~unless~~ ~~the~~ department must ~~receives~~ a complete final certification application before the end of the 12 month period or prior to the sunset of the program, whichever comes first.

(913) The department may consider proposals for new technology offerings for small premium projects within this section. The proposal application will include a set of guidelines that define the information that must be submitted for department review. The department will evaluate proposals and determine whether to include the technology and the rate at which to incentivize. The department may provide an opportunity for public comment on approved proposals prior to adding them to the Opportunity Announcement. All proposals must include:

(a) Regional data on the mean and range of technology unit costs,

(b) Regional data on the mean and range technology unit energy savings,

(c) Market projections,

(d) Evaluation of barriers and opportunities to market,

(e) Research references (e.g. periodical and article reviews),

(f) Evidence that the technology is currently listed as an emerging energy conservation technology by the Northwest Energy Efficiency Alliance, Bonneville Power Administration, U.S. Department of Energy or other agencies recognized and approved of by the department, and

(g) Any other information the department requires.

Stat. Auth.: ORS 469.040, 469B.285, 469B.306~~OL 2011, Ch. 730, Sec. 34-51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34-51~~

### 330-210-0050

#### Completeness Review

(1) ~~Following the opportunity period, t~~he department will review all preliminary certification applications, other than those participating in the small premium project process, to determine whether:

(a) All sections of the application are complete as outlined in the Opportunity Announcement.

(b) The applicant has submitted the required fee.

(c) The project meets the definition of an energy conservation project.

~~(d) The applicant intends to begin construction within 12 months of award.~~

~~(e)~~ The applicant is applying prior to the installation or construction of the project.

(A) If the applicant applies after installation or construction of the project has started, the department will deny the application unless a written explanation of the special circumstances is received and approved by the director.

(B) Failing to submit a timely application or the fact that the project was not selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

~~(f)~~ The energy conservation project is located in Oregon.

(2) If the department finds that the application is complete, the application will move into the competitive review process and the department will notify the applicant in writing.

(3) The department ~~will~~may deny~~all~~ incomplete applications and notify applicants in writing of the reason for denial of the application.

(4) The department considers the completeness review a test; the decision to deny an incomplete application is not subject to review under ORS chapter 183.

Stat. Auth.: ORS 469.040, 469B.303, 469B.306~~OL 2011, Ch. 730, Sec. 34-51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34-51~~

### 330-210-0060

#### Competitive Review

(1) The department will conduct a competitive review of all applications that pass the completeness review, other than those participating in the small premium project process.

(2) During the competitive review, the department's internal review team will prioritize applications for preliminary certification according to the criteria described in the rules. Depending on the Opportunity Announcement objectives, the department may give greater or lesser weight to each of the criteria listed in rules.

(3) For the purposes of the competitive review, the department will compare projects of similar technology types against each other. The department may issue an Opportunity Announcement combining two or more of the following technological sector categories and compare projects from the technological sector categories together. The technological sector categories for energy conservation projects are:

(a) Building envelopes, weatherization.

(b) Renewably sourced thermal energy projects that use a renewable energy source, such as solar, biomass or geothermal, directly without converting it to electricity. Within this category, energy savings will be determined through energy displacement.

(c) Commercial building systems.

(d) Sustainable buildings. This category is for projects that are eligible for tax credits under the standards for new construction and total building retrofit.

(e) Commercial, agricultural and industrial processes.

~~(f) Combined heat and power or co-gen Cool Schools. This category is for projects in which the applicant is a public school, educational services district or other entity considered as an eligible Cool Schools applicant by the department.~~

(4) Within the technological sector categories, the department may divide the applications into tiers based on project size. The Opportunity Announcement will have details about any tiers prior to implementation.

(5) In the Opportunity Announcement, the department will list the evaluation criteria for the competitive review. The competitive review will give preference to projects that have the highest energy savings over the five-year tax credit period per tax credit dollar requested. Additional criteria the department may consider includes:

(a) The amount of energy saved over the equipment's lifetime;

(b) The market or industry sector;

~~(bc)~~ The project's expected lifespan compared to the project's simple payback period;

~~(ed)~~ The incentive structure and whether the energy savings benefit a party other than the owner;

~~(de)~~ Lifetime energy savings compared to lifetime cost (benefit-to-cost ratio);

~~(ef)~~ The project implementation plan;

~~(fg)~~ The project financial plan;

~~(gh)~~ Information on jobs created and sustained;

~~(hi)~~ The geographical area and local economic conditions of the site location;

~~(ji)~~ Agreement to a voluntary reduction of requested tax incentive; and

~~(jk)~~ Agreement to a voluntary measurement and verification plan, which includes an agreement to share the results with the department.

