

## ALTERNATIVE ENERGY DEVICES

### **469B.100 Definitions for ORS 469B.100 to 469B.118; rules.**

As used in ORS 316.116, 317.115 and 469B.100 to 469B.118:

(1) "Alternative energy device" means a category one alternative energy device or a category two alternative energy device.

(2) "Alternative fuel device" includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

(3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

(a) Registered in this state; and

(b) Manufactured or modified to use an alternative fuel, including but not limited to electricity, natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Director of the State Department of Energy that produces less exhaust emissions than vehicles fueled by gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without regard to energy consumption savings.

(4) "Category one alternative energy device" means:

(a) Any system, mechanism or series of mechanisms that uses solar radiation for space heating or cooling for one or more dwellings;

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;

(c) A ground water heat pump and ground loop system;

(d) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;

(e) Equipment used in the production of alternative fuels;

(f) A generator powered by alternative fuels and used to produce electricity;

(g) An energy efficient appliance;

(h) An alternative fuel device; or

(i) A premium efficiency biomass combustion device that includes a dedicated outside combustion air source and that meets minimum performance standards that are established by the State Department of Energy.

(5) "Category two alternative energy device" means a fuel cell system, solar electric system or wind electric system.

(6) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(7) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(8)(a) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device.

(b) For an alternative fuel vehicle, "cost" means the difference between the cost of the alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification. "Cost" does not include any amounts paid for remodification of the same vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, "cost" means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469B.100 to 469B.118 and any rules adopted by the Director of the State Department of Energy.

(d) For related equipment, "cost" means the cost of the related equipment and any modifications or additions to the related equipment necessary to prepare the related equipment for use in converting a vehicle to alternative fuel use.

(9) "Domestic water heating" means the heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(10) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(11) "Energy efficient appliance" includes emerging technologies, such as high-efficiency heat-pump water heaters for domestic hot water that meet the Northern Tier Specification established by the Northwest Energy Efficiency Alliance for electricity or

have 0.67 or greater energy factor for gas water heaters, ductless heat pumps, high-efficiency furnaces that are at least 95 percent efficient, on-demand gas water heaters and heat-pumps, that exceed code.

(12) “First year energy yield” of an alternative energy device is the usable energy produced under average environmental conditions in one year.

(13) “Fuel cell system” means any system, mechanism or series of mechanisms that uses fuel cells or fuel cell technology to generate electrical energy for a dwelling.

(14) “Fueling station” includes but is not limited to a compressed natural gas compressor fueling system or an electric charging system for vehicle power battery charging.

(15) “Placed in service” means the date an alternative energy device is ready and available to produce usable energy or save energy.

(16) “Solar electric system” means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

(17) “Third-party alternative energy device installation” means an alternative energy device that is installed in connection with residential property and owned by a person other than the residential property owner in accordance with an agreement in effect for at least 10 years between the residential property owner and the alternative energy device owner. The agreement must cover maintenance and either the use of or the power generated by the alternative energy device.

(18) “Wind electric system” means any system, mechanism or series of mechanisms that uses wind to generate electrical energy for a dwelling. [Formerly 469.160]

**Note:** 469B.100 to 469B.118 [formerly 469.160 to 469.180] were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 74, chapter 730, Oregon Laws 2011, provides:

**Sec. 74.** The amendments to ORS 316.116, 469.160 [renumbered 469B.100], 469.165 [renumbered 469B.103], 469.170 [renumbered 469B.106] and 469.172 [renumbered 469B.112] by sections 69 to 72 of this 2011 Act apply to alternative energy devices certified by the State Department of Energy on or after January 1, 2012, and to

tax years beginning on or after January 1, 2012. [2011 c.730 §74]

**469B.103 Criteria; federal standards; rules.** (1) For the purposes of carrying out ORS 469B.100 to 469B.118, the State Department of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings. The department may, in prescribing criteria, rely on applicable federal, state and local requirements for energy efficiency, including the state building code and any specialty codes and any code adopted by the Building Codes Division of the Department of Consumer and Business Services.

(2) The department shall take into consideration evolving market conditions in prescribing minimum performance criteria for alternative energy devices and in determining credit amounts, consistent with ORS 316.116.

