**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**DIVISION 16**

**POLLUTION CONTROL TAX CREDITS**

**340-016-0080**

**Certification**

(1) The Preliminary Certificate. The Commission shall pre-certify the eligibility of a facility if the Commission determines the facility is eligible for a pollution control tax credit certificate as set forth in OAR 340-016-0060. The certificate shall be prima facie evidence that the facility is qualified for certification for tax relief under [ORS 468](http://landru.leg.state.or.us/ors/468.html).167. Preliminary certification shall not ensure that the facility constructed will receive certification under ORS 468.167 or tax relief under ORS 307.405 or 315.304.

(2) The Final Certificate. The Commission shall certify the actual cost of a pollution control facility as set forth in OAR 340-016-0070 and the portion of the cost properly allocable to pollution control as set forth in [ORS 468](http://landru.leg.state.or.us/ors/468.html).190 and OAR 340-016-0075 if the Department determines the facility is eligible for pollution control tax credit certification as set forth in 340-016-0060. The certificate:

(a) Shall bear a separate serial number for each such facility;

(b) May certify two or more facilities which constitute an operational unit under one certificate;

(c) Is effective for purposes of tax relief according to the provisions of ORS 307.405 or [ORS 315](http://landru.leg.state.or.us/ors/315.html).304;

(d) Shall be granted:

(A) For 10 consecutive years beginning with tax year of the person taking the tax credit; or

(B) For 20 consecutive years for corporations organized under ORS Chapters 62 or 65 that utilize ad valorem tax-relief. The portion of the facility allocable to pollution control shall be exempt from ad valorem taxation.

(e) Shall be limited to that portion of the eligible and allocable facility costs, as set forth in OAR 340-016-0070 and OAR 340-016-0075 representing the taxpayer's investment in the pollution control facility.

(f) May certify portions of a facility qualifying under ORS 468.165(1)(c) separately under this section if portions of the facility are owned by more than one person. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of [ORS 307](http://landru.leg.state.or.us/ors/307.html).405 or ORS 315.304, whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility.

(g) May certify a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to pollution control, material recovery or recycling than was claimed in the application for certification.

(3) Revocation. The Department may order the revocation of the final tax credit certification as set forth in [ORS 468](http://landru.leg.state.or.us/ors/468.html).185. The Department shall notify the Department of Revenue and the county assessor of the county in which the facility is located as soon as the order of revocation or reinstatement under this section has become final.

(a) Cause for Revocation. Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Department may order revocation of a tax credit for:

(A) Fraud or Misrepresentation, if the certificate was obtained by fraud or misrepresentation. All prior tax relief provided to the certificate holder by virtue of such certificate shall be forfeited. The Department of Revenue or the proper county officers shall proceed to collect taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405 and 315.304; or

(B) Failure to Operate Facility, if the certificate holder has failed substantially to operate the facility for the purpose of, and to the extent necessary to meet the specifications of the certificate; or in compliance with the applicable Department or Commission statutes, rules, orders or permit conditions. The certificate holder shall be denied any further relief provided under ORS 307.405 or 315.304 in connection with such facility from and after the date that the order of revocation becomes final.

(b) Suspended Revocation. The Department may suspend the revocation of a certificate when operation of a facility ceases if the certificate holder indicates in writing that the facility will be returned to operation within five years time. In the event that the facility is not returned to operation as indicated, the Department shall revoke the certificate.

(c) Impact on Adjacent Facilities. The Department may revoke tax credits held for any facility or piece of equipment which is for the purpose of preventing, controlling, reducing, or eliminating pollution to the same media and which is at a location adjacent to the non-complying facility.

(d) Reinstatement. The Department may reinstate any revoked tax credit certification if the Department finds the non-complying facility has been brought into compliance. The tax credit certification shall be reinstated for the remaining period of the tax credit, less the period beginning on the date the Department revokes the certificate and ending on the date the Department reinstates the certificate.

(4) Sale, Exchange or Disposition of Facility. The certificate holder shall provide the Department with written notice upon any sale, exchange or other disposition of the certified pollution control facility. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality. Upon sale or exchange of the facility, the certificate holder may request that the Department transfer a tax credit from one holder to another, the Department shall reissue the certificate to the new holder, and report the transfer of the certificate to the Department of Revenue as set forth in [ORS 307](http://landru.leg.state.or.us/ors/307.html).405 and 315.304.

Stat. Auth.: ORS 468.150
Stats. Implemented: ORS 468.150 – ORS 468.190
Hist.: DEQ 5-1998, f. 4-24-98, cert. ef. 5-1-98

**340-016-0088**

**Subdelegation of Certificate Administration**

(1) The Environmental Quality Commission subdelegates authority to the Director of the Department of Environmental Quality to:

(a) Transfer the tax credit certificate upon sale or exchange of the certified facility under OAR 340-016-0080(4) if:

(A) The new facility owner submits a complete Tax Credit Transfer Request form provided by the Department; and

(B) The Department determines the new facility owner continues to operate the facility according to the conditions of certification under ORS 468.170.

(b) Revoke a certificate under OAR 340-016-0080(3).

(2) The Director may subdelegate the authority provided in section (1) of this rule to the Administrator of the Management Services Division.

Stat. Auth.: ORS 468.020, ORS 468.150
Stats. Implemented: ORS 468.150 – ORS 468.190

**Truck Engine Tax Credits**

**340-016-0210**

**Purpose**

This rule establishes Department of Environmental Quality policies and procedures for issuing tax credits to Oregon taxpayers that purchase qualifying truck engines in accordance with Oregon Law 2003, Chapter 618, Sections 28 through 32. These rules apply only to purchases made on or after September 27, 2007, and certificates issued on or before December 31, 2013.

Stat. Auth.: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Hist.: DEQ 8-2004, f. & cert. ef. 9-17-04; DEQ 9-2008, f. & cert. ef. 7-11-08