

# Chapter 469B

2017 EDITION

## Energy Tax Credits; Grants

### ALTERNATIVE ENERGY DEVICES

- 469B.100 Definitions for ORS 469B.100 to 469B.118; rules
- 469B.103 Criteria; federal standards; rules
- 469B.106 Claim for tax credits; eligibility; contents; contractor system certification; rules
- 469B.112 Ineligible devices; rules
- 469B.115 Performance assumptions and prescriptive measures for tax credits
- 469B.118 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection

### RENEWABLE ENERGY RESOURCES

- 469B.130 Definitions for ORS 469B.130 to 469B.169 and 469B.171; rules
- 469B.133 Policy
- 469B.136 Priority given to certain projects; criteria; rules
- 469B.139 Criteria for high-performance homes, renewable energy systems, combined heat and power facilities and facilities using or producing renewable energy resources; rules
- 469B.142 Annual limit to cost of facility eligible for tax credits; discretion of director; rules
- 469B.145 Application for preliminary certification; eligibility; contents of application; fees; rules
- 469B.148 Transferability of facility tax credit; effect on taxes reported by public utility; rules
- 469B.151 Tax credit for rental housing units; eligibility
- 469B.154 Transferability of rental housing unit tax credit; rules
- 469B.157 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification
- 469B.161 Final certification; eligibility; contents of application
- 469B.164 Fees for certification; rules
- 469B.167 Certificate required for tax credits; certification not to exceed five years
- 469B.169 Suspension or revocation of certificate; forfeiture of tax credits; collection
- 469B.171 Assistance with facility purchase for investor-owned utility customers

### RENEWABLE ENERGY PRODUCTION SYSTEMS

- 469B.250 Definitions for ORS 469B.250 to 469B.265
- 469B.253 Application for grant; fees
- 469B.256 Grant award; performance agreement; denial; limitations; forfeiture
- 469B.259 Grant application fees; rules
- 469B.262 Limitations on amount of potential tax credits for certified renewable energy development contributions; allocation; rules

- 469B.265 Policies and procedures; standards for single renewable energy production system; rules

### ENERGY CONSERVATION PROJECTS

- 469B.270 Definitions for ORS 315.331 and 469B.270 to 469B.306
- 469B.273 Preference given to certain projects; criteria
- 469B.276 Transferability of project tax credit; recertification; determination of prices; rules
- 469B.279 Standards for energy conservation projects; rules
- 469B.282 Limitation on amount receiving preliminary certification
- 469B.285 Application for preliminary certification; eligibility; contents; fees; certification to remain valid for three years; rules
- 469B.288 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification
- 469B.291 Final certification; eligibility; contents of application; performance agreement; rules
- 469B.294 Fees for certification or recertification; rules
- 469B.297 Certificate required for tax credits; certification not to exceed five years; recertification
- 469B.298 Recertification of eligibility
- 469B.300 Revocation of certificate; forfeiture of tax credits; collection
- 469B.303 Limitations on amount of potential tax credits for energy conservation projects; allocation; rules
- 469B.306 Policies and procedures; standards for single energy conservation project; rules

### TRANSPORTATION PROJECTS

- 469B.320 Definitions for ORS 315.336 and 469B.320 to 469B.347
- 469B.323 Transferability of project tax credit; determination of prices; rules
- 469B.326 Application for preliminary certification; eligibility; contents; fees; certification to remain valid for three years; rules
- 469B.329 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification
- 469B.332 Final certification; eligibility; contents of application; rules
- 469B.335 Fees for certification; rules
- 469B.338 Certificate required for tax credits; certification not to exceed five years
- 469B.341 Revocation of certificate; forfeiture of tax credits; collection
- 469B.344 Limitation on amount of potential tax credits for transportation projects
- 469B.347 Policies and procedures; standards for single transportation project; rules

**PUBLIC HEALTH AND SAFETY**

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**BIOFUELS AND BIOMASS**

**469B.400** Fuel blends and solid biofuels; qualification for tax credits; rules

**469B.403** Biomass; eligibility for tax credits; rates

**469B.407** Suspension or revocation

**PENALTIES**

**469B.991** Civil penalty when contractor certificate revoked

**ALTERNATIVE ENERGY DEVICES**

**469B.100 Definitions for ORS 469B.100 to 469B.118; rules.** As used in ORS 316.116 and 469B.100 to 469B.118:

(1) "Alternative energy device" means a category one alternative energy device or a category two alternative energy device.

(2) "Alternative fuel device" includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

(3) "Category one alternative energy device" means:

(a) Any system, mechanism or series of mechanisms that uses solar radiation for space heating or cooling for one or more dwellings;

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;

(c) A ground source heat pump and ground loop system;

(d) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;

(e) Equipment used in the production of alternative fuels;

(f) A generator powered by alternative fuels and used to produce electricity;

(g) An energy efficient appliance;

(h) An alternative fuel device; or

(i) A premium efficiency biomass combustion device that includes a dedicated outside combustion air source and that meets minimum performance standards that are established by the State Department of Energy.

(4) "Category two alternative energy device" means a fuel cell system, solar electric system or wind electric system.

(5) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(6) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(7) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device.

(8) "Domestic water heating" means the heating of water used in a dwelling for bath-

ing, clothes washing, dishwashing and other related functions.

(9) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(10) "Energy efficient appliance" includes emerging technologies that exceed state and federal appliance standards.

(11) "First year energy yield" of an alternative energy device is the usable energy produced or energy saved under average environmental conditions in one year.

(12) "Fuel cell system" means any system, mechanism or series of mechanisms that uses fuel cells or fuel cell technology to generate electrical energy for a dwelling.

(13) "Placed in service" means the date an alternative energy device is ready and available to produce usable energy or save energy.

(14) "Solar electric system" means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

(15) "Third-party alternative energy device installation" means an alternative energy device that is installed in connection with residential property and owned by a person other than the residential property owner in accordance with an agreement in effect for at least 10 years between the residential property owner and the alternative energy device owner. The agreement must cover maintenance and either the use of or the power generated by the alternative energy device.

(16) "Wind electric system" means any system, mechanism or series of mechanisms that uses wind to generate electrical energy for a dwelling. [Formerly 469.160; 2015 c.701 §28]

**469B.103 Criteria; federal standards;**

**rules.** (1) For the purposes of carrying out ORS 469B.100 to 469B.118, the State Department of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings. The department may, in prescribing criteria, rely on applicable federal, state and local requirements for energy efficiency, including the state building code, state and federal appliance standards and any specialty codes and any code adopted by the Building Codes Division of the Department of Consumer and Business Services.

(2) The department shall take into consideration evolving market conditions in prescribing minimum performance criteria for

alternative energy devices and in determining credit amounts, consistent with ORS 316.116.

(3) The department, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of the Solar Heating and Cooling Demonstration Act of 1974, 42 U.S.C. 5506.

(4) The Director of the State Department of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116, including but not limited to rules that further define an alternative fuel device and that govern the computation of costs eligible for credit.

(5) The department shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 316.116 and 469B.100 to 469B.118. [Formerly 469.165; 2015 c.701 §29]

**469B.106 Claim for tax credits; eligibility; contents; contractor system certification; rules.** (1) Subject to the limitations in section 75, chapter 730, Oregon Laws 2011, any person may claim a tax credit under ORS 316.116 if the person:

(a) Meets the requirements of ORS 316.116;

(b) Meets the requirements of ORS 469B.100 to 469B.118; and

(c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative energy device.

(2) In order to be eligible for a tax credit under ORS 316.116, a person claiming a tax credit for construction or installation of an alternative energy device shall have the device certified by the State Department of Energy or constructed or installed by a contractor certified by the department under subsection (4) of this section.