(3) The department, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of the Solar Heating and Cooling Demonstration Act of 1974, 42 U.S.C. 5506.

(4) The Director of the State Department of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further define an alternative fuel vehicle, related equipment or fueling station necessary to operate an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel vehicle as a condition of tax credit eligibility. [Formerly 469.165]

**Note:** See notes under 469B.100.

**469B.106 Claim for tax credits; eligibility; contents; contractor system certification; rules.** (1) Subject to the limitations in section 75, chapter 730, Oregon Laws 2011, any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the person:

- (a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);
- (b) Meets the requirements of ORS 469B.100 to 469B.118; and
- (c) Pays, subject to subsection (10) of this section, all or a portion of the costs of an

alternative energy device.

(2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling station necessary to operate an alternative fuel vehicle.

(3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming a tax credit for construction or installation of an alternative energy device (including a fueling station) shall have the device certified by the State Department of Energy or constructed or installed by a contractor certified by the department under subsection (5) of this section. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(b) Certification of an alternative fuel vehicle or related equipment shall be accomplished under rules that shall be adopted by the Director of the State Department of Energy.

(4) Verification of the purchase, construction or installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall contain:

(a) The location of the alternative energy device;

(b) A description of the type of device;

(c) If the device was constructed or installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and construct or install the alternative energy device;

(d) If the device was constructed or installed by a contractor, a statement signed by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device;

(B) A copy of consumer information published by the State Department of Energy;

(C) An operating manual for the alternative energy device; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate for the alternative energy device, as appropriate;

(e) If the device was not constructed or installed by a contractor, evidence that:

(A) The State Department of Energy has issued an alternative energy device system certificate for the alternative energy device; and

(B) The taxpayer has obtained all building permits required for construction or

installation of the device;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469B.100 to 469B.118 or, if the device is a fueling station and the taxpayer is the contractor, a statement signed by the contractor that the construction or installation meets all of the requirements of ORS 469B.100 to 469B.118;

(g) The date the alternative energy device was purchased;

(h) The date the alternative energy device was placed in service; and

(i) Any other information that the Director of the State Department of Energy or the Department of Revenue determines is necessary.

(5)(a) When the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

(b) Any person who sells or installs more than 12 alternative energy devices in one year shall apply for a contractor system certification. An application for a contractor system certification shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and construction or installation of the alternative energy device;

(B) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing and siting method and construction or installation procedure;

(C) The addresses of three installations of the device that are available for inspection by the State Department of Energy;

(D) The range of installed costs to purchasers of the device;

(E) Any important construction, installation or operating instructions; and

(F) Any other information that the State Department of Energy determines is necessary.

(c) A new application for contractor system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) The State Department of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and installation of the same domestic water heating alternative energy devices authorized by the dealer certification.

(e) If the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device constructed or installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing, siting method and construction or installation procedure;

(B) The constructed or installed cost of the device; and

(C) A statement that the taxpayer has all permits required for construction or installation of the device.

(6) An applicant seeking a credit for a third-party alternative energy device installation must obtain certification from the State Department of Energy under subsection (5) of this section prior to commencing installation of alternative energy devices. An applicant may receive certifications for no more than 25 devices under this subsection in one application.

(7) To claim the tax credit, the verification form described in subsection (4) of this section shall be submitted with the taxpayer's tax return for the year the alternative energy device is placed in service or the immediately succeeding tax year. A copy of the contractor's certification certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate also shall be submitted.

(8) The verification form and contractor's certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

(9) The verification form and contractor's certificate described under this section may be transferred to the first purchaser of a dwelling or, in the case of construction or installation of a fueling station in an existing dwelling, the current owner, who intends to use or is using the dwelling as a principal or secondary residence.

(10) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 or 317.115 and 469B.100 to 469B.118 to

the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection. [Formerly 469.170]

**Note:** Section 8a, chapter 832, Oregon Laws 2005, provides:

**Sec. 8a.** (1) The State Department of Energy may not issue a contractor's certification certificate or an alternative energy device system certificate under ORS 469.170 [renumbered 469B.106] after January 1, 2018.