(L) Integration with broader energy and environmental goals.

(6) The department's internal review team will recommend to the director which projects to advance to technical review based on the competitive review results. The director will review and then amend or approve the recommendations.

(7) The department will notify applicants of the competitive review's outcome. The department may place projects not advanced to the technical review phase on a supplemental list, pending the technical reviews of the selected projects. The department will retain the supplemental list until preliminary certifications have been issued for the selected energy conservation projects. The supplemental list will include only those projects submitted in response to the particular Opportunity Announcement.

(8) The department will deny applications not advanced to the technical review phase or advanced from the supplemental list. The department will notify applicants in writing of the reason for denial of the application.

~~(89)~~ If an applicant has not started installation or construction of the energy conservation project, an applicant may apply again for the same project in a future opportunity period by submitting a new application and fee. The department will not apply fees or applications submitted in response to a previous Opportunity Announcement to future Opportunity Announcements.

Stat. Auth.: ORS 469.040, 469B.303, 469B.306~~OL 2011, Ch. 730, Sec. 34 – 51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34 – 51~~

### 330-210-0070

#### Technical Review

(1) Once the department requests the technical review fee and the applicant has paid the technical review fee, the department will conduct a technical review of the project applications ~~s advanced from the competitive review process~~. If the applicant does not submit the required technical review fee to the department within 21 calendar days of ~~mailing of the notification from the date of the request for payment of the~~ for technical review fee, the department may deny the application.

(2) The department will review the information provided in the preliminary certification application against industry standards to determine whether the project is financially and technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible the energy conservation project must meet the following requirements:

(a) The project must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be the owner, contract purchaser or project lessee at the time of the project's installation or construction.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, a federally recognized tribe or public entity that partners with an Oregon business or resident. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A project located at a residential property must be rental property. A rental property must meet laws related to rental accommodations and contain a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner.

~~(e) Within the project schedule and detailed project description provided in the preliminary certification application, the applicant must demonstrate the ability to begin construction within 12 months from the date the department issues the project's preliminary certification.~~

~~(f)~~ (e) The energy conservation project must ~~meet the~~ have a simple payback period of greater than three years requirements. The department bases simple payback on total project cost divided by the

qualified annual energy savings. Total project cost is calculated for this purpose before any tax credits or grants are applied.

(g) An applicant for a new construction or total building retrofit project must indicate that the project will meet the current standard, at the time of application submission, for one of the following:

(A) Leadership in Energy and Environmental Design (LEED);

(i) The project must be seeking LEED platinum certification with a minimum of eight Optimize Energy Performance points; or

(ii) Using the appropriate peer reviewed energy modeling program, the project must show a minimum 26 percent improvement over ASHRAE 90.1-2007, without addenda.

(B) Green Globes

(i) The project must be seeking Green Globes, Four Globes certification; or

(ii) Using the appropriate peer reviewed energy modeling, the project must be a building falling within the 95th percentile, or better, of the equivalent building stock listed in the Commercial Buildings Energy Consumption Survey (CBECS). Where an equivalent building type is not listed, the modeling must be equivalent to a minimum 26 percent improvement over ASHRAE 90.1-2007, without addenda.

(C) Reach Code

(i) Project plans must be submitted to a local building department and approved for building under the Oregon Reach Code.

(ii) For proposed buildings either required to model or opting for the modeling path, the energy model must show at least an 18 percent improvement over the Oregon Energy Efficiency Specialty Code.

(D) Earth Advantage

(i) The project must be seeking Earth Advantage Gold Certification; or

(ii) Using the appropriate peer reviewed energy modeling program, the project must show a minimum 18 percent improvement over the Oregon Energy Efficiency Specialty Code.

(~~h~~g) An application for replacing inefficient equipment must demonstrate that the equipment being replaced is within its useful service life and in a good state of repair.

(~~h~~) A qualified third party must evaluate and recommend research and development projects.

