

**DEPARTMENT OF ENERGY
DIVISION 170**

**BIOMASS PRODUCER OR COLLECTOR TAX CREDIT
CERTIFICATION RULES**

330-170-0010 Purpose and Scope

- (1) OAR chapter 330, division 170 establishes the procedure and criteria for certifying tax credits under ORS 315.141 and ORS 469.790.
- (2) These rules apply to tax years beginning on or after January 1, 2012, and before January 1, 2018.

330-170-0020 Definitions

For the purposes of OAR chapter 330, division 170 the definitions in ORS 315.141 apply and in addition the following definitions shall apply:

- (1) “Applicant” or “taxpayer” means an individual or a legal entity (including but not limited to any domestic or foreign corporation, trust, partnership, cooperative, or limited liability company), but does not include a nonprofit organization or a government entity.
- (2) “Certificate” means a document issued by the department representing the right to claim a tax credit described in ORS 315.141 for the amount described on the certificate.
- (3) “Charcoal” means biomass produced into a densified, carbon rich product used in filters, as an absorbent, soil amendment, or a fuel marketed for cooking purposes and not including biofuels produced by torrefaction.
- (4) “Department” means the Oregon Department of Energy.
- (5) “Director” means the Director of the Oregon Department of Energy.
- (6) “Dry ton” means the amount of biomass that would weigh 2,000 pounds at zero percent moisture content.
- (7) “Firewood” as used in this rule means whole or split pieces of wood that are in a form commonly used for burning in campfires, stoves, or fireplaces.
- (8) “Manure” means feces and urine of domestic livestock as excreted.
- (9) “Oil Seed Crops” means canola, camelina, soybean, sunflower, safflower, mustard, and flaxseed grown to produce biodiesel.

- (10) “Rendering Offal” means the waste or by-products of a rendering process.
- (11) “Used Cooking Oil” means waste vegetable oil from food preparation.
- (12) “Vegetative Biomass from Agricultural Crops” means grass, wheat, straw and other types of biomass derived from crop production.
- (13) “Virgin Oil” means un-used oil that has been extracted from an agricultural crop.
- (14) “Waste Grease” means waste vegetable oil, animal fat, or organic grease from food preparation that is recovered from a grease trap, grease interceptor, grease recovery or similar device.
- (15) “Wastewater Biosolids” means organic material generated during the treatment of wastewater or sewage in a treatment facility.
- (16) “Yard Debris” is defined in ORS 459.005(30).

330-170-0030 Applicant Eligibility

- (1) To be eligible for certification, the applicant must:
 - (a) Be an agricultural producer or biomass collector;
 - (b) Have title to the biomass at the time the biomass is delivered to the biofuel producer;
 - (c) Produce or collect the biomass in Oregon; and
 - (d) Deliver or cause the delivery of the biomass to be:
 - (A) Used as biofuel in Oregon; or
 - (B) Used to produce biofuel in Oregon.

330-170-0040 Biomass Eligibility

- (1) The following material is not eligible:
 - (a) Material used to produce firewood or charcoal;
 - (b) Construction and demolition debris, urban wood waste, yard debris, or other material that does not have a credit rate listed under ORS 469.790;
 - (c) Sawdust, bark and other residual wood waste generated at a mill operation;
 - (d) Algae;
 - (e) Material from pre-construction or construction activities and golf courses.
- (2) The biomass must be produced into biofuel in Oregon or used as biofuel in Oregon.
- (3) The biomass must meet the definition in these rules and ORS 315.141 and be listed in ORS 469.790.

