

Attachment A

Division 16 Redline/Strikeout Rule

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 468.167. 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 468.190 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 315.304;
- (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 307.405 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 ~~Commission~~Department may order the revocation of the final tax credit certification as set forth in ORS 468.185. 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 ~~Commission~~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 ~~Commission~~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 ~~Commission~~Department shall revoke the certificate.

(c) Impact on Adjacent Facilities. The ~~Commission~~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 ~~Commission~~Department may reinstate any revoked tax credit certification if the ~~Commission~~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 ~~Commission~~Department revokes the certificate and ending on the date the ~~Commission~~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 ~~Commission~~Department transfer a tax credit from one holder to another, the ~~Commission~~Department shall reissue the certificate to the new holder, and ~~the Department shall~~ report the transfer of the certificate to the Department of Revenue as set forth in ORS 307.405 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

~~Pollution Prevention Tax Credits~~

~~340-016-0100~~

~~Purpose~~

~~The 1995 Oregon Legislature established a pilot program to determine the desirability of a tax credit program which encourages businesses to utilize technologies or processes that prevent the creation of air pollutants. The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of pollution prevention tax credits. These rules are to be used to implement ORS 468A.095 through 468A.098.~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.095, ORS 468A.096 & ORS 468A.098~~

~~Hist.: DEQ 11-1996, f. & cert. ef. 7-24-96~~

~~340-016-0110~~

~~Definitions~~

~~(1) Applicant: A person who applies for a pollution prevention tax credit under these rules. It includes a sole proprietor, partnership, limited partnership, joint venture, C corporation, S corporation, limited liability company, cooperative association, or non-profit corporation that files an Oregon tax return.~~

~~(2) Business Location: A stationary source of air emissions as defined in OAR 340-028-0110.~~

~~(3) Commission: Environmental Quality Commission~~

~~(4) Cost: The capital equipment costs and expenses the Department finds are needed to acquire, erect, build, or install an emission prevention project under these rules.~~

~~(a) Costs may include:~~

~~(A) Certifiable capital and installation costs, including payments for fees to design or engineer the project,~~

~~(B) Government fees associated with installation of the equipment,~~

~~(C) Shipping, and~~

~~(D) Materials and supplies needed to install the project.~~

~~(b) Tangible equipment costs shall be at least 50% of the total costs claimed for the emission prevention project.~~

~~(c) Costs may not include:~~

~~(A) Interest and warranty charges;~~

~~(B) Legal fees and court costs;~~

~~(C) Patent searches;~~

~~(D) Tax credit application and filing fees;~~

~~(E) Costs to maintain, operate, or repair a project, including spare parts;~~

~~(F) Costs to remove existing equipment which is being replaced by the emission prevention project;~~

~~(G) Construction equipment needed to install the project, or~~

~~(H) Land.~~

~~(d) If the emission prevention project is installed under a lease, lease option or lease purchase contract, the lessee's cost to acquire the tangible assets of the emission prevention project is the present value of the lease payments. The lease costs shall not include taxes, insurance, interest, and operating and maintenance costs. Payments to be made in the future shall be discounted to present value.~~

~~(5) Department: the Oregon Department of Environmental Quality~~

~~(6) Director: the Director of the Department of Environmental Quality~~

~~(7) Emission prevention project: production technologies or processes, or components of production technologies or processes, installed at a business location within Oregon which meet the criteria in OAR 340-016-0120.~~

~~(8) Installed: the completion of erection, installation, modification, or construction of all elements of the emission prevention project which are essential to perform its purpose.~~

~~(9) Targeted Emission Source Categories: categories of sources that qualify for a pollution prevention tax credit under OAR 340-016-0120:~~

~~(a) 40 CFR 63.320 to 63.325 (National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities);~~

~~(b) 40 CFR 63.340 to 63.347 (National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks); or~~

~~(c) 40 CFR 63.460 to 63.469 (National Emission Standards for Halogenated Solvent Cleaning).~~

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.095, ORS 468A.096 & ORS 468A.098

Hist.: DEQ 11-1996, f. & cert. ef. 7-24-96

340-016-0120

Emission Prevention Projects Which Qualify for a Pollution Prevention Tax Credit

~~(1) Any person may apply for certification under OAR 340-016-0130 of the cost of production technologies or processes installed at a business location within Oregon and producing emission levels and types not subject to regulation under Section 112 of the Clean Air Act of 1990 (P.L. 101-549) if:~~