(3) Verification of the purchase, construction or installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall contain:

(a) The location of the alternative energy device;

(b) A description of the type of device;

(c) If the device was constructed or installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and construct or install the alternative energy device;

(d) If the device was constructed or installed by a contractor, a statement signed

by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device;

(B) A copy of consumer information published by the State Department of Energy;

(C) An operating manual for the alternative energy device; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate for the alternative energy device, as appropriate;

(e) If the device was not constructed or installed by a contractor, evidence that:

(A) The State Department of Energy has issued an alternative energy device system certificate for the alternative energy device; and

(B) The taxpayer has obtained all building permits required for construction or installation of the device;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469B.100 to 469B.118;

(g) The date the alternative energy device was purchased by the residential property owner, or, for a third-party alternative energy device installation, the date that the residential property owner and the alternative energy device owner signed a contract;

(h) The date the alternative energy device was placed in service; and

(i) Any other information that the Director of the State Department of Energy or the Department of Revenue determines is necessary.

(4)(a) When the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

(b) Any person who sells or installs more than 12 alternative energy devices in one year shall apply for a contractor system certification. An application for a contractor system certification shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and construction or installation of the alternative energy device;

(B) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing and siting method and construction or installation procedure;

(C) The addresses of three installations of the device that are available for inspection by the State Department of Energy;

(D) The range of installed costs to purchasers of the device;

(E) Any important construction, installation or operating instructions; and

(F) Any other information that the State Department of Energy determines is necessary.

(c) A new application for contractor system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) The State Department of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and installation of the same domestic water heating alternative energy devices authorized by the dealer certification.

(e) If the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device constructed or installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing, siting method and construction or installation procedure;

(B) The constructed or installed cost of the device; and

(C) A statement that the taxpayer has all permits required for construction or installation of the device.

(5) Prior to commencing installation of alternative energy devices, installers of third-party alternative energy device installations must apply to the State Department of Energy to reserve credits on behalf of owners of residential property. Installers may reserve credit for no more than 25 installations under this subsection in one application.

(6) To claim the tax credit, the verification form described in subsection (3) of this section shall be submitted with the taxpayer's tax return for the year the alternative energy device is placed in service or the immediately succeeding tax year. A copy of the contractor's certification certificate or alternative energy device system certificate also shall be submitted.

(7) The verification form and contractor's certificate or alternative energy device system certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116.

(8) The verification form and contractor's certificate described under this section may be transferred to the first purchaser of a dwelling who intends to use the dwelling as a principal or secondary residence.

(9) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 and 469B.100 to 469B.118 to the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection. [Formerly 469.170; 2012 c.45 §13; 2015 c.701 §30]

**Note:** Section 8a (1), chapter 832, Oregon Laws 2005, provides:

**Sec. 8a.** (1) The State Department of Energy may not issue a contractor's certification certificate or an alternative energy device system certificate under ORS 469.170 [renumbered 469B.106] after January 1, 2018. [2005 c.832 §8a(1); 2009 c.913 §13(1); 2011 c.730 §68(1)]

**469B.109** [Formerly 469.171; 2012 c.45 §13a; repealed by 2015 c.701 §36]

**469B.112 Ineligible devices; rules.** The following devices are not eligible for the tax credit under ORS 316.116:

- (1) Standard efficiency furnaces;
- (2) Air conditioning systems;
- (3) Boilers;
- (4) Standard back-up heating systems;
- (5) Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the woodstove, furnace or system constitutes a premium efficiency biomass combustion device described in ORS 469B.100 (3)(i);
- (6) Heat pump water heaters that are part of a geothermal heat pump space heating system;
- (7) Structures that cover or enclose a swimming pool;

(8) Swimming pools, hot tubs or spas used to store heat;

(9) Above ground, uninsulated swimming pools, hot tubs or spas;

(10) Photovoltaic systems installed on recreational vehicles;

(11) Conversion of an existing alternative energy device to another type of alternative energy device;

(12) Repair or replacement of an existing alternative energy device;

(13) A category two alternative energy device, if the equipment or other property that comprises the category two alternative energy device is the basis for an allowed credit for a category one alternative energy device under ORS 316.116;

(14) A category one alternative energy device, if the equipment or other property that comprises the category one alternative energy device is also the basis for an allowed credit for a category two alternative energy device under ORS 316.116; or

(15) Any other device identified by the State Department of Energy. The department may adopt rules defining standards for eligible and ineligible devices under this section. [Formerly 469.172; 2015 c.701 §31]

**469B.115 Performance assumptions and prescriptive measures for tax credits.**

(1) In order to carry out ORS 469B.100 to 469B.118, the State Department of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices constructed or installed in a dwelling.

(2) The department shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The State Department of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the department shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standards SRCC 100, 300, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the Air-Conditioning, Heating, and Refrigeration Institute under ANSI/AHRI/ASHRAE/ISO Standard 13256-1 test at 50 degrees Fahrenheit entering water temperature, as appropriate. The testing requirements under

this paragraph do not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply with comparable requirements as determined by the department.

(c) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the department.

(d) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the department. [Formerly 469.176; 2015 c.701 §32]

**469B.118 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection.** (1) Upon the Department of Revenue's own motion, or upon request of the State Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) The alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469B.100 to 469B.118; or

(d) The taxpayer failed to consent to an inspection of the constructed or installed alternative energy device by the State Department of Energy after a reasonable, written request for such an inspection by the State Department of Energy.

(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a contractor certificate issued under ORS 469B.106 if the director finds that:

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;

(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469B.106 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

(3) If the tax credit allowed under ORS 316.116 for the purchase, construction or installation of an alternative energy device is ordered forfeited due to an action of the taxpayer under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the tax credit relief under ORS 316.116.

(4) If the tax credit for the construction or installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer as a result of the tax credit relief under ORS 316.116. As long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer, the assessment of such taxes shall be levied on the contractor and not on the taxpayer. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the State Department of Energy or its representative may inspect an alternative energy device that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the State Department of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [Formerly 469.180; 2015 c.701 §33]

## RENEWABLE ENERGY RESOURCES

**469B.130 Definitions for ORS 469B.130 to 469B.169 and 469B.171; rules.** As used in ORS 469B.130 to 469B.169 and 469B.171:

(1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State Department of Energy by rule that is used primarily in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption savings.

(2) "Car sharing facility" means the expenses of operating a car sharing program, including but not limited to the fair market value of parking spaces used to store the fleet of cars available for a car sharing program, but does not include the costs of the fleet of cars.

(3) "Car sharing program" means a program 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. "Car sharing program" does not include operations conducted by car rental agencies.

(4) "Cost" means the capital costs and expenses necessarily incurred in the erection, construction, installation and acquisition of a facility, including site development costs and expenses for a sustainable building practices facility.

(5) "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 erected, constructed, installed or acquired 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 erected, constructed, installed or acquired 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 469B.100, 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.

(6) "Facility" means an energy facility, recycling 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 or a homebuilder-installed renewable energy system.

(7) "High-efficiency combined heat and power facility" means a device or equipment that simultaneously produces heat and electricity from a single source of fuel and that meets the criteria established for a high-efficiency combined heat and power facility under ORS 469B.139.

(8) "High-performance home" means a new single-family dwelling that:

(a) Is designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources; and

(b) Meets the criteria established for a high-performance home under ORS 469B.139.

(9) "Homebuilder-installed renewable energy system" means a renewable energy resource system that:

(a) Meets the criteria established for a renewable energy resource system under ORS 469B.139; and

(b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder constructing the dwelling.

(10) "Qualified transit pass contract" means a purchase agreement entered into between a transportation provider and a person, the terms of which obligate the person to purchase transit passes on behalf or for the benefit of employees, students, patients or other individuals over a specified period of time.

(11) "Recycling facility" means equipment used by a trade or business solely for recycling:

(a) Including:

(A) Equipment used solely for hauling and refining used oil;

(B) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used further in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(D) Any equipment used solely for processing recyclable materials such as balers, flatteners, crushers, separators and scales.

(b) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the director.