(2) The State Department of Energy may not issue an alternative fuel vehicle or related equipment certificate under ORS 469.170 for a tax year beginning on or after January 1, 2012. [2005 c.832 §8a; 2009 c.913 §13; 2011 c.730 §68]

**Note:** See notes under 469B.100.

**469B.109 Transfer of tax credit for alternative fuel vehicle; rules.** (1) The owner of an alternative fuel vehicle as defined in ORS 469B.100 may transfer a tax credit otherwise allowed under ORS 316.116 for cost of the vehicle in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [Formerly 469.171]

**Note:** See first note under 469B.100.

**469B.112 Ineligible devices; rules.** The following devices are not eligible for the tax credit under ORS 316.116:

(1) Standard efficiency furnaces;

(2) Air conditioning systems;



(3) Boilers;

(4) Standard back-up heating systems;

(5) Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the woodstove, furnace or system constitutes a premium efficiency biomass combustion device described in ORS 469B.100 (4)(i);

(6) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(7) Structures that cover or enclose a swimming pool;

(8) Swimming pools, hot tubs or spas used to store heat;

(9) Above ground, uninsulated swimming pools, hot tubs or spas;

(10) Photovoltaic systems installed on recreational vehicles;

(11) Conversion of an existing alternative energy device to another type of alternative energy device;

(12) Repair or replacement of an existing alternative energy device;

(13) A category two alternative energy device, if the equipment or other property that comprises the category two alternative energy device is the basis for an allowed credit for a category one alternative energy device under ORS 316.116;

(14) A category one alternative energy device, if the equipment or other property that comprises the category one alternative energy device is also the basis for an allowed credit for a category two alternative energy device under ORS 316.116; or

(15) Any other device identified by the State Department of Energy. The department may adopt rules defining standards for eligible and ineligible devices under this section. [Formerly 469.172]

**Note:** See notes under 469B.100.

**469B.115 Performance assumptions and prescriptive measures for tax credits.**

(1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS 469B.100 to 469B.118, the State Department of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit

amount for alternative energy devices constructed or installed in a dwelling.

(2) The department shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The State Department of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the department shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating energy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the construction or installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply with comparable requirements as determined by the department.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the department.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the department. [Formerly 469.176]

**Note:** See first note under 469B.100.

**469B.118 Forfeiture of tax credits; revocation of contractor certificate;**

**inspection; effect of failure to allow inspection.** (1) Upon the Department of Revenue's own motion, or upon request of the State Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) In the case of an alternative energy device other than an alternative fuel vehicle or related equipment, the alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469B.100 to 469B.118; or

(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device by the State Department of Energy after a reasonable, written request for such an inspection by the State Department of Energy. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a contractor certificate issued under ORS 469B.106 if the director finds that:

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;

(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469B.106 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or installation of an alternative energy device is ordered forfeited due to an action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a result of the tax credit relief under ORS 316.116 or 317.115.

(4) If the tax credit for the construction or installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an

amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. As long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the State Department of Energy or its representative may inspect an alternative energy device that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the State Department of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [Formerly 469.180]

**Note:** See first note under 469B.100.

## RENEWABLE ENERGY RESOURCES

**469B.130 Definitions for ORS 469B.130 to 469B.169 and 469B.171; rules.** As used in ORS 469B.130 to 469B.169 and 469B.171:

(1) “Alternative fuel vehicle” means a vehicle as defined by the Director of the State Department of Energy by rule that is used primarily in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption savings.

(2) “Car sharing facility” means the expenses of operating a car sharing program, including but not limited to the fair market value of parking spaces used to store the fleet of cars available for a car sharing program, but does not include the costs of the fleet of cars.

(3) “Car sharing program” means a program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. “Car sharing program” does not include operations conducted by car

rental agencies.

(4) "Cost" means the capital costs and expenses necessarily incurred in the erection, construction, installation and acquisition of a facility, including site development costs and expenses for a sustainable building practices facility.

(5) "Energy facility" means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily erected, constructed, installed or acquired by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily erected, constructed, installed or acquired by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469B.100, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(6) "Facility" means an energy facility, recycling facility, transportation facility, car

sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home or a homebuilder-installed renewable energy system.

(7) “High-efficiency combined heat and power facility” means a device or equipment that simultaneously produces heat and electricity from a single source of fuel and that meets the criteria established for a high-efficiency combined heat and power facility under ORS 469B.139.