~~(a) The technologies or processes are installed in replacement of technologies or processes that produce emission levels and types that are subject to, or are installed in lieu of systems that would produce emission levels and types subject to regulation under:~~

~~(A) 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities);~~

~~(B) 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or~~

~~(C) 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning); and~~

~~(b) The technologies or processes are installed on or after January 1, 1996 and on or before December 31, 1999; and~~

~~(c) The cost of the technologies and processes does not qualify for certification under ORS 468.165 and 468.170. Subject to any applicable limits on credit amounts, the granting of a certification of a pollution control facility under ORS 468.165 and 468.170 shall not prevent an application under this section for the cost of technologies and processes not included in the pollution control facility.~~

~~(A) Pollution prevention tax credit applicants may submit a combined application form to determine whether the technologies or processes would qualify for a pollution control facility tax credit.~~

~~(B) If the applicant can clearly demonstrate that no portion of the project is eligible for pollution control tax credits, then the Department shall make its determination as part of its pollution prevention tax credit recommendation to the Environmental Quality Commission.~~

~~(C) If a project could potentially qualify for both pollution control and pollution prevention tax credits, and the applicant can clearly demonstrate that less than 10% of the cost claimed in the application, up to a maximum of \$7500, may qualify for pollution control tax credits, then the Department shall make its determination as part of its pollution prevention tax credit recommendation to the Environmental Quality Commission.~~

~~(D) If a project could potentially qualify for both pollution control and pollution prevention tax credits, and the portions of the project which would qualify for pollution control tax credits and pollution prevention tax credits are easily separable and distinguishable, and they are not eligible for combined review under section (C) of this rule, then the projects shall be considered separate projects and shall be applied for separately accompanied by appropriate fees.~~

~~(E) If a project could potentially qualify for both pollution control and pollution prevention tax credits, and if the portions of the project which would qualify for pollution control tax credits and pollution prevention tax credits are interrelated portions of a system and are not easily separable and distinguishable, then the applicant shall apply for the pollution control tax credit first to identify which portions of the project will be certified under pollution control tax credits prior to submitting an application for pollution prevention tax credits.~~

~~(2) Emission prevention projects may include, but are not limited to, the following process or technologies, or components of the process or technologies. Projects may also include the retrofit of existing equipment to accommodate use of alternative chemicals.~~

~~(a) Dry cleaning facilities:~~

~~(A) Multiprocess wet cleaning systems;~~

~~(B) Equipment using petroleum based solvents or other alternatives to perchlorethylene;~~

~~(C) Large washing machines if the applicant can demonstrate that it was installed in lieu of solvent usage;~~

~~(D) Equipment which results in perchloroethylene use of less than 140 gallons per year per facility and qualification as a small area source under 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities).~~

~~(b) Hard and decorative chromium electro plating and chromium anodizing tanks:~~

~~(A) Equipment using replacement technologies for chrome, including but not limited to:~~

~~(i) Very hard electroless nickel deposits;~~

~~(ii) Replacement of hard chromium with nickel/boron;~~

~~(iii) Equipment using ion beam processing alternatives;~~

~~(B) Chrome free conversion coating for aluminum~~

~~(C) Zinc phosphates which replace chromates on steel for pre-paint applications, and other phosphates on aluminum which are used as a replacement for or instead of standard chromates as a pre-paint on aluminum base materials.~~

~~(D) Equipment using trivalent chrome as a replacement for hexavalent chrome~~

~~(E) Equipment which results in emissions below the levels specified in 40 CFR 63.340 to 63.347 (National Emission Standards for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks).~~

~~(c) Halogenated solvent cleaning:~~

~~(A) Vapor degreasers that use nonhalogenated solvents~~

~~(B) Ultrasonic cleaners~~

~~(C) Aqueous, nonaqueous or semiaqueous cleaning systems~~

~~(D) Hot and cold caustic dip tanks~~

~~(E) Equipment which results in emissions below the levels specified in 40 CFR 63.460 to 63.469 (National Emission Standards for Halogenated Solvent Cleaning).~~