(12)(a) "Renewable energy resource" includes, but is not limited to:

(A) Straw, forest slash, wood waste or other wastes from farm or forest land, non-petroleum plant or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal energy;

(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 that:

(i) Does not exceed 10 megawatts of installed capacity; or

(ii) Qualifies as a research, development or demonstration facility; or

(C) A renewable energy storage device as defined by the director by rule.

(b) "Renewable energy resource" does not include a hydroelectric generating facility that is not described in paragraph (a) of this subsection.

(13) "Sustainable building practices facility" means a commercial building in which building practices that reduce the amount of energy, water or other resources needed for construction and operation of the building are used. "Sustainable building practices fa-



ility” may be further defined by the State Department of Energy by rule, including rules that establish traditional building practice baselines in energy, water or other resource usage for comparative purposes for use in determining whether a facility is a sustainable building practices facility.

(14) “Transportation facility” means a transportation project that reduces energy use during commuting to and from work or school, during work-related travel, or during travel to obtain medical or other services, and may be further defined by the department by rule. “Transportation facility” includes, but is not limited to:

(a) A qualified transit pass contract or a transportation services contract; or

(b) The purchase of efficient truck technology and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011.

(15) “Transportation provider” means a public, private or nonprofit entity that provides transportation services to members of the public.

(16) “Transportation services contract” means a contract that is related to a transportation facility, and may be further defined by the department by rule. [Formerly 469.185]

**469B.133 Policy.** In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [Formerly 469.190]

**469B.136 Priority given to certain projects; criteria; rules.** (1) In determining the eligibility of any facility for tax credits, preference shall be given to those projects that:

(a) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(A) Nonowner occupied single family dwellings; and

(B) Multiple unit residential housing; or

(b) Provide long-term energy savings from the use of renewable resources or conservation of energy resources.

(2) The Director of the State Department of Energy shall establish by rule a tiered priority system to be used in evaluating applicants for certification of facilities using or producing renewable energy resources. The

tier system shall be based upon the projected costs of facilities. In determining the eligibility for tax credits and in allocating the available certified cost pursuant to section 2 (1), chapter 76, Oregon Laws 2010, among facilities, the director shall subject facilities with higher projected costs to closer scrutiny, shall compare projects of similar costs against each other and may certify less than the total cost of any facility based on this evaluation. The director may employ criteria including the following factors as defined by rule:

(a) Technology-specific energy production standards;

(b) Market sector;

(c) Delivery of energy into existing distribution and transmission network;

(d) Investment payback period;

(e) Expected lifespan of the facility;

(f) Potential for long-term viability;

(g) Environmental standards established by the director;

(h) Potential to create and sustain new jobs;

(i) Projected siting in a location that is geographically or socioeconomically advantageous;

(j) Demonstrated readiness to begin implementation;

(k) Amount and quality of energy generated;

(L) Strength of business plan;

(m) Provision of operations and maintenance data, with appropriate protections for trade secrets consistent with ORS chapter 192;

(n) Connection to existing infrastructure;

(o) Third-party review of the applicant’s business plan; or

(p) Data related to projected return on investment. [Formerly 469.195]

**469B.139 Criteria for high-performance homes, renewable energy systems, combined heat and power facilities and facilities using or producing renewable energy resources; rules.** The State Department of Energy shall by rule establish all of the following criteria:

(1) For a high-performance home, the minimum design and construction standards that must be met or exceeded for a dwelling to be considered a high-performance home, including but not limited to standards for the building envelope, HVAC systems, lighting, appliances, water conservation measures, use of sustainable building materials and on-site renewable energy systems. The criteria must also establish the minimum reduction in es-

timated net purchased energy that a dwelling must achieve to be considered a high-performance home.

(2) For a homebuilder-installed renewable energy system, the minimum performance and efficiency standards that a solar electric system, solar domestic water heating system, passive solar space heating system, wind power system, geothermal heating system, fuel cell system or other system utilizing renewable resources must achieve to be considered a homebuilder-installed renewable energy system.

(3) For a high-efficiency combined heat and power facility, the minimum performance and efficiency standards that the facility must achieve to be considered a high-efficiency combined heat and power facility.

(4) For a facility using or producing renewable energy resources, standards relating to criteria required under ORS 469B.136 (2).

(5) Standards, consistent with the definitions in ORS 469B.130, relating to what constitutes a single facility. [Formerly 469.197]

**469B.142 Annual limit to cost of facility eligible for tax credits; discretion of director; rules.** (1) For a facility, the total cost that receives a preliminary certification from the Director of the State Department of Energy for tax credits in any calendar year may not exceed:

(a) \$20 million, in the case of a facility using or producing renewable energy resources or a high-efficiency combined heat and power facility;

(b) Five percent of the total cost of the facility but no more than \$3 million, in the case of a facility that uses or produces renewable energy resources and is a wind facility with an installed capacity of more than 10 megawatts; or

(c) \$10 million, in the case of any other facility.

(2) The director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469B.130 to 469B.169 and applicable rules and standards adopted under ORS 469B.130 to 469B.169. The director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the determination. [Formerly 469.200]

**469B.145 Application for preliminary certification; eligibility; contents of application; fees; rules.** (1) Prior to erection, construction, installation or acquisition of a

proposed facility, any person may apply to the State Department of Energy for preliminary certification under ORS 469B.157 if:

(a) The erection, construction, installation or acquisition of the facility is to be commenced on or after October 3, 1979;

(b) The facility complies with the standards or rules adopted by the Director of the State Department of Energy; and

(c) The applicant meets one of the following criteria:

(A) The applicant is a person to whom a tax credit for the facility has been transferred; or

(B) The applicant will be the owner, contract purchaser or lessee of the facility at the time of erection, construction, installation or acquisition of the proposed facility, and:

(i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the facility in connection with Oregon property; or

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person that will utilize the facility in connection with Oregon property.

(2) An application for preliminary certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the applicant or the lessee of the applicant's facility:

(A) Intends to convert from a purchased energy source to a renewable energy resource;

(B) Plans to acquire, construct or install a facility that will use a renewable energy resource or solid waste instead of electricity, petroleum or natural gas;

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

(D) Plans to acquire, construct or install a facility that substantially reduces the consumption of purchased energy;

(E) Plans to acquire, construct or install equipment for recycling as described in ORS 469B.130 (11);

(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alternative fuel vehicle;

(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

(H) Plans to acquire transit passes for use by individuals specified by the applicant;

(I) Plans to acquire, construct or install a transportation facility;

(J) Plans to acquire a sustainable building practices facility;

(K) Plans to acquire a car sharing facility and operate a car sharing program;

(L) Plans to construct a high-efficiency combined heat and power facility;

(M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system; or

(N) Is a homebuilder and plans to construct a high-performance home.

(b) A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application and remain in operation for at least five years, unless the director by rule specifies a shorter period of operation.

(c) Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy that will be produced for sale, as the result of using the facility or, if applicable, information about the expected level of sustainable building practices facility performance.

(d) The projected cost of the facility.

(e) If applicable, a copy of the proposed qualified transit pass contract, transportation services contract or contract for lease of parking spaces for a car sharing facility.

(f) Information on the number and type of jobs that will be created, the number of jobs sustained throughout the construction, installation and operation of the facility and the benefits of the facility with regard to overall economic activity in this state.

(g) Information demonstrating that the proposed facility will comply with applicable state and local laws and regulations and obtain required licenses and permits.

(h) Information relating to the criteria required under ORS 469B.136.

(i) Any other information the director considers necessary to determine whether the proposed facility is in accordance with the provisions of ORS 469B.130 to 469B.169, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469B.164. The director may refund all or a portion of the fee if the application for certification is rejected.

(4) The director may allow an applicant to file the preliminary application or a reapplication under subsection (6) of this section

after the start of erection, construction, installation or acquisition of the facility if the director finds:

(a) Filing the application before the start of erection, construction, installation or acquisition is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469B.130 to 469B.169.

(5) A preliminary certification of a sustainable building practices facility shall be applied for and issued as prescribed by the department by rule.