(~~j~~) The qualified annual energy savings of the energy conservation project must pay back the qualifying ~~project~~-cost within the service life of the project. This requirement does not apply to research and development projects.

(~~k~~) The department may require that the baseline energy conservation project be specifically identified and permanently decommissioned.

(k) A combined heat and power or co-gen project must:

(A) Increase the overall efficiency as compared to existing energy use or standard separate power and heat production that would provide the same amount of net energy.

(B) Meet or exceed annual fuel conversion efficiency as outlined in the Opportunity Announcement.

(C) Meet any other requirements listed in the Opportunity Announcement.

(4) The department will review energy conservation project costs for eligibility to determine the qualifying ~~project~~-costs. Qualifying Costs may include the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project. The application must document total project cost by providing a list of itemized costs.

(a) Qualifying ~~project~~-costs, that directly contribute to the claimed energy savings of the energy conservation project, include:

(A) The cost of components of the proposed energy conservation project;

(B) Fees to design or engineer the energy conservation project;

(C) The cost of title searches, escrow fees, permit and license fees, excluding fees required by this rule, and shipping;

(D) Costs for all materials and supplies needed for the erection, construction, installation or acquisition of the proposed energy conservation project;

(E) Cost of work performed by employees or independent contractors of the applicant based on the following conditions:



- (i) Employees or contractors must be certified, accredited, licensed or otherwise qualified to do the work;
- (ii) The work must be associated with the erection, construction, installation or acquisition of the proposed energy conservation project;
- (iii) Project management and other similar costs may only account for up to 15 percent of the qualifying project costs; and
- (iv) Costs for employees' or contractors' work on the energy conservation project must be detailed and documented as to specific tasks, hours worked and compensation costs. This cost may include employee benefits and taxes;

(F) Costs for legal counsel that is directly related to the development of an energy conservation project (excluding litigation, intellectual property, etc.);

(G) Costs of training associated with the energy conservation project that is approved by the department; and

(H) Other costs the department determines should be included.

(b) Qualifying ~~project~~ costs do not include:

(A) Interest and warranty charges;

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

(C) Intellectual property search, application and filing payments;

(D) Donated, in-kind or volunteer labor and materials;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for an energy conservation project including, but not limited to the tax credit review charge, costs associated with the creation and development of the certified public accountant attestation letter and costs associated with securing a pass-through partner for the project;

(F) Routine operational, routine maintenance and repair costs associated with the energy conservation project;

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

(H) Expenses that are deemed not to have a benefit to the energy conservation project, including but not limited to, fines, penalties, entertainment, food, alcohol, gifts and lobbying; ~~and~~

~~(I) Costs that are incurred to bring a building up to building code standards or otherwise repair the building in order to install the project, including design or engineering expenses;~~

~~(J) Any portion of the cost for an energy conservation project that has previously received a tax credit or grant under ORS chapters 469 or 469B; and~~

~~(K) Other costs the department determines should be excluded.~~

(c) The department may do inspections to verify ~~qualified project costs~~ information reported on the preliminary certification application.

(d) Qualifying costs will be limited to the incremental costs for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.

The department will calculate incremental cost as the difference between the cost of the energy conservation project with the energy efficient features and the cost to construct a similar project at code or industry standard. ~~Qualifying project cost will be limited to incremental cost for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.~~

(A) In new construction and total building retrofit projects, ~~qualifying project~~ incremental cost is the difference between building to code and building to exceed the applicable required standards.

(B) In other energy conservation projects, ~~qualifying project~~ incremental cost is the difference between prevailing practices for that business or industry and a more energy efficient method.

(e) Qualifying ~~project~~ costs may be reduced by the following amounts:

(A<sub>i</sub>) If the energy conservation project has a simple payback greater than the service life of the project, the qualifying costs may be prorated down to an amount that would result in a payback within the service life of the project.

~~(A<sub>i</sub>) The department will prorate, b~~ Based on the 2015~~1~~ edition of ASHRAE standards or as otherwise determined in these rules, the department may prorate qualifying ~~project~~ cost based on the remaining service life of the equipment. If the baseline project has exceeded its service life, the department will consider only the incremental cost of the project as eligible ~~cost~~ for calculating the amount of a tax credit.