~~(3) In order to qualify for a pollution prevention tax credit, the business location must:~~

~~(a) Be registered under the Clean Air Act Title III National Emission Standards for Hazardous Air Pollutants, if it currently operates systems which would be regulated under the federal regulations referenced in section (1) of this rule; or~~

~~(b) Certify that the process or technology was installed in lieu of systems used by targeted emission source categories, as required by Section (1) of this rule.~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.095, ORS 468A.096 & ORS 468A.098~~

~~Hist.: DEQ 11-1996, f. & cert. ef. 7-24-96~~

340-016-0130

~~Procedures for Processing Pollution Prevention Tax Credits~~

~~(1) Filing of Application~~

~~(a) A written application for pollution prevention tax credit certification shall be made to the Department on a form provided by the Department. One original and one copy shall be submitted. The application shall include, but not be limited to, the following information:~~

~~(A) Identifying information, including company name and address, plant name and address if different from company's name, and telephone number and names of plant site contact persons.~~

~~(B) A description of the emission prevention project, and a statement explaining how the technologies or processes, including process components, used will prevent or eliminate the emissions regulated under 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities); 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning).~~

~~(C) A summary and accounting of the actual emission prevention project costs. Records of project costs, such as canceled checks, invoices and receipts, shall be retained by the business. Records must be maintained until the tax year in which the tax credits claimed are no longer subject to Department of Revenue audit.~~

~~(D) A statement verifying the date the project was installed.~~

~~(E) A statement that the project is in accord with local, state and federal environmental laws and regulations.~~

~~(F) If the project is leased, a copy of the lease.~~

~~(G) Information which will allow the Commission to determine whether the project is eligible for a pollution control tax credit.~~

~~(H) Other information the Director considers necessary to assure a project complies with these rules.~~

~~(I) Certification by a responsible official of truth, accuracy and completeness of the application and attachments.~~

~~(b) The application shall be submitted within one year of installation of the technologies or processes. Failure to submit a timely application shall make the cost of a technology or process~~

~~ineligible for certification. The Commission may grant an extension of time, not exceeding one year, to submit an application when circumstances beyond the control of the applicant would make a timely submittal unreasonable.~~

~~(c) An application shall not be considered filed until it is complete and ready for processing. To be deemed complete, an applicant shall provide all information required in subsection (1)(a) of this rule, and the information shall be sufficient to determine whether the emission prevention project and associated costs qualify for certification and that the project is installed in accordance with federal, state and local environmental statutes, rules and standards. This means that all requested information is furnished by the applicant, and the Department notifies the applicant in writing that the application is complete and ready for processing.~~

~~(d) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits, clearly identified, will not be accepted by the Department for filing and shall be returned to the applicant for completion.~~

~~(e) Within 60 days after the receipt of an application, the Department shall request any additional information that the applicant needs to submit in order for the application to be considered complete. The Department's request for additional information may be considered an automatic request for extension of time to file the application. The applicant shall submit the requested information within 30 days of the date when the Department requested the information unless the applicant requests in writing a reasonable amount of additional time to submit the requested information.~~

~~(2) Commission Action~~

~~(a) Notice of the Department's recommended action on the application shall be mailed to the applicant at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing. The Commission shall act on an application for certification before the 120th day after the filing of a complete application. The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission.~~

~~(b) Certification:~~

~~(A) The Commission shall certify the cost of technologies or processes for which an application has been made under this rule, if the Commission finds that the technologies or processes:~~

~~(i) were installed in accordance with the requirements of OAR 340-016-0120.~~

~~(ii) further the intents and purposes of 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities); 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and~~

~~chromium anodizing tanks); or 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning).~~

~~(B) The action of the Commission shall include certification of the actual cost of the technologies or processes resulting in the elimination of emissions regulated under 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities); 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning). Each certificate shall bear a separate serial number for each such emission prevention project.~~

~~(C) The amount of the actual cost certified for all technologies or processes installed in any taxable year at a single business location shall not exceed \$75,000.~~

~~(D) The Commission may certify the cost of more than one technology or process at a location under one certificate.~~

~~(E) The actual cost certified shall not exceed the applicant's own cash investment in the technologies or processes.~~