(6) A preliminary certification shall remain valid for a period of three calendar years after the date the preliminary certification is issued by the director. The director may extend the three-year period for two additional calendar years upon reapplication and submission of the fee required by this section. [Formerly 469.205]

**469B.148 Transferability of facility tax credit; effect on taxes reported by public utility; rules.** (1) The owner of a facility may transfer a tax credit for the facility in exchange for a cash payment equal to the present value of the potential tax credit, as determined at the time of the application for preliminary certification.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

(4) Notwithstanding any other provision of law, a tax credit transferred pursuant to this section does not decrease the amount of taxes required to be reported by a public utility. [Formerly 469.206; 2012 c.45 §23a]

**469B.151 Tax credit for rental housing units; eligibility.** (1) Except as provided in subsection (3) of this section, an applicant under ORS 469B.145 (1)(c) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636. The tax credit shall apply to only the first \$5,000 of actually installed energy conservation measure costs per dwelling unit.

(2) An owner, contract purchaser or lessee of a rental housing unit for which energy conservation measures have been financed by an applicant under subsection (1)

of this section is ineligible for an energy conservation measure tax credit for such measures.

(3) No applicant under ORS 469B.145 (1)(c) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636 if the rental housing units are constructed on or after January 1, 1996. [Formerly 469.207]

**469B.154 Transferability of rental housing unit tax credit; rules.** (1) The owner of a rental housing unit may transfer a tax credit for energy conservation measures installed in rental housing units under ORS 469B.151 in exchange for a cash payment equal to the present value of the tax credit. To be eligible for a transfer, the energy conservation measures must have been recommended in an energy audit as provided in ORS 469.633 or 469.651.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [Formerly 469.208; 2017 c.727 §15]

**469B.157 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification.** (1) The Director of the State Department of Energy may require the submission of plans, specifications and contract terms, and after examination thereof, may request corrections and revisions of the plans, specifications and terms.

(2) If the director determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the acquisition, erection, construction or installation of the facility. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) The director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The acquisition, erection, construction or installation does not comply with the provisions of ORS 469B.130 to 469B.169 and applicable rules and standards;

(b) The applicant has previously received preliminary or final certification for the same costs;

(c) The applicant is unable to demonstrate that the facility would be economically

viable without the allowance of additional credits under ORS 315.354;

(d) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469B.130 to 469B.169; or

(e) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business. [Formerly 469.210]

**469B.161 Final certification; eligibility; contents of application.** (1) A final certification may not be issued by the Director of the State Department of Energy under this section unless:

(a) The facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469B.157;

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.145 (2) and does not violate any condition that may be imposed as described in ORS 469B.157 (3); and

(c) The facility was acquired, erected, constructed or installed in accordance with the applicable provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the director.

(2) Any person may apply to the State Department of Energy for final certification of a facility:

(a) If the department issued preliminary certification for the facility under ORS 469B.157; and

(b)(A) After completion of erection, construction, installation or acquisition of the proposed facility or, if the facility is a qualified transit pass contract, after entering into the contract with a transportation provider; or

(B) After transfer of the facility, as provided in ORS 315.354 (5).

(3) An application for final certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the facility certified to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts for purchase and installation of the facility;

(c) The amount of the credit under ORS 315.354 that is to be claimed;

(d) The number and type of jobs created by the operation and maintenance of the facility over the five-year period beginning with the year of preliminary certification under ORS 469B.157 and information on the benefits of the facility with regard to overall economic activity in this state;

(e) Information sufficient to demonstrate that the facility will remain in operation for at least five years, unless the director by rule specifies a shorter period of operation;

(f) Information sufficient to demonstrate, in the case of a research, development or demonstration facility that is not in operation, that the applicant has made reasonable efforts to make the facility operable and meet the requirements of the preliminary certificate;

(g) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director; and

(h) Any other information determined by the director to be necessary prior to issuance of a final certificate, including inspection of the facility by the department.

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The director may issue the certificate, or certificates for efficient truck technology within a transportation facility, together with such conditions as the director determines are appropriate to promote the purposes of ORS 315.354, 469B.130 to 469B.169 and 469B.171. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the facility. However, the director may not certify an amount for tax credit purposes that is more than the amount approved in the preliminary certificate issued for the facility.

(5) If the director rejects an application for final certification, or certifies a lesser actual cost of the facility than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons therefor, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

(6) Upon approval of an application for final certification of a facility, the director shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices consti-

tute an operational unit, the director may certify the operational unit under one certificate.

(7) The director may establish by rule timelines and intermediate deadlines for submission of application materials. [Formerly 469.215]

#### **469B.164 Fees for certification; rules.**

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees which the State Department of Energy may require of applicants for preliminary or final certification under ORS 469B.130 to 469B.169. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of filing, investigating, granting and rejecting applications for certification and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the facility. The fee shall not be considered as part of the cost of the facility to be certified. [Formerly 469.217]

**469B.167 Certificate required for tax credits; certification not to exceed five years.** (1)(a) A certificate issued under ORS 469B.161 is required for purposes of obtaining tax credits in accordance with ORS 315.354. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the facility under ORS 469B.161 is received by the State Department of Energy.

(b) For a transferee holding a credit that has been transferred under ORS 469B.148 or 469B.154, the five-year period shall begin with the tax year in which the transferee pays for the credit.

(2) Notwithstanding subsection (1) of this section, for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469B.161 after January 1, 2010:

(a) The five-year period prescribed in subsection (1)(a) of this section shall begin with the tax year immediately following the tax year during which the completed application for final certification of the facility under ORS 469B.161 is received by the department.

(b) If claimed by a transferee, the first of five tax years in which the transferee may claim the credit is the tax year in which the transferee paid for the credit or the tax year

prescribed in paragraph (a) of this subsection, whichever is later.

(c) An application shall be considered complete without the identification of a transferee for purposes of ORS 469B.148 or 469B.154.

(3) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable. [Formerly 469.220]

**469B.169 Suspension or revocation of certificate; forfeiture of tax credits; collection.** (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the suspension or revocation of the certificate issued under ORS 469B.161 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation;

(b) The holder of the certificate or the operator of the facility has failed to construct or operate the facility in compliance with the plans, specifications and procedures in the certificate; or

(c) The facility is no longer in operation.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue, the facility owner, contract purchaser or lessee and any transferee under ORS 469B.148 of the order of revocation.

(3) If the certificate is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited and upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under ORS 315.354.

(4)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (3) of this section from the person that obtained certification from the State Department of Energy or any successor in interest to the business interests of that person. No assessment of tax shall be necessary and no statute of limitation shall preclude the collection of taxes described in this subsection.

(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires an interest through bankruptcy or through foreclosure of a security interest is not considered to be a successor in interest to the business interests of the person that obtained certification from the State Department of Energy.

(5) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.354 in connection with the facility from and after the date that the order of revocation becomes final.

(6) Notwithstanding subsections (1) to (5) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.148 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 315.354 may not be reduced and a transferee is not liable under subsections (3) and (4) of this section. [Formerly 469.225]

**469B.171 Assistance with facility purchase for investor-owned utility customers.**

(1) An investor-owned utility may offer cash payments to assist the utility's commercial and industrial customers in purchasing a facility as defined in ORS 469B.130, including but not limited to an alternative fuel vehicle refueling station. The utility may pay the customer the present value to the utility of the tax credit to which the customer would be entitled under ORS 469B.130 to 469B.169.

(2) As used in this section, "cash payment" and "investor-owned utility" have the meanings given those terms in ORS 469.631. [Formerly 469.878]

## RENEWABLE ENERGY PRODUCTION SYSTEMS

**469B.250 Definitions for ORS 469B.250 to 469B.265.** As used in ORS 469B.250 to 469B.265:

(1) "Biomass" has the meaning given that term in ORS 315.141.

(2) "Cost" means the actual cost of the acquisition, construction and installation of the renewable energy production system paid by the applicant for the system, before considering utility incentives.

(3) "Renewable energy production system" means a system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy.