- (4) Biomass that is converted to electric energy through combustion must meet the following criteria:
 - (a) Prior to July 1, 2010 no additional criteria must be met;
 - (b) On or after July 1, 2010 and prior to November 2, 2010 biomass must be converted at a facility with a minimum overall thermal conversion efficiency of 40 percent; or
 - (c) On or after November 2, 2010 and before January 1, 2012, biomass must be converted at a facility that meets the current criteria for qualifying cogeneration facilities found in 18 CFR 292.205.
 - (d) On or after January 1, 2012 no additional criteria must be met.
- (5) Biomass that is converted for thermal use at residential, commercial, institutional, or industrial facilities is eligible.
- (6) Waste grease that is not dewatered prior to delivery to a biofuel producer is considered to have an eligible biomass content of 20 percent of the delivered weight of the oil and water mixture, unless the applicant can demonstrate, to the satisfaction of the Department, an alternative measurement.
- (7) Only one taxpayer may receive a certified credit for each unit of biomass.

330-170-0050 Application Process

- (1) Taxpayers requesting a Biomass Producer or Collector Tax Credit shall apply on the Department approved form. In addition to the information on the form, the applicant shall provide the following information:
 - (a) Proof that the agricultural producer or biomass collector held title to the biomass at the time the biomass was delivered;
 - (b) The physical address, or township, range, section, and quarter/quarter section, or other specific geographic indicator of the origination of the biomass;
 - (c) A summary or settlement sheet indicating each shipment that was received by the biofuel producer. Each summary or settlement sheet must include the following:
 - (A) The name and address of the biofuel producer to which the biomass was delivered;
 - (B) The date of delivery for each shipment of biomass;
 - (C) The type of biomass included in each shipment and applicable tax credit rate for each shipment;
 - (D) The amount of biomass delivered in each shipment;
 - (E) The delivered price for each shipment of biomass, including the dry ton payment rate if applicable;
 - (F) The weight ticket number or a similar unique identifier for each shipment; and
 - (G) For woody biomass and vegetative biomass from agricultural crops, the dry ton weight equivalent of the actual tonnage in each shipment, calculated in a manner acceptable to the Department.
 - (d) Receipts and certification from the biofuel producer(s) indicating the amount of

- biomass delivered to it by the agricultural producer or biomass collector and a statement from the biofuel producer indicating the amount of biomass that was used or is to be used as biofuel in Oregon or to produce biofuel in Oregon. The certification must be specific to the agricultural producer or biomass collector and the biomass that is included in the application;
- (e) Documentation, from the biofuel producer indicating adherence to any additional criteria provided in 330-170-0040 that apply to the biomass;
 - (f) All calculations used to convert the measure of the biomass to another measure and source references for the calculations and all variables;
 - (g) An application fee equal to \$0.006 multiplied by the total amount of tax credits requested or \$50, whichever is greater;
 - (h) If eligible biomass is stored or aggregated with other biomass or materials after the initial production or collection activities and prior to delivery to a biofuel producer, the biomass producer or collector must provide detailed records certifying the amount and source of each type of biomass;
 - (i) Agricultural producers or biomass collectors that produce or collect animal manure must use the following formula to calculate the amount of eligible manure:
 - (A) $a \times b \times c / 2000$; where:
 - (i) a is equal to the number of 1,000 pound animal units contributing manure during the period,
 - (ii) b is equal to the average animal manure production value from the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Revision 2, March 2008, and
 - (iii) c is equal to the number of days in the period.
 - (B) The following documentation must be included with the application:
 - (i) The log of animal numbers and calculation of 1,000 pound animal units: [Number of animals contributing manure, by classification, (conduct a separate calculation for milkers, dry cows, heifers, calves)] multiplied by [the average lbs./1,000] = number of 1,000 pound animal units.
 - (ii) Documentation indicating the manure was used or is to be used as biofuel in Oregon or to produce biofuel in Oregon;
 - (j) When it is not practicable to produce weight tickets for deliveries to a biofuel producer, agricultural producers that produce oil seed crops, grain crops, grass, wheat, straw or other vegetative biomass must include the following records with their application:
 - (A) Documentation demonstrating the quantity of biomass produced, which must include one or more of the following:
 - (i) Acreage report(s) or yield data submitted to the United States Department of Agriculture;
 - (ii) Crop insurance records of acreage planted and quantity harvested of biofuel crop; or
 - (iii) Additional documentation showing the actual yields of the biomass crop.
 - (B) Receipts or equivalent documentation indicating the biomass was used or is to be used as biofuel in Oregon, or to produce biofuel; and
 - (k) Applicants that physically transfer biomass to be processed into biofuel or used as