~~(i) Energy conservation projects must have a simple payback of greater than three years and less than the service life of the energy conservation project.~~

(ii) An applicant may submit, for department approval, a published or recognized standard or other documentation as considered necessary by the department to determine service life expectancy. If a published or recognized standard is unavailable, the department may use a 15-year limit on service life expectancy.

(B) Costs for a portion of or an entire energy conservation project that has previously received a tax credit certification or grant issued by the department.

(C) Costs to replace the same baseline energy conservation project more than once.

~~(f) New construction, total building retrofit and small premium projects must provide cost information, but the department will calculate the tax credit amount by using a predetermined amount described in the applicable Opportunity Announcement.~~

~~(g)~~ An applicant may incur qualifying ~~project~~ costs prior to the submission of an application, but may not begin installation or construction.

(5) The department will determine whether the project is a single energy conservation project, or is part of a larger project when considered in combination with other applications.

(a) For projects applying for preliminary certification, ~~the~~ department considers a single energy conservation project as one or more projects that are applied for in response to the same Opportunity Announcement, owned or controlled by the same person and located at the same building or structure.

(b) For small premium projects, the department considers a single energy conservation project as one or more projects that are applied for in response to the same Opportunity Announcement, for the same technology sector, owned or controlled by the same person and located at the same building or structure.

~~(b)~~ For the purposes of this subsection, “same person” includes affiliated or subsidiary corporations, other subsidiary business organizations or other affiliated entities owned or controlled by the same parent corporation but excludes equity-only financing partners.

~~(d)~~ The department may reduce the potential tax credit award or deny the application if the department finds that the proposed project is not a single energy conservation project as described in subsection (a) and (b).

~~(e)~~ The department will not divide energy conservation projects applied for in the same application.

(6) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(7) The department will notify the applicant in writing if the department denies the application during the technical review.

(8) If the technical review determines that inaccurate information was submitted by the applicant during the competitive process, the department may deny the application.

(9) If the department denies the application or reduces the tax credit during the technical review, the applicant may request reconsideration in writing within 60 days from the date of denial or reduction.

Stat. Auth.: ORS 469.040, 469B.279, 469B.303, 469B.306~~OL 2011, Ch. 730, Sec. 34 – 51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34 – 51~~

### **330-210-0080**

#### **Preliminary Certification**

(1) The department may issue a preliminary certificate if it determines that the energy conservation project is technically feasible and capable of operating in accordance with the representations made by the applicant.

(2) The department may issue a tax credit that is less than the amount requested in the energy conservation project application, pursuant to statute and applicable rules.

(3) The sum of any incentives, grants, credits, ~~other public funds~~ and the energy conservation tax credit incentive may not exceed total project costs.

(4) The preliminary certificate will state the qualifying ~~project~~ cost, the potential amount of allowable tax credit and may include any conditions for claiming the credit. The applicant has 60 days from the issue date of the preliminary certificate to return the signed conditions of preliminary certification. Failure to return the signed conditions of preliminary certification within the specified time period may result in revocation of the preliminary certificate.

(5) The applicant must report to the department on the project's status beginning one year from the issuing date of the preliminary certificate, unless the department has already received the project's application for final certification. The applicant must continue to submit project progress reports to the department every six months after the initial report until the department receives the project's application for final certificate. Failure to submit reports may result in denial of a final certification.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the original preliminary certification or until the sunset of the program, whichever comes first.

(7) The department may revise a preliminary certificate to comply with statute, rule, the Opportunity Announcement or to correct clerical errors.

Stat. Auth.: ORS 469.040, 469B.306-51

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331OL 2011, Ch. 730, Sec. 34-51

### **330-210-0090**

#### **Amendments ~~to Preliminary Certifications~~**

~~(1) The applicant must notify the department of any changes.~~ Amendments are documentation of changes to the project described in the application for preliminary certification. Changes that result in less than a five percent cumulative change in energy savings may be submitted with the final certification application.

(2) An applicant must submit requests for amendments prior to issuance of the final certification.

~~(23)~~ Small premium projects are not eligible for amendments to informational filings.

~~(34) An applicant must declare all changes to the energy conservation project by the time the department receives the final certification application. Undeclared changes found in the application for final certification or through later inspection will~~ Failure of an applicant to submit documentation to the department of changes to the project may result in denial of final tax credit certification.