(4) "Solar technology" means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy. [2011 c.730 §27]

**469B.253 Application for grant; fees.**

(1) Prior to the installation or construction of a renewable energy production system, any person may apply to the State Department of Energy for a grant under ORS 469B.256 if:

(a) The applicant will be the owner, contract purchaser or lessee of the system at the time of installation or construction of the proposed system;

(b) The system does not exceed 35 megawatts of nameplate capacity;

(c) The system is located in Oregon; and

(d) The system complies with the standards or rules adopted by the Director of the State Department of Energy.

(2) An application for a grant under ORS 469B.256 shall be made in writing on a form prepared by the department and shall contain:

(a) A detailed description of the system and its operation and information showing that the system will operate as represented in the application and remain in operation for at least five years, unless the director by rule specifies another period of operation.

(b) The anticipated total system cost.

(c) Information on the number and type of jobs, directly connected to the awarding of the grant, that will be:

(A) Created by the system; and

(B) Sustained throughout the construction, installation and operation of the system.

(d) Information demonstrating that the system will comply with applicable state and local laws and regulations and obtain required licenses and permits.

(e) Any other information the director considers necessary to determine whether the system is in accordance with the provisions of ORS 469B.250 to 469B.265, and any applicable rules or standards adopted by the director.

(3) An application for a grant shall be accompanied by a fee established under ORS 469B.259. The director may refund all or a portion of the fee if the application for a grant is rejected.

(4) The director may allow an applicant to file the application for a grant after the start of installation or construction of the system if the director finds that:

(a) Filing the application before the start of installation or construction is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The system would otherwise qualify for a grant under ORS 469B.250 to 469B.265. [2011 c.730 §29; 2012 c.45 §4]

**469B.256 Grant award; performance agreement; denial; limitations; forfeiture.**

(1) The Director of the State Department of Energy may require an applicant for a grant under this section for a renewable energy production system to submit plans, specifications and contract terms, and after examina-

tion of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the system is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.250 to 469B.265 and any applicable rules or standards adopted by the director, the director may enter into a performance agreement with the applicant and award a grant under this section to the applicant. The grant provided for in the performance agreement may not exceed 35 percent of the cost of the project and may not exceed \$250,000 per system. If construction does not begin within 12 months of an award under this section, the performance agreement shall be void and the State Department of Energy shall revoke the grant.

(3) The director may, in accordance with ORS chapter 183, deny a grant under this section if the director determines that:

(a) The system does not comply with the provisions of ORS 469B.250 to 469B.265 and applicable rules and standards;

(b) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 315.326 or 469B.130 to 469B.169, or any grant under ORS 469B.250 to 469B.265; or

(c) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business.

(4) The department shall reduce the amount of grant allowable to an applicant if, when combined with other government incentives or grants available to the applicant, the amount calculated under subsection (2) of this section exceeds 75 percent of the total system cost calculated under this section.

(5) Upon determination by the director that the applicant has violated the provisions of the performance agreement or ORS 469B.250 to 469B.265, the applicant will be liable to the department for all grant moneys disbursed to the applicant. [2011 c.730 §30; 2012 c.45 §1]

**469B.259 Grant application fees; rules.**

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for a grant for a renewable energy production system under ORS 469B.250 to 469B.265 or for tax credit certification under

ORS 315.326. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of ORS 469B.250 to 469B.265, including filing, investigating, granting and rejecting applications for grant or tax credit certification and ensuring compliance with ORS 315.326, 315.329 and 469B.250 to 469B.265 and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the system. The fee is not considered part of the cost of the system for which a grant is being sought. [2011 c.730 §31]

**469B.262 Limitations on amount of potential tax credits for certified renewable energy development contributions; allocation; rules.** (1) The total amount of potential tax credits for certified renewable energy development contributions in this state may not, at the time of certification under ORS 315.326, exceed:

- (a) \$3 million for any biennium; or
  - (b) \$750,000 for the six months beginning July 1, 2017, and ending December 31, 2017.
- (2) In the event that the Director of the State Department of Energy receives applications for grants under ORS 469B.256 in excess of the contributions received pursuant to ORS 315.326, the director shall allocate the issuance of grants according to standards and criteria established by rule by the director. [2011 c.730 §32]

**469B.265 Policies and procedures; standards for single renewable energy production system; rules.** The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 315.326, 315.329 and 469B.250 to 469B.265, including standards for what constitutes a single renewable energy production system. [2011 c.730 §33]

## ENERGY CONSERVATION PROJECTS

**469B.270 Definitions for ORS 315.331 and 469B.270 to 469B.306.** As used in ORS 315.331 and 469B.270 to 469B.306:

(1) “Cost” means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project.

(2) “Energy conservation project” means 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.

(3) “Four globes” means the highest of four tiers of ratings for certification in the Green Globes program rating system.

(4) “Green Globes program” means a building guidance and assessment program to advance overall environmental performance and sustainability of commercial buildings established by the Green Building Initiative.

(5)(a) “LEED” means the Leadership in Energy and Environmental Design rating system for certification of energy-efficient and environmentally sustainable buildings established by the U.S. Green Building Council.

(b) “LEED Platinum” means the highest of four tiers of standards for certification in the LEED rating system. [2011 c.730 §38]

**469B.273 Preference given to certain projects; criteria.** (1) In determining the priority of any energy conservation project for tax credits, preference shall be given to those projects that have the highest energy savings over the five-year credit allowance period per tax credit dollar.

(2) In administering this section, the Director of the State Department of Energy shall compare projects of similar technology types against each other, take into account the amount of energy saved over the life of the equipment, market or industry sector, expected lifespan of the project compared to the simple payback period, whether the energy savings of the project benefit a party other than the owner and any other factors defined in State Department of Energy rule. The department may certify less than the total cost of any project based on this evaluation. [2011 c.730 §39]

**469B.276 Transferability of project tax credit; recertification; determination of prices; rules.** (1) The owner of a project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the potential tax credit, as determined at the time of the application for preliminary certification. If the tax credit is subject to recertification, only that portion of the tax credit that has been recertified may be transferred.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate in-



flation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section. [2011 c.730 §40; 2012 c.45 §20; 2015 c.545 §4]

**Note:** Section 9, chapter 545, Oregon Laws 2015, provides:

**Sec. 9.** Section 2 of this 2015 Act [469B.298] and the amendments to ORS 315.331, 469B.276, 469B.291, 469B.294, 469B.297 and 469B.300 by sections 3 to 8 of this 2015 Act apply to applications for final certification under ORS 469B.291 submitted on or after September 1, 2015, and to tax years beginning on or after January 1, 2015. [2015 c.545 §9]

**469B.279 Standards for energy conservation projects; rules.** The State Department of Energy shall by rule establish the following standards relating to energy conservation projects:

(1) In consultation with the Department of Consumer and Business Services Building Codes Division, standards relating to energy savings in new construction.

(2) Standards relating to what constitutes a replacement of inefficient equipment.

(3) Standards for the determination of total project cost.

(4) Standards for the application of third party review of research and development projects by a qualified third party selected by the Director of the State Department of Energy, as required in ORS 469B.285. [2011 c.730 §41]

**469B.282 Limitation on amount receiving preliminary certification.** For an energy conservation project, the total amount that receives a preliminary certification from the Director of the State Department of Energy may not exceed \$10 million in certified cost. [2011 c.730 §42]

**469B.285 Application for preliminary certification; eligibility; contents; fees; certification to remain valid for three years; rules.** (1) Prior to the installation or construction of an energy conservation project, any person may apply to the State Department of Energy for preliminary certification under ORS 469B.288 if:

(a) The project complies with the standards adopted by the Director of the State Department of Energy; and

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

(2) An application for preliminary certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the applicant plans to acquire, construct or install a project that substantially reduces the consumption of purchased energy or uses energy more efficiently.

(b) A detailed description of the project and its operation and information showing that the project will operate as represented in the application and remain in operation for at least five years, unless the director by rule specifies another period of operation.