(8) “High-performance home” means a new single-family dwelling that:

(a) Is designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources; and

(b) Meets the criteria established for a high-performance home under ORS 469B.139.

(9) “Homebuilder-installed renewable energy system” means a renewable energy resource system that:

(a) Meets the criteria established for a renewable energy resource system under ORS 469B.139; and

(b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder constructing the dwelling.

(10) “Qualified transit pass contract” means a purchase agreement entered into between a transportation provider and a person, the terms of which obligate the person to purchase transit passes on behalf or for the benefit of employees, students, patients or other individuals over a specified period of time.

(11) “Recycling facility” means equipment used by a trade or business solely for recycling:

(a) Including:

(A) Equipment used solely for hauling and refining used oil;

(B) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used further in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(D) Any equipment used solely for processing recyclable materials such as balers, flatteners, crushers, separators and scales.

(b) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the director.

(12)(a) "Renewable energy resource" includes, but is not limited to:

(A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal energy;

(B) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and that:

(i) Does not exceed 10 megawatts of installed capacity; or

(ii) Qualifies as a research, development or demonstration facility; or

(C) A renewable energy storage device as defined by the director by rule.

(b) "Renewable energy resource" does not include a hydroelectric generating facility that is not described in paragraph (a) of this subsection.

(13) "Sustainable building practices facility" means a commercial building in which building practices that reduce the amount of energy, water or other resources needed for construction and operation of the building are used. "Sustainable building practices facility" may be further defined by the State Department of Energy by rule, including rules that establish traditional building practice baselines in energy, water or other resource usage for comparative purposes for use in determining whether a facility is a sustainable building practices facility.

(14) "Transportation facility" means a transportation project that reduces energy use during commuting to and from work or school, during work-related travel, or during travel to obtain medical or other services, and may be further defined by the department by rule. "Transportation facility" includes, but is not limited to:

(a) A qualified transit pass contract or a transportation services contract; or

(b) The purchase of efficient truck technology and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011.

(15) "Transportation provider" means a public, private or nonprofit entity that provides transportation services to members of the public.

(16) "Transportation services contract" means a contract that is related to a transportation facility, and may be further defined by the department by rule. [Formerly 469.185]

**Note:** 469B.130 to 469B.169 [formerly 469.185 to 469.225] were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**469B.133 Policy.** In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [Formerly 469.190]

**Note:** See note under 469B.130.

**469B.136 Priority given to certain projects; criteria; rules.** (1) In determining the eligibility of any facility for tax credits, preference shall be given to those projects that:

(a) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(A) Nonowner occupied single family dwellings; and

(B) Multiple unit residential housing; or

(b) Provide long-term energy savings from the use of renewable resources or conservation of energy resources.

(2) The Director of the State Department of Energy shall establish by rule a tiered priority system to be used in evaluating applicants for certification of facilities using or producing renewable energy resources. The tier system shall be based upon the projected costs of facilities. In determining the eligibility for tax credits and in allocating the available certified cost pursuant to section 2 (1), chapter 76, Oregon Laws 2010,



among facilities, the director shall subject facilities with higher projected costs to closer scrutiny, shall compare projects of similar costs against each other and may certify less than the total cost of any facility based on this evaluation. The director may employ criteria including the following factors as defined by rule:

- (a) Technology-specific energy production standards;
- (b) Market sector;
- (c) Delivery of energy into existing distribution and transmission network;
- (d) Investment payback period;
- (e) Expected lifespan of the facility;
- (f) Potential for long-term viability;
- (g) Environmental standards established by the director;
- (h) Potential to create and sustain new jobs;
- (i) Projected siting in a location that is geographically or socioeconomically advantageous;
- (j) Demonstrated readiness to begin implementation;
- (k) Amount and quality of energy generated;
- (L) Strength of business plan;
- (m) Provision of operations and maintenance data, with appropriate protections for trade secrets consistent with ORS chapter 192;
- (n) Connection to existing infrastructure;
- (o) Third-party review of the applicant's business plan; or
- (p) Data related to projected return on investment. [Formerly 469.195]

**Note:** See note under 469B.130.