

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Department of Energy
Agency and Division

330
Administrative Rules Chapter Number

In the Matter of: Modifications to Business Energy Tax Credit to implement HB 3680 (2010)

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Modification of the Business Energy Tax Credit to implement monetary caps and revise processing criteria

Statutory Authority: ORS 469.040, 469.165, 469.185-469.225, 315.354, 315.356, Oregon Laws, 2010, Chapter 76

Other Authority:

Stats. Implemented: ORS 469.185-469.225, 315.354, 315.356, Oregon Laws, 2010, Chapter 76

Need for the Temporary Rule(s):

HB 3680 §§ 1-16 (2010) contains amendments to a number of statutes that govern the Business Energy Tax Credit (BETC) program. HB 3680 (2010) was enacted during the 2010 legislative session and becomes effective 5/27/2010. Certain provisions of the bill are applicable to preliminary certifications that were issued previously or are currently pending before the agency, and the bill includes some provisions that are applicable to preliminary certifications issued on or after 7/1/2009 and some other provisions applicable to preliminary or final certifications issued on or after 1/1/2010. These rules are needed in order to give immediate notice and guidance to tax credit applicants regarding the new provisions, their applicability, and statutory amendments enacted as part of HB 3680 (2010). There was insufficient time to implement the permanent rulemaking proceeding between the end of the special session and the effective date of HB 3680 (2010). These rules create the prioritization criteria and framework required under the new laws to process previously issued, pending and new renewable facility business energy tax credit applications.

Documents Relied Upon, and where they are available:

HB 3680 (2010)

Justification of Temporary Rule(s):

The 2010 legislature authorized a tiered prioritization system and placed monetary caps on the amount of tax credits that may be awarded under the BETC program, in order to reduce the budgetary impact of the BETC. These rules implement the processes anticipated by the legislature to create a tiered system that compares projects of similar size against each other. The rule changes will also provide the department with the tools needed to approve or deny a project within the tiered system. The Department of Energy finds that its failure to act promptly to enact administrative rules implementing the prioritization and monetary limitations enacted by the legislature in HB 3680 (2010) and made retroactively applicable would result in serious prejudice to the public interest, because tax credit applicants will not have notice of the Department's policy regarding: the process and prioritization criteria to be applied by the Department with regard to the tax credits, the eligible cost for wind powered devices above 10MW and electric vehicle manufacturing, deadlines for applications prior to program sunsets revised in HB 3680, amendments to standards used when considering what constitutes a single facility, when final certifications may be issued for efficient truck technology, additional clarity of existing policies, and updated calculations to be used in determining the discounted value of the tax credits transferred to pass-through partners. Further, the Department finds that its failure to act promptly will also result in serious prejudice to the interests of tax credit applicants, because there is substantial likelihood that without these rules tax credit

applicants would inaccurately estimate the potential for or value of the tax credit in determining the financial viability of a potential eligible facility. These temporary rules will provide clarity and certainty for applicants. The Department also finds that its failure to act promptly to change the rules regarding the calculations for determining the discounted value of the tax credits transferred under ORS 469.206 could cause confusion and uncertainty as to the proper rate for the tax credits by pass-through partners.

Housing Cost Impact: As described above, the proposed rules are intended to implement changes to the BETC program as a result of the 2010 legislative session. In general, the BETC program provides tax incentives for the development of certain conservation and renewable energy projects. The proposed rules will not generally increase the cost or reduce the supply of housing or land for housing or residential development, because the program either does not affect housing or provides incentive for increased energy efficiency in new housing. In general, the proposed rules will not increase the cost of materials, labor, administration or other costs.

Authorized Signer

Printed name

Date

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