(c) Information on the amount by which consumption of purchased energy by the applicant will be reduced, and, if applicable, information about the expected level of sustainable building practices project performance.

(d) The anticipated total project cost.

(e) Information on the number and type of jobs, directly connected to the allowance of the credit, that will be:

(A) Created by the project; and

(B) Sustained throughout the construction, installation and operation of the project.

(f) Information demonstrating that the project will comply with applicable state and local laws and regulations and obtain required licenses and permits.

(g) Information relating to the standards described in ORS 469B.279.

(h) A recommendation for a research and development project as demonstrative of innovation that has been made by a qualified third party selected by the director.

(i) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of ORS 469B.270 to 469B.306, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469B.294. The director may refund all or a portion of the fee if the application for certification is rejected.

(4) The director may allow an applicant to file the application for preliminary certification after the start of installation or construction of the project if the director finds that:

(a) Filing the application before the start of installation or construction is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The project would otherwise qualify for certification under ORS 469B.270 to 469B.306.

(5) The director may, by rule, waive preliminary certification under ORS 469B.288,

or may establish an informational filing system in place of preliminary certification, for projects that:

(a) Have eligible costs of less than \$20,000;

(b) Consist of measures that the director determines to be eligible for waiver of preliminary certification; and

(c) Comply with any other requirements established by the director.

(6) A preliminary certification shall remain valid for a period of three calendar years after the date on which the preliminary certification is issued by the director, after which the certification becomes invalid even if:

(a) The applicant is awaiting identification of a pass-through partner; or

(b) The preliminary certification has been amended. [2011 c.730 §43; 2012 c.45 §21]

**469B.288 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification.** (1) The Director of the State Department of Energy may require an applicant for certification of an energy conservation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.270 to 469B.306 and any applicable rules or standards adopted by the director, the director may issue a preliminary certificate approving the installation or construction of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) In accordance with ORS chapter 183, the director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The project does not comply with the provisions of ORS 469B.270 to 469B.306 and applicable rules and standards;

(b) The applicant has previously received preliminary or final certification for the project;

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469B.130 to 469B.169 or 469B.270 to 469B.306; or

(d) The applicant or the principal, director, officer, owner, majority shareholder or

member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business. [2011 c.730 §44]

**469B.291 Final certification; eligibility; contents of application; performance agreement; rules.** (1) The Director of the State Department of Energy may issue a final certification for an energy conservation project under this section only if:

(a) The project was installed or constructed under a preliminary certificate of approval issued under ORS 469B.288, unless preliminary certification is waived under ORS 469B.285 (5);

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.285 (2) and does not violate any condition that may be imposed as described in subsections (4) and (5) of this section; and

(c) The project was installed or constructed in accordance with the applicable provisions of ORS 469B.270 to 469B.306 and any applicable rules or standards adopted by the director.

(2) Any person may apply to the State Department of Energy for final certification of a project:

(a) If the person received preliminary certification for the project under ORS 469B.288; and

(b) After completion of the installation or construction of the project.

(3) An application for final certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the project attested to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the project is less than \$50,000, copies of receipts for purchase and installation of the project;

(c) The amount of the credit under ORS 315.331 that is to be claimed;

(d) The number and type of jobs, directly connected to the allowance of the credit, that will be created by the operation and maintenance of the project over the five-year period beginning with the year of preliminary certification under ORS 469B.288;

(e) Information sufficient to demonstrate that the project will remain in operation for at least five years, unless the director by rule specifies another period of operation;

(f) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director;

(g) Information, if applicable, pertaining to prior recommendation of the project by a qualified third party selected by the director; and

(h) Any other information determined by the director to be necessary prior to issuance of a final certificate, including inspection of the project by the department.

(4) As part of the final certification process, the director may require the applicant to enter into a performance agreement with the department. The performance agreement may include a recertification requirement under ORS 469B.298 and any additional requirements that the director determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306.

(5) After the filing of the application under this section, the director may issue the certificate together with any conditions, including conditions imposed by a performance agreement, that the director determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the project. However, the director may not certify an amount for tax credit purposes that is more than the amount approved in the preliminary certificate issued for the project.

(6) Except as otherwise provided in ORS 469B.298, if the director rejects an application for final certification, or certifies a lesser amount of credit than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons for the action, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

(7) Upon approval of an application for final certification of a project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the total project cost.

(8) The director may establish by rule timelines and intermediate deadlines for submission of application materials. [2011 c.730 §45; 2012 c.45 §22; 2015 c.545 §5]

**Note:** See note under 469B.276.

**469B.294 Fees for certification or recertification; rules.** By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification or recertification of an energy conservation project under ORS 469B.270 to 469B.306. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of ORS 469B.270 to 469B.306, including filing, investigating, granting and rejecting applications for certification or recertification and ensuring compliance with ORS 469B.270 to 469B.306 and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified. [2011 c.730 §46; 2015 c.545 §6]

**Note:** See note under 469B.276.

**469B.297 Certificate required for tax credits; certification not to exceed five years; recertification.** (1) A certificate issued under ORS 469B.291 is required for purposes of obtaining tax credits in accordance with ORS 315.331. Except as otherwise provided in ORS 469B.298, such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the project under ORS 469B.291 is received by the State Department of Energy. If required by the department in a performance agreement, the project owner shall seek recertification during the five-year period, as provided in ORS 469B.298.

(2) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable.

(3) For a transferee holding a credit that has been transferred under ORS 469B.276, the five-year period shall begin with the tax year in which the transferee pays for the credit. [2011 c.730 §47; 2015 c.545 §7]

**Note:** See note under 469B.276.

**469B.298 Recertification of eligibility.** (1) An owner of an energy conservation project with a total project cost certified under ORS 469B.291 of \$1 million or more that is subject to a recertification requirement in a performance agreement shall apply under this section for recertification of eligibility for the tax credit allowed under ORS 315.331.

(2) The applicant shall file an application for recertification with the State Department of Energy at least 60 days prior to the anniversary date of the issuance of the final certificate. The Director of the State Department of Energy may require recertification for the three years following the date of the issuance of the final certificate.

(3) The recertification application shall contain the following information:

(a) A description of the business operations conducted at the facility and any changes in the business operations since the project was completed;

(b) Energy consumption for the project or facility as shown in the preceding 12 months of utility billing records;

(c) A statement signed by the applicant attesting that the project is in compliance with all applicable laws related to the ownership and operation of the project;

(d) A statement signed by the project owner attesting that the project owner is current on all obligations to the state, including but not limited to taxes and permitting fees;

(e) An inspection of the project by the department, if required by the department; and

(f) Any other information required by the department.

(4) A recertification application filed under this section must be accompanied by the fee established under ORS 469B.294.

(5) The department shall review the recertification application and approve the application if it meets the requirements of subsections (3) and (4) of this section and the project is in compliance with all applicable statutes and administrative rules and with the performance agreement.

(6) The department may consult with the city or county in which the facility is located or with any state agency in determining whether to approve a recertification application under this section.

(7) If the director approves a recertification application, the director shall issue a recertification of eligibility for a tax credit under ORS 315.331 for up to 10 percent of the total project cost certified under ORS 469B.291. The director may deny the recertification or issue a recertification in an amount of credit less than 10 percent of the total project cost certified under ORS 469B.291 if the director determines that the project is not in compliance with all applicable statutes and administrative rules and with the performance agreement.

(8) If the director does not approve a recertification application or reduces the

amount of tax credit, the project owner may not claim, use or transfer that portion of the tax credit for which the recertification was denied.

(9) A person aggrieved by a decision of the director to deny or reduce the amount of a recertification for a tax credit may request and be granted a contested case hearing under ORS chapter 183. [2015 c.545 §2]

**Note:** See note under 469B.276.

**469B.300 Revocation of certificate; forfeiture of tax credits; collection.** (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a certificate issued under ORS 469B.291 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation;

(b) The holder of the certificate or the operator of the project has failed to construct or operate the project in compliance with the plans, specifications and procedures in the certificate; or

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under ORS 315.331, from the certificate holder or a successor in interest to the business interests of the certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

(3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or any successor in interest to the business interests of that person. An assessment of tax is not necessary and a statute of limitation does not preclude the collection of taxes described in this subsection.