~~(F) No determination of the portion of the costs to be certified shall be made until a complete application is filed.~~

~~(G) A certificate under this rule is effective for purposes of tax relief in accordance with ORS 315.311 if the technologies or processes were installed on or after January 1, 1996 and on or before December 31, 1999.~~

~~(H) Certification of an emission prevention project qualifying under this rule shall be granted for a period of five consecutive years, beginning with the tax year of the person in which the technology or process is certified under this section.~~

~~(I) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief beginning with the tax year following the tax year of certification as provided in ORS 315.304, based on that partner's pro rata share of the certified cost of the technology or process as determined by the partner's pro rata share of the business that installed the technology or process.~~

~~(J) If the Commission approves for certification an emission prevention project but all funds have been allocated for that targeted group or calendar year in accordance with OAR 340-016-0140, then the certification shall be delayed pending availability of funds. The applicant will not need to resubmit an application.~~

~~(K) If the Commission is acting on several applications but there is only enough funding for some of the applications in accordance with OAR 340-016-0140, the order in which the~~

~~applications were filed as complete and ready for processing will determine the order in which tax credit certificates are issued.~~

~~(c) Rejection~~

~~(A) If the Department has allocated all funds for this pilot under ORS 468A.098(7), the Department may reject all applications made after exhaustion of funds, and all applications which were approved pending availability of funds.~~

~~(B) If the Department determines that the application is incomplete for processing and the applicant fails to submit requested information within 30 days of the date when the Department requested the information, the application will be rejected by the Department unless the applicant requests in writing additional time to submit the requested information.~~

~~(C) If the application is submitted after the one year period following installation and an extension request has not been filed prior to the end of the one year period following installation, the application will be rejected by the Department.~~

~~(D) If the Commission rejects an application for certification, or certifies a lesser actual cost of the technologies or processes than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.~~

~~(d) Appeal: If the application is rejected by the Commission for any reason other than achievement of the program limitation imposed under OAR 340-016-0140, including the information furnished by the applicant as to the cost of the technologies or processes, or if the applicant is dissatisfied with the certification of the actual cost of the technology or process, the applicant may appeal the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.095, ORS 468A.096 & ORS 468A.098~~

~~Hist.: DEQ 11-1996, f. & cert. ef. 7-24-96~~

340-016-0140

~~Limitations and Rankings on Certified Costs~~

~~(1) The total actual cost certified for all projects completed on or after January 1, 1996 or on or before December 31, 1999, shall not exceed \$5,200,000. Funds shall be allocated equally over the four year period except as provided in subsection (3) of this rule, and distributed equally to targeted emission source categories in accordance with subsection (2) of this rule.~~

~~(2) The Director may set aside \$433,333 per year of costs certified for each of the targeted emission source categories. If the amount set aside for a targeted emission source category is not allocated to sources within that category by November 15 of each year, it may be used for other targeted emission source categories in the order in which the application was filed.~~

~~(3) Final certification shall be awarded first to targeted emission sources for which a set-aside has been established, then to other targeted emission sources, in the order in which the applications were filed as complete and ready for processing, until all funds are allotted for a calendar year. If the amount of set-aside is not allotted in a calendar year, it may be carried over and distributed equally to each of the targeted emissions source categories' annual set-aside to be used in the next calendar year until all funds are allotted.~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.095, ORS 468A.096 & ORS 468A.098~~

~~Hist.: DEQ 11-1996, f. & cert. ef. 7-24-96~~

340-016-0150

Fees

~~(1) The following fees must accompany each application for a pollution prevention tax credit:~~

~~(a) Filing fee in the amount of \$100. The filing fee is nonrefundable.~~

~~(b) Application processing fee in the amount of 1% of the cost claimed in the application, up to a maximum fee of \$750. If the application is rejected or withdrawn at a later date, DEQ may refund the application processing fee.~~

~~(2) The applicant shall submit an amount equal to the sum of the filing fee and the application processing fee with each application, made payable to the Department of Environmental Quality. No application is considered complete until the filing fee and application processing fee are submitted.~~

~~(3) The fees shall not be considered by the Commission as part of the cost of the facility to be certified.~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.095, ORS 468A.096 & ORS 468A.098~~