- biofuel in a manner that does not allow for weighing or calculating the weight of biomass, and is not detailed above, must supply documentation indicating the amount of biomass as measured by metering equipment or a similar device.
- (A) Applicants must provide documentation, including manufacturer's specifications which indicate the measurements are accurate and reliable.
 - (B) Metering equipment or similar devices must be calibrated according to the manufacturer's specifications and the calibration records must be maintained for a period of no less than five years.
- (2) The Department may require the applicant to provide further information as needed to complete a review of the application and verify compliance with statute and these rules. This information may include, but is not limited to, demonstration that the biomass is used as biofuel in an eligible manner.
- (3) If a biomass collector requests a tax credit in place of the agricultural producer that produced the biomass, the application must include a signed statement from the agricultural producer that they are aware the biomass collector will be applying for the credit and that the agricultural producer will not apply for a tax credit for the same unit of biomass.
- (4) Applications must be received within 60 days following the end of the applicant's tax year during which the biomass is delivered to a biofuel producer. Applications received after this date will be returned and any application fee will be fully refunded.
- (5) The Department may refund up to 75 percent of the application fee if the application is withdrawn prior to review by the Department. Only refunds that are \$50 or greater will be issued.
- (6) The Department may require the applicant to pay reasonable costs, not to exceed actual costs, incurred in connection with reviewing the application that exceed the original application fee and which the Director determines are incurred solely in connection with processing the application. The Department shall advise the applicant of any additional costs the applicant must pay before the Department incurs the costs.
- (7) The applicant must maintain records of the application and any supporting documentation for a period of not less than five years from the date of application.

330-170-0060 Certification and Denial

- (1) If the Department approves an application, the Director will issue a Certificate to the applicant identifying the name of the Certificate holder, the biomass, and the amount of the tax credit certified.
- (a) The amount of tax credit certified will be determined by multiplying the amount of biomass delivered to a biofuel producer by the applicable tax credit rate found in ORS 469.790.

- (b) Except for oil seed crops, tax credit certificates will be issued for the tax year the biomass is delivered to a biofuel producer for use in Oregon. Tax credit certificates for the production of oil seed crops used to produce biofuel will be issued for the tax year in which the oil seeds are delivered to an oil seed processor. The Department will not certify tax credits for agricultural producers that produce oil seeds until documentation indicating the oil has been used to produce biofuel is provided in accordance with these rules.
- (2) The department may adjust the amount of tax credit certified from the applied amount if miscalculations, inconsistencies or errors are found during the technical review.
- (3) If multiple types of eligible biomass are included in a load that is appropriately documented under these rules, the department will apply the lowest credit rate associated with the biomass in determining the amount of certified credit for the entire load of eligible biomass.
- (4) The Department may review the biomass origination, production or collection activities, or the operating activities of the biofuel producer. The information gathered during a review may be used to determine if the application complies with applicable statutory provisions and rules.
- (5) If the Department does not approve an application, the Director will provide written notice of denial, including a statement of the findings and reasons for the denial, by mail. The Department may deny the application if:
 - (a) The application does not comply with applicable statutory provisions and rules;
 - (b) The applicant does not provide information requested by the Department within a reasonable time;
 - (c) The application is for biomass that is not eligible for the tax credit, or the Department cannot determine the amount of eligible biomass that is co-mingled or combined with biomass that is not eligible; or
 - (d) The Department is unable to determine the application complies with applicable statutory provisions and rules based on the information provided by the applicant or gathered during the review process.
- (6) The applicant may request reconsideration in writing no later than 60 days after the Director issues a decision denying an application.

330-170-0070 Minimum Discount Value

The minimum discounted value of a tax credit issued under ORS 315.141 is 90 percent of the amount of the tax credit.