(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires an interest through bankruptcy or through foreclosure of a security interest is not considered to be a successor in interest to the business interests of the person that obtained certification.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section,

the certificate holder shall be denied any further relief under ORS 315.331 in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.276 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 469B.276 may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section.

(6) If the project owner is subject to a performance agreement requiring recertification under ORS 469B.298, the certificate shall be considered revoked as to any portion of the tax credit that has not previously received approval under a recertification application that was required to have been filed pursuant to ORS 469B.298. [2011 c.730 §48; 2015 c.545 §8]

**Note:** See note under 469B.276.

**469B.303 Limitations on amount of potential tax credits for energy conservation projects; allocation; rules.** (1) The total amount of potential tax credits for all energy conservation projects in this state may not, at the time of preliminary certification under ORS 469B.288, exceed:

(a) \$28 million for any biennium; or

(b) \$7.5 million for the six months beginning July 1, 2017, and ending December 31, 2017.

(2) In the event that the Director of the State Department of Energy receives applications for preliminary certification with a total amount of certified costs for potential tax credits in excess of the limitations in subsection (1) of this section, the director shall allocate the issuance of preliminary certifications according to standards and criteria established by rule by the director. [2011 c.730 §49]

**469B.306 Policies and procedures; standards for single energy conservation project; rules.** The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 315.331 and 469B.270 to 469B.306 and section 36, chapter 730, Oregon Laws 2011, including standards for what constitutes a single energy conservation project. [2011 c.730 §50]

## TRANSPORTATION PROJECTS

**469B.320 Definitions for ORS 315.336 and 469B.320 to 469B.347.** As used in ORS 315.336 and 469B.320 to 469B.347:

(1) "Acquisition of an alternative fuel vehicle fleet" includes the replacement of two or more vehicles that are not used primarily for personal, family or household purposes, that are modified or acquired directly from the factory and that:

(a) Use an alternative fuel, including electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, Hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy as an alternative fuel; and

(b) Produce lower exhaust emissions, or are more energy efficient, than equivalent vehicles fueled by gasoline or diesel.

(2) "Alternative fuel vehicle infrastructure project" includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

(3) "Alternative fuel vehicle project" means:

(a) The acquisition of an alternative fuel vehicle fleet; or

(b) An alternative fuel vehicle infrastructure project.

(4) "Cost" includes capital expenditures and core expenses such as vehicle repair, fuel, personnel and administrative expenses.

(5) "Transportation project" means:

(a) Transit services provided to members of the public by a public or nonprofit entity that receives state or federal funding for those services, or is the direct recipient of funding from an entity that receives state or federal funding for the services; or

(b) An alternative fuel vehicle project. [2011 c.730 §56; 2012 c.45 §7; 2013 c.774 §13]

**469B.323 Transferability of project tax credit; determination of prices; rules.** (1) The owner of a transportation project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section. [2011 c.730 §57]

**469B.326 Application for preliminary certification; eligibility; contents; fees; certification to remain valid for three years; rules.** (1) Prior to the acquisition or

performance of a transportation project, a person may apply to the State Department of Energy for preliminary certification for the project under ORS 469B.329 if:

(a) The project complies with the standards adopted by the Director of the State Department of Energy; and

(b) The applicant will be the owner, contract purchaser or lessee of the project at the time of acquisition or performance of the project.

(2) An application for preliminary certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the applicant plans to acquire or perform a project that substantially reduces the consumption of purchased petroleum energy.

(b) A detailed description of the project and its operation and information showing that the project will operate as represented in the application and remain in operation for at least five years, unless the director by rule specifies another period of operation.

(c) Information on the amount by which consumption of purchased petroleum energy by the applicant will be reduced, and, if applicable, information about the expected level of project performance.

(d) The anticipated total project cost.

(e) Information on the number and types of jobs, directly connected to the allowance of the credit, that will be:

(A) Created by the project; and

(B) Sustained throughout the acquisition and performance of the project.

(f) Information demonstrating that the project will comply with applicable state and local laws and regulations and obtain required licenses and permits.

(g) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of ORS 469B.320 to 469B.347, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469B.335. The director may refund all or a portion of the fee if the application for certification is rejected.

(4) The director may allow an applicant to file the application for preliminary certification after the start of acquisition or performance of the project if the director finds that:

(a) Filing the application before the start of acquisition or performance is inappropriate

because special circumstances render filing earlier unreasonable; and

(b) The project would otherwise qualify for certification under ORS 469B.320 to 469B.347.

(5) A preliminary certification shall remain valid for a period of three calendar years after the date on which the preliminary certification is issued by the director, after which the certification becomes invalid even if:

(a) The applicant is awaiting identification of a pass-through partner; or

(b) The preliminary certification has been amended. [2011 c.730 §58; 2012 c.45 §8]

**469B.329 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification.** (1) The Director of the State Department of Energy may require an applicant for certification of a transportation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.320 to 469B.347 and any applicable rules or standards adopted by the director, the director may issue a preliminary certificate approving the acquisition or performance of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) In accordance with ORS chapter 183, the director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The project does not comply with the provisions of ORS 469B.320 to 469B.347 and applicable rules and standards;

(b) The applicant has previously received preliminary or final certification for the project;

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469B.130 to 469B.169 or 469B.320 to 469B.347; or

(d) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business. [2011 c.730 §59]

**469B.332 Final certification; eligibility; contents of application; rules.** (1) A final certification for a transportation project may not be issued by the Director of the State Department of Energy under this section unless:

(a) The project was acquired or performed under a preliminary certificate of approval issued under ORS 469B.329;

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.326 (2) and does not violate any condition that may be imposed as described in subsection (4) of this section; and

(c) The project was acquired or performed in accordance with the applicable provisions of ORS 469B.320 to 469B.347 and any applicable rules or standards adopted by the director.

(2) A person may apply to the State Department of Energy for final certification of a project:

(a) If the person received preliminary certification for the project under ORS 469B.329; and

(b) After completion of the acquisition or performance of the project.

(3) An application for final certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b)(A) The actual cost of the project attested to by a certified public accountant who is not an employee of the applicant or the applicant's completed audit in compliance with federal Office of Management and Budget Circular A-133; or

(B) If the actual cost of the project is less than \$50,000, copies of receipts for acquisition and performance of the project;

(c) The amount of the credit under ORS 315.336 that is to be claimed;

(d) The number and types of jobs, directly connected to the allowance of the credit, created by the acquisition and performance of the project over the five-year period beginning on the date of issuance of the preliminary certification under ORS 469B.329;

(e) Information sufficient to demonstrate that the project will remain in operation for at least five years, unless the director by rule specifies another period of operation;

(f) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director; and

(g) Any other information determined by the director to be necessary prior to issuance

of a final certificate, including inspection of the project by the department.

(4) After the filing of the application under this section, the director may issue the certificate together with any conditions that the director determines are appropriate to promote the purposes of ORS 315.336 and 469B.320 to 469B.347. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the project. However, the director may not certify an amount for tax credit purposes that is more than the amount of credit approved in the preliminary certificate issued for the project.

(5) If the director rejects an application for final certification, or certifies a lesser amount of credit than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons for the action, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

(6) Upon approval of an application for final certification of a project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the certified cost of the project.

(7) The director may establish by rule timelines and intermediate deadlines for submission of application materials. [2011 c.730 §60; 2012 c.45 §9]

**469B.335 Fees for certification; rules.**

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification of a transportation project under ORS 469B.320 to 469B.347. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of ORS 469B.320 to 469B.347, including filing, investigating, granting and rejecting applications for certification and ensuring compliance with ORS 469B.320 to 469B.347 and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified. [2011 c.730 §61]

**469B.338 Certificate required for tax credits; certification not to exceed five years.**

(1) A certificate issued under ORS 469B.332 is required for purposes of obtaining tax credits in accordance with ORS 315.336. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the transportation project under ORS 469B.332 is received by the State Department of Energy.