~~(45) Applicants~~ Changes to the project must be documented by the applicant. The applicant must submit an amendments request on the form specified in the Opportunity Announcement along with the required amendment fee, except that:

(a) Changes that result in less than a five percent aggregate change in energy savings may be documented in the project's status report, the final certification application form, an amendment request form or by otherwise notifying the department in writing. These changes do not require an amendment fee. The applicant must demonstrate that the change to the project resulted in less than five percent aggregate change in energy savings.

(b) A change of responsible party information or applicant contact information may be documented by notifying the department in writing. These changes do not require an amendment fee.

(6) Undeclared changes found in the application for final certification or through later inspection must be documented by the applicant by submitting an amendment request on the form specified in the Opportunity Announcement with the required amendment fee. Undeclared changes that result in less than a five percent

aggregate change in energy savings may be documented by the department through an inspection report or final review and do not require an amendment fee.

~~(57)~~ When documenting a change, ~~the~~ applicant must demonstrate that the energy conservation project, with the proposed change, will continue to meet the requirements of statute, rule and the Opportunity Announcement; be technically feasible; will operate as represented and ~~will~~would remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical documentation supporting the proposed amendment. The department may deny amendments submitted without such justification.

~~(68)~~ An amendment may result in a reduction in tax credit, but may not increase the tax credit amount certified in the preliminary certificate.

~~(79)~~ If an amendment request does not include all information needed to complete the review, the department may provide the applicant a written request for additional information. If the applicant does not provide the requested information to the department within 30 calendar days of the date of the department's written request, the department may deny the amendment request to amend the preliminary certification.

~~(810)~~ Requests for amendments must include payment of the appropriate fee, unless provided otherwise in this rule.

~~(a) The department may accept non-substantive changes, such as change of responsible party information, without payment of the fee and at any time up to the time of submission of the application for final certification.~~

~~(b) Changes that result in less than a five percent cumulative change in energy savings may be submitted without payment of the fee and with the final certification application.~~

~~(911)~~ The department will evaluate amendments to determine impact on energy savings and other factors, including whether the change would have affected the outcome of competitive review, which may result in pre-rating reduction of the potential tax credit amount based on energy savings or project cost or denial of the amendment request.

~~(1012)~~ The department will decide whether to approve the amendment request.

(a) If the amendment request is approved prior to submission of the application for final certification, the department will draft an amended preliminary certification, which may contain new or amended conditions and requirements.

(b) If the amendment request is approved after submission of the application for final certification, the department will notify the applicant in writing. The amendment may result in a reduction in tax credit and inclusion of conditions in the final certificate.

~~(c)~~ If the amendment request is denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request. The amendment fee will not be applied to future amendments.

(d) No later than 60 days after the department denies an amendment request or reduces the tax credit under this section, the applicant may request reconsideration in writing. The request for reconsideration will not extend other mandated timelines, such as the expiration date of the preliminary certificate.

Stat. Auth.: ORS 469.040, 469B.306~~OL 2011, Ch. 730, Sec. 34 – 51~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331~~OL 2011, Ch. 730, Sec. 34 – 51~~

### **330-210-0100**

#### **Final Certification**

(1) An energy conservation project must be completed and operating ~~ingonal~~ prior to applying for a final certification. An applicant must submit requests for amendments ~~to preliminary certifications~~ prior to ~~or at the time of submission~~ issuance of the final certification ~~application~~.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or informational filing or those without the final review fee.

(a) A preliminary certification remains valid for a period of three calendar years after the date the department issues the original preliminary certification or until the sunset of the program, whichever comes first.

(b) An informational filing remains valid for a period of 12 months after the date the department receives the informational filing, or the sunset of the program, whichever comes first.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection to verify:

(a) That the energy conservation project is complete and operating.

(b) Compliance with statute, rules and the preliminary certification or informational filing.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the project is leased or rented.

(e) That the property taxes for the project location are current.

(f) That the energy conservation project will be maintained and operated for at least five years.

(g) The total project costs for purchase and installation or construction of the energy conservation project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that no contract or loan agreements directly related to the project are in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(D) Applicants must provide itemized documentation of the installed energy conservation project. A detailed invoice or the public accountant's attestation may be sufficient documentation.

(h) Other information the department considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application for final certification.

(6) Applicants may not receive multiple tax credit certifications from the department for the same energy conservation project.

