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STATUTORY MINOR CORRECTION

DEQ 1-2019
CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

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& LEGISLATIVE COUNSEL

FILING CAPTION: Clean Fuels Program paragraph number correction

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting spelling

Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule

AMEND: 340-253-0330

RULE TITLE: Credit Generators: Providers of Electricity

RULE SUMMARY: Correcting numbering. "(6)" is missing from the paragraph between "(5)" and "(7)". Adding "(6)" to correct.

RULE TEXT:

(1) Applicability. This rule applies to providers of electricity used as a transportation fuel.

(2) For residential charging. For electricity used to charge an electric vehicle at a residence, subsections (a) and (b) determine the person who is eligible to generate credits.

(a) Electric Utility. In order to generate credits for the following year, an electric utility must notify DEQ by October 1 of the current year whether it will generate credits or designate an aggregator to act on its behalf. The utility or its aggregator must have an active registration approved by DEQ under OAR 340-253-0500. Once a utility has made a designation under this section that designation will remain in effect unless the utility requests a change in writing to DEQ.

(b) Backstop Aggregator. If an electric utility does not register or designate an aggregator under subsection (a), then a backstop aggregator is eligible to claim any credits that the utility could have generated for the following year under section (6).

(3) For non-residential charging. For electricity used to charge an electric vehicle at non-residential locations, such as in public, for a fleet, at a workplace, or at multi-family housing sites, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Owner or service provider of the electric-charging equipment. The owner or service provider of the electric-charging equipment may generate the credits. Only one entity may generate credits from each piece of charging equipment.

(b) Electric Utility. If the owner or service provider of the electric-charging equipment does not generate the credits, then an electric utility or an aggregator designated to act on the utility's behalf is eligible to generate the credits. The utility or its aggregator must have an active registration approved by DEQ under OAR 340-253-0500. Once a utility has made a designation under this section that designation will remain in effect unless the utility requests a change in writing to DEQ.

- (c) Backstop Aggregator. If an electric utility does not register or designate an aggregator under subsection (b), then a backstop aggregator is eligible to claim any credits that the utility could have generated for the following year under section (6).
- (4) Public Transit. For electricity used to power fixed guideway vehicles such as light rail systems, streetcars, and aerial trams, or transit buses, a transit agency may generate the credits. The transit agency must have an active registration approved by DEQ under OAR 340-253-0500.
- (5) Forklifts. For electricity used to power forklifts, the forklift fleet owner or fleet operator may generate the credits. Only one entity may generate credits from each piece of equipment. The fleet owner has precedence to generate credits or designate an aggregator.
- (6) Transportation Refrigeration Units. The fleet owner or fleet operator of the electric transportation refrigeration unit may generate credits for electricity used in transport refrigeration units. Only one entity may generate credits from each piece of equipment. The fleet owner has precedence to generate credits or designate an aggregator.
- (7) Responsibilities to generate credits. Any person specified under sections (2) through (6) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements of this division.
- (8) Backstop Aggregator. The backstop aggregator that serves as the credit generator of electricity credits that have not been claimed by an electric utility, an aggregator designated by an electric utility, or an owner or service provider of electric charging equipment under sections (2) and (3).
- (a) To qualify to submit an application to be a backstop aggregator, an organization must:
- (A) Be an organization exempt from federal taxation under section 501(c)(3) of the U.S. Internal Revenue Code;
- (B) Complete annual independent financial audits.
- (b) An entity that wishes to be the backstop aggregator must submit an application with DEQ that includes:
- (A) A description of the mission of the organization and how being a backstop aggregator fits into its mission;
- (B) A description of the experience and expertise of key individuals in the organization who would be assigned to work associated with being a backstop aggregator;
- (C) A plan describing:
- (i) How the organization will promote transportation electrification statewide or in specific utility service territories, if applicable;
- (ii) Any entities that the organization might partner with to implement its plan;
- (iii) How the organization plans to use the revenue from the sale of credits, which may include, without limitation, programs that provide incentives to purchase electric vehicles or install electric vehicle chargers, opportunities to educate the public about electric vehicles, and anticipated costs to administer its plan; and
- (iv) The financial controls that are, or will be put, in place to segregate funds from the sale of credits from other monies controlled by the organization.
- (D) Its last three years of independent financial audits and I.R.S. form 990s, and proof that the I.R.S. has certified them as qualifying as an exempt organization under 501(c)(3);
- (c) Initial applications to be a backstop aggregator are due to DEQ no later than March 15, 2018, to be eligible to be the backstop aggregator beginning in 2018. If the EQC does not approve the designation of a backstop aggregator under subsection (e), then DEQ may set a new deadline for applications if it decides to undertake a new selection process.
- (d) Applications will be evaluated by DEQ with the assistance of relevant experts selected by DEQ. DEQ will evaluate applications based on the likelihood that the applicant will maximize the benefits from the credits it receives to expand the use of alternative fuel vehicles and reduce greenhouse gas emissions from the transportation sector in Oregon.
- (e) DEQ may recommend an organization be designated as the initial backstop aggregator to the EQC by May 31, 2018. If DEQ does not recommend an organization to be the backstop aggregator or the EQC does not approve DEQ's recommendation, then DEQ may undertake a new selection process at a later date under the same criteria in subsections (b) and (d).
- (f) Following EQC approval of an organization to be the backstop aggregator, DEQ and the organization may enter into a written agreement regarding its participation in the program. A written agreement must be in place prior to the

backstop aggregator registering an account in the CFP Online System and receiving credits for the first time. The backstop aggregator must:

(A) By March 31st of each year, submit a report that summarizes the previous year's activity including:

(i) How much revenue was generated from the credits it received;

(ii) A description of activities including the status of each activity, where each activity took place, and each activity's budget, including administrative costs, and an estimate of its outcomes; and

(iii) The results of its most recent independent financial audit.

(B) Maintain records and make them available upon request by DEQ, including records required to be maintained under OAR 340-253-0600 and, in addition, any records relating to its application, the programs it operates using the proceeds from the sale of credits under this program, and any of the organization's financial records.

(g) If DEQ determines that a backstop aggregator is in violation of this division or the agreement that it enters into with DEQ to be the backstop aggregator, DEQ may rescind its designation and solicit applications to select a new backstop aggregator.

(h) If backstop aggregator wishes to terminate its agreement with DEQ, then DEQ may solicit applications to select a new backstop aggregator.

(i) After a backstop aggregator has been in place for three years, DEQ may hold a new selection process to appoint a backstop aggregator for future years. Unless DEQ has rescinded an organization as backstop aggregator under subsection (g), the current backstop aggregator may apply to be re-designated as the backstop aggregator for future years.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468A.266, 468A.268, 468A.277

STATUTES/OTHER IMPLEMENTED: ORS 468.020, ORS 468A.265 through 468A.277