(2) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable.

(3) For a transferee holding a credit that has been transferred under ORS 469B.323, the five-year period shall begin with the tax year in which the transferee pays for the credit. [2011 c.730 §62]

**469B.341 Revocation of certificate; forfeiture of tax credits; collection.**

(1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a certificate issued under ORS 469B.332 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation;

(b) The holder of the certificate or the operator of the transportation project has failed to acquire or perform the project in compliance with the plans, specifications and contract terms in the certificate; or

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under ORS 315.336, from the certificate holder or a successor in interest to the business interests of the certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

(3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or any successor in interest to the business interests of that person. An assessment of tax is not necessary and a statute of limitation does not preclude the collection

of taxes described in subsection (2) of this section.

(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires an interest through bankruptcy or through foreclosure of a security interest is not considered to be a successor in interest to the business interests of the person that obtained certification.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.336 in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.323 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 469B.323 may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section. [2011 c.730 §63]

**469B.344 Limitation on amount of potential tax credits for transportation projects.**

(1)(a) The total amount of potential tax credits for all transportation projects in this state may not, at the time of preliminary certification under ORS 469B.329, exceed \$20 million for any biennium.

(b) For each tax year, the Director of the State Department of Energy may allocate a percentage of the amount allowed in paragraph (a) of this subsection to alternative fuel vehicle projects and a percentage to transit services.

(2) Notwithstanding ORS 315.336, in the event that the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limits set by the director pursuant to subsection (1)(b) of this section, the director shall allocate the issuance of preliminary certifications among applicants as follows:

(a) If an excess of applications for credits for transit services is received, the director shall allocate the issuance of preliminary certifications among applicants for credits for transit services and proportionately reduce the amount of allowed credit, with no applicant receiving more than 20 percent of the amount established under subsection (1)(b) of this section for transit services.

(b) The director may allocate the issuance of preliminary certifications among applicants for credits for alternative fuel vehicle projects and may award credits for less than the amount otherwise allowed applicants.



(c) If, after making any reductions required under paragraph (a) of this subsection, an unallocated amount remains, the director shall allocate this additional amount among applicants affected by the percentage restriction in paragraph (a) of this subsection. [2011 c.730 §64; 2012 c.45 §10; 2013 c.774 §15]

**469B.347 Policies and procedures; standards for single transportation project; rules.** The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 315.336 and 469B.320 to 469B.347, including standards for what constitutes a single transportation project. [2011 c.730 §65]

## BIOFUELS AND BIOMASS

**469B.400 Fuel blends and solid biofuels; qualification for tax credits; rules.** The State Department of Energy shall by rule identify categories of fuel blend and solid biofuel that qualify for the personal income tax credit allowed under ORS 315.465. [Formerly 469.785]

**Note:** Sections 8a and 8b (2), chapter 739, Oregon Laws 2007, provide:

**Sec. 8a.** The State Department of Energy shall periodically conduct an impact study of the biofuels program. The study will include but is not limited to the following criteria with respect to the biofuel sector in this state:

- (1) Jobs created;
- (2) Average wage rates for those jobs;
- (3) The provision of health care and other benefits;
- (4) The extent to which workforce training opportunities are being provided to employees;
- (5) The number of acres of biofuel feedstock planted;
- (6) The number of gallons of biofuel blended fuel produced and consumed in the state;
- (7) The cost of fuel with biofuel blends and how that compares with the cost of petroleum fuel;
- (8) Environmental impacts such as reductions in greenhouse gas emissions and other toxic air pollution;
- (9) The impact of biofuel feedstock production on the price of commodity crops and the cost of food staples; and
- (10) The extent to which Oregon producers import biofuel or biofuel feedstock from outside the state. [2007 c.739 §8a]

**Sec. 8b.** (2) Section 8a of this 2007 Act is repealed January 2, 2025. [2007 c.739 §8b(2)]

**469B.403 Biomass; eligibility for tax credits; rates.** To be eligible for the tax credit under ORS 315.141, the biomass must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates for biomass are:

- (1) For oilseed crops, \$0.05 per pound.
- (2) For grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel.

(3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.

(4) For used cooking oil or waste grease, \$0.10 per gallon.

(5) For wastewater biosolids, \$10.00 per wet ton.

(6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from harvest or forest health stewardship, \$10.00 per bone dry ton.

(7) For grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per bone dry ton.

(8) For animal manure or rendering offal, \$3.50 per wet ton. [Formerly 469.790; 2016 c.29 §12]

**Note:** Section 6, chapter 739, Oregon Laws 2007, provides:

**Sec. 6.** (1) ORS 315.141, 315.144 and 469B.403 apply to tax years beginning on or after January 1, 2007, and before January 1, 2018.

(2) Notwithstanding subsection (1) of this section, a tax credit is not allowed for wheat grain (other than nongrain wheat material) for tax years beginning before January 1, 2009, or on or after January 1, 2018. [2007 c.739 §6; 2007 c.590 §5; 2009 c.913 §18; 2011 c.730 §2; 2016 c.29 §11; 2017 c.610 §12]

**469B.407 Suspension or revocation.** (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the suspension or revocation of the certificate or portion of the certificate issued under ORS 315.141 if the director finds that:

- (a) The certification was obtained by fraud or misrepresentation; or
- (b) The certification was obtained by mistake or miscalculation.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue and the person that obtained the tax credit certification from the State Department of Energy of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect:

(a) In the case in which no portion of a certificate has been transferred under ORS 315.144, those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under ORS 315.141 and 469B.403 pursuant to the revoked certification, from the certificate holder or a successor in interest to the business interests of the certificate holder. All tax credits provided to the holder of the certificate and attributable to the fraudulently or mistakenly obtained certificate or portion of the certificate shall be forfeited.

(b) In the case in which all of a certificate has been transferred under ORS 315.144, an amount equal to the amount of the tax credits allowable to the transferee under ORS 315.141 and 469B.403 pursuant to the revoked certification, from the transferor.

(c) In the case in which a portion of a certificate has been transferred under ORS 315.144, those taxes not paid by the transferor as a result of the tax credits provided to the transferor under ORS 315.141 and 469B.403 pursuant to the revoked certification, from the transferor or a successor in interest to the business interests of the transferor, and an amount equal to the amount of the tax credits allowable to the transferee under ORS 315.141 and 469B.403 pursuant to the revoked certification, from the transferor. All tax credits provided to the transferor and attributable to the fraudulently or mistakenly obtained certificate or portion of the certificate shall be forfeited.

(3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or a successor in interest to the business interests of that person. No assessment of tax shall be necessary and no statute of limitation shall preclude the collection of taxes described in this subsection.

(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires an interest through bankruptcy or through foreclosure of a security interest is not considered to be a successor in interest to the business interests of the person that obtained certification.

(4) Notwithstanding subsections (1) to (3) of this section, a certificate or portion of a certificate held by a transferee under ORS 315.144 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 315.144 may not be reduced and a transferee is not liable under subsections (2) and (3) of this section. [2016 c.29 §15]

### PENALTIES

**469B.991 Civil penalty when contractor certificate revoked.** (1) The Director of the State Department of Energy may impose a civil penalty against a contractor if a contractor certificate is revoked under ORS 469B.118. The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 to the contractor or to purchasers of the system for which a contractor's certificate has been revoked.

(2) The State Department of Energy may not collect any of the amount of a civil penalty imposed under subsection (1) of this section from a purchaser of the system for which the final certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469B.118 (3) to collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's fraud or misrepresentation under ORS 469B.118 (1)(a).

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) A penalty recovered under this section shall be paid into the State Treasury and credited to the General Fund and is available for general governmental expenses. [Formerly 469.994; 2015 c.701 §34]