~~(7)~~ The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification application.

~~(8)~~ As part of the final certification process, projects with certified cost of \$1 million or more will be required to enter into a performance agreement with the department and applicants with projects with certified cost of less than \$1 million may be required to enter into a performance agreement with the department.

(a) To determine if a performance agreement is required for projects with certified cost of less than \$1 million, the department may, but is not limited to evaluating:

(A) Financial aspects of the project,



(B) Technical aspects of the project, and

(C) Other areas as determined by the department.

(b) A performance agreement may include:

(A) A recertification requirement under ~~Oregon Laws 2015, chapter 545, section 2~~ ORS 469B.298,

(B) Energy performance requirements,

(C) Conditions and requirements in the preliminary certificate,

(D) A provision allowing the performance agreement to be terminated for reasons stated in the agreement and subject to terms described in the agreement, and

(E) Any additional requirements that the department determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306.

(c) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to entering into the agreement.

(d) If the department decides to require a performance agreement, the department will send a performance agreement to the applicant for review.

(e) Applicants will have 30 calendar days from the date of the offer letter accompanying the performance agreement to accept the performance agreement. The offer letter accompanying the performance agreement will specify how an applicant may accept the performance agreement. An applicant's failure to accept the performance agreement as specified in the offer letter may result in denial of the application for final certification.

(f) After the department receives the performance agreement signed by the applicant and the department executes the performance agreement, the department will issue the appropriate portion of the tax credit certificate. Projects subject to recertification may be issued a certified amount letter showing the total tax credit amount approved along with a final certificate for the initial portion of the tax credit.

(g) An applicant must submit a written amendment request to the department to amend a performance agreement. The department will decide whether to approve the request. An amendment cannot result in a greater tax credit amount.

(A) If approved, the department will draft an amended performance agreement, which may contain new or amended conditions and requirements. The amended performance agreement will become effective upon signature by all parties.

(B) If denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request.

(98) The department will determine the certified cost upon verification that the energy conservation project's installation or construction is complete and that the project complies with statute, rules, the preliminary certification or informational filing, and any other applicable requirements.

(a) Except as provided in ~~(subsection 8)~~ (c), the department may issue a tax credit certificate of up to 35 percent of the qualifying ~~project~~ cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate or reserved in the informational filing, but may not certify a greater amount.

(b) The sum of any incentives, grants, credits, ~~other public funds~~ and the energy conservation tax credit may not exceed total project costs.

(c) If recertification of the tax credit is required under ~~Oregon Laws 2015, chapter 545, section 2~~ ORS 469B.298 and this rule, the department may issue a certificate for an initial portion of tax credit up to 10 percent of the certified cost. To receive certification of the full value of the tax credit, the applicant must recertify the tax credit as required under ~~Oregon Laws 2015, chapter 545~~ ORS 469B.298 and OAR 330-210-0110.

(109) The department will send a written notification to the applicant of its decision whether to issue a final certification within 60 days, after the department receives a complete application for final certification. If a written decision from the department is not issued within 60 days after receipt of the complete application, then the application is rejected and no further action will be taken. Any time required to provide additional information as provided in OAR 330-210-0100(5) is not included in this 60 day period.

(11) For purposes of administering the sunset of the energy conservation tax credit program under Oregon Laws 2011, chapter 730, section 36:

(a) The department must receive a complete application for final certification prior to the end of the 2017 tax year of the applicant.

(b) For applicants who choose to use the pass-through or transfer process, the entity purchasing the credit must pay for the tax credit prior to the end of its 2017 tax year.

Stat. Auth.: ORS 469.040, 469B.291, 469B.306, ~~OL 2015 Ch. 545~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, ~~OL 2015 Ch. 545~~

### **330-210-0150**

#### **Compliance and Pass-through**

(1) All participants in this program are subject to OAR 330-230. If the tax credit is subject to recertification under OAR 330-210-0110, only that portion of the tax credit that has been certified or recertified may be transferred at the five-year present value rate in OAR 330-230-0130.

(2) The department may periodically inspect energy conservation projects and related documents during the five-year term of the tax credit.

Stat. Auth.: ORS 469.040, 469B.276, 469B.306, ~~OL 2015 Ch. 545~~

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, ~~OL 2015 Ch. 545~~