~~Hist.: DEQ 11-1996, f. & cert. ef. 7-24-96~~

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, ~~2011~~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

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Housekeeping and streamlining for DEQ-administered tax credits

This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking	Housekeeping and streamlining for DEQ-administered tax credits
Statutory Authority or other Legal Authority	ORS 468.020, ORS 468.150, ORS 468A.098; chapter 618, Oregon Laws 2003, Sec. 31-32, reprinted in a note following ORS 315.356
Statutes Implemented	ORS 468.150-190; 468A.095, 468A.096, 468A.098; chapter 618, Oregon Laws 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Need for the Rule(s)	To reduce workload and increase response time to complete pollution control certificate administration, the EQC requested DEQ perform certificate transfers, reissuance, revocations or reinstatements typically when a certificate holder sells a pollution control facility, changes their legal name or ceases operating the facility. In 2009, the Environmental Quality Commission issued the last <u>Pollution Control Tax Credit</u> certificate under ORS 468.150-190. With no new facility certifications, certificate administration does not warrant a separate action item on the EQC agenda. EQC and DEQ continue to have certificate administration responsibilities through 2018 and reporting responsibility through 2023. To reduce Secretary of State charges for maintaining rules beyond program deadlines and any ability to claim the credit on the Oregon tax return, this proposal would repeal <u>pollution prevention</u> tax credit rules. The pollution prevention tax credit was a 4-year pilot program with a December 31, 1999 deadline for project completion. The EQC issued the last tax credit certificate in 2000 under ORS 468A.095 through 468A.098, certificate holders could claim the credit over 5 years and ORS 315.311 provided a 4-year carry forward of any unused credits. The last year to claim unused credits on the Oregon tax return was 2008. To align <u>truck engine tax credit</u> rules to 2009 amendments to 2003 Oregon Law, this proposal would amend the period for certificate issuance from December 31, 2011 to December 31, 2013.
Documents Relied Upon for Rulemaking	OAR 340-016, ORS 468.020, ORS 150; chapter 618, Oregon Laws 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	This rulemaking is for housekeeping purposes and has no cost of compliance. The truck engine tax credit rule aligns to 2009 legislation that extended certification to December 31, 2013. The legislative extension has the potential to reduce state revenues by \$1,000,000.
Impacts on the General Public	No impact to general public
Impacts to Small Business	No impact to small business

(50 or fewer employees – ORS183.310(10))		
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	No cost of compliance on small business
	b) Types of businesses and industries with small businesses subject to the proposed rule	Not applicable
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	Not applicable
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	Not applicable
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	Not applicable
Impacts on Large Business (all businesses that are not “small businesses” under ORS183.310(10))	Describe projected fiscal and economic impacts. No impact on large business	
Impacts on Local Government	No impact on local government	
Impacts on State Agencies other than DEQ	No economic or fiscal impact on other state agencies	
Impacts on DEQ	Minor reductions in EQC preparation and presentation time, reduced cost to maintain obsolete rules	

Assumptions	None
Housing Costs	DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single-family dwelling on that parcel.
Administrative Rule Advisory Committee	DEQ did not use an advisory committee. The proposed changes are for minor housekeeping and program streamlining.

Prepared by

Printed name

Date

Approved by DEQ Budget Office

Printed name

Date

(Signed copy on file.)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION

Housekeeping and streamlining for DEQ-administered tax credits

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

The proposed rules apply to Oregon tax credits and do not have an applicable federal requirement.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

Not applicable.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

Not applicable.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
OAR 340-016

RULE CAPTION

Housekeeping and streamlining for DEQ-administered tax credits

1. Explain the purpose of the proposed rules.

The proposed rulemaking would:

- Adopt and amend Pollution Control Tax Credits rules to subdelegate certificate administration activities to DEQ;
- Repeal the Pollution Prevention Tax Credit pilot program rules. The statute authorized DEQ to issue program certificates through December 31, 1999.
- Amend the Truck Engine Tax Credit to align the last date of certificate issuance from December 31, 2011 to December 31, 2013 consistent with 2008 amendments to OL 2003.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes___ No X

a. If yes, identify existing program/rule/activity:

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes___ No___ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The proposed rules do not affect land use regulations. They are housekeeping in nature and streamline administrative activities.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable