



Biofuels Statutory Citations

STATE OF OREGON

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#). These statutes are placed in reverse chronological order using the date of the most recent amendment to the statute. Many biofuels laws were enacted as amendments to previously passed laws.

Current through the 2013 Legislative Session of the Oregon General Assembly.

469B.320. Definitions

<Text of section applicable to tax years prior to Jan. 1, 2015. See, also, section applicable to tax years beginning on or after Jan. 1, 2015.>

As used in [ORS 315.336](#) and 469B.320 to [469B.347](#):

- (1) “Alternative fuel vehicle infrastructure project” includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.
- (2) “Cost” includes capital expenditures and core expenses such as vehicle repair, fuel, personnel and administrative expenses.
- (3) “Transportation project” means:
 - (a) Transit services provided to members of the public by a public or nonprofit entity that receives state or federal funding for those services, or is the direct recipient of funding from an entity that receives state or federal funding for the services; or
 - (b) An alternative fuel vehicle infrastructure project.

Credits Added by [Laws 2011, c. 730, § 56, eff. Sept. 29, 2011](#). Amended by [Laws 2012, c. 45, § 7, eff. June 4, 2012](#).

469B.320. Definitions

<Text of section applicable to tax years beginning on or after Jan. 1, 2015. See, also, section applicable to tax years prior to Jan. 1, 2015.>

As used in [ORS 315.336](#) and 469B.320 to [469B.347](#):

(1) “Acquisition of an alternative fuel vehicle fleet” includes the replacement of two or more vehicles that are not used primarily for personal, family or household purposes, that are modified or acquired directly from the factory and that:

(a) Use an alternative fuel, including electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, Hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy as an alternative fuel; and

(b) Produce lower exhaust emissions, or are more energy efficient, than equivalent vehicles fueled by gasoline or diesel.

(2) “Alternative fuel vehicle infrastructure project” 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 project” means:

(a) The acquisition of an alternative fuel vehicle fleet; or

(b) An alternative fuel vehicle infrastructure project.

(4) “Cost” includes capital expenditures and core expenses such as vehicle repair, fuel, personnel and administrative expenses.

(5) “Transportation project” means:

(a) Transit services provided to members of the public by a public or nonprofit entity that receives state or federal funding for those services, or is the direct recipient of funding from an entity that receives state or federal funding for the services; or

(b) An alternative fuel vehicle project.

Credits Added by [Laws 2011, c. 730, § 56, eff. Sept. 29, 2011](#). Amended by [Laws 2012, c. 45, § 7, eff. June 4, 2012](#); [Laws 2013, c. 774, § 13, eff. Oct. 7, 2013](#).

469B.323. Transfer of tax credits

(1) The owner of a transportation project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

469B.326. Application for preliminary certification

(1) Prior to the acquisition or performance of a transportation project, a person may apply to the State Department of Energy for preliminary certification for the project under [ORS 469B.329](#) if:

(a) The project complies with the standards adopted by the Director of the State Department of Energy; and

(b) The applicant will be the owner, contract purchaser or lessee of the project at the time of acquisition or performance of the project.

(2) An application for preliminary certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the applicant plans to acquire or perform a project that substantially reduces the consumption of purchased petroleum energy.

(b) A detailed description of the project and its operation and information showing that the project will operate as represented in the application and remain in operation for at least five years, unless the director by rule specifies another period of operation.

(c) Information on the amount by which consumption of purchased petroleum energy by the applicant will be reduced, and, if applicable, information about the expected level of project performance.

(d) The anticipated total project cost.

(e) Information on the number and types of jobs, directly connected to the allowance of the credit, that will be:

(A) Created by the project; and

(B) Sustained throughout the acquisition and performance of the project.

(f) Information demonstrating that the project will comply with applicable state and local laws and regulations and obtain required licenses and permits.

(g) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of [ORS 469B.320](#) to [469B.347](#), and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under [ORS 469B.335](#). The director may refund all or a portion of the fee if the application for certification is rejected.

(4) The director may allow an applicant to file the application for preliminary certification after the start

of acquisition or performance of the project if the director finds that:

(a) Filing the application before the start of acquisition or performance is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The project would otherwise qualify for certification under [ORS 469B.320](#) to [469B.347](#).

(5) A preliminary certification shall remain valid for a period of three calendar years after the date on which the preliminary certification is issued by the director, after which the certification becomes invalid even if:

(a) The applicant is awaiting identification of a pass-through partner; or

(b) The preliminary certification has been amended.

Credits Added by [Laws 2011, c. 730, § 58, eff. Sept. 29, 2011](#). Amended by [Laws 2012, c. 45, § 8, eff. June 4, 2012](#).

469B.329. Preliminary certification; actions of director

(1) The Director of the State Department of Energy may require an applicant for certification of a transportation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of [ORS 469B.320](#) to [469B.347](#) and any applicable rules or standards adopted by the director, the director may issue a preliminary certificate approving the acquisition or performance of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) In accordance with ORS chapter 183, the director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The project does not comply with the provisions of [ORS 469B.320](#) to [469B.347](#) and applicable rules and standards;

(b) The applicant has previously received preliminary or final certification for the project;

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under [ORS 469B.130](#) to [469B.169](#) or [469B.320](#) to [469B.347](#); or

(d) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control

over a business.

Credits Added by [Laws 2011, c. 730, § 59, eff. Sept. 29, 2011.](#)

469B.332. Final certification; application; actions of director

(1) A final certification for a transportation project may not be issued by the Director of the State Department of Energy under this section unless:

(a) The project was acquired or performed under a preliminary certificate of approval issued under [ORS 469B.329](#);

(b) The applicant demonstrates the ability to provide the information required by [ORS 469B.326 \(2\)](#) and does not violate any condition that may be imposed as described in subsection (4) of this section; and

(c) The project was acquired or performed in accordance with the applicable provisions of [ORS 469B.320 to 469B.347](#) and any applicable rules or standards adopted by the director.

(2) A person may apply to the State Department of Energy for final certification of a project:

(a) If the person received preliminary certification for the project under [ORS 469B.329](#); and

(b) After completion of the acquisition or performance of the project.

(3) An application for final certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b)(A) The actual cost of the project attested to by a certified public accountant who is not an employee of the applicant or the applicant's completed audit in compliance with federal Office of Management and Budget Circular A-133; or

(B) If the actual cost of the project is less than \$50,000, copies of receipts for acquisition and performance of the project;

(c) The amount of the credit under [ORS 315.336](#) that is to be claimed;

(d) The number and types of jobs, directly connected to the allowance of the credit, created by the acquisition and performance of the project over the five-year period beginning on the date of issuance of the preliminary certification under [ORS 469B.329](#);

(e) Information sufficient to demonstrate that the project will remain in operation for at least five years, unless the director by rule specifies another period of operation;

(f) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director; and

(g) Any other information determined by the director to be necessary prior to issuance of a final certificate, including inspection of the project by the department.

(4) After the filing of the application under this section, the director may issue the certificate together with any conditions that the director determines are appropriate to promote the purposes of [ORS 315.336](#) and [469B.320](#) to [469B.347](#). If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the project. However, the director may not certify an amount for tax credit purposes that is more than the amount of credit approved in the preliminary certificate issued for the project.

(5) If the director rejects an application for final certification, or certifies a lesser amount of credit than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons for the action, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

(6) Upon approval of an application for final certification of a project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the certified cost of the project.

(7) The director may establish by rule timelines and intermediate deadlines for submission of application materials.

Credits Added by [Laws 2011, c. 730, § 60, eff. Sept. 29, 2011](#). Amended by [Laws 2012, c. 45, § 9, eff. June 4, 2012](#).

469B.335. Fees; adoption of schedule; use of moneys

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification of a transportation project under [ORS 469B.320](#) to [469B.347](#). Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of [ORS 469B.320](#) to [469B.347](#), including filing, investigating, granting and rejecting applications for certification and ensuring compliance with [ORS 469B.320](#) to [469B.347](#) and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified.

Credits Added by [Laws 2011, c. 730, § 61, eff. Sept. 29, 2011](#).

469B.338. Certificate required to obtain tax credits; duration of certification; use of credit renders certificate nontransferable

- (1) A certificate issued under [ORS 469B.332](#) is required for purposes of obtaining tax credits in accordance with [ORS 315.336](#). Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the transportation project under [ORS 469B.332](#) is received by the State Department of Energy.
- (2) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable.
- (3) For a transferee holding a credit that has been transferred under [ORS 469B.323](#), the five-year period shall begin with the tax year in which the transferee pays for the credit.

Credits Added by [Laws 2011, c. 730, § 62, eff. Sept. 29, 2011](#).

469B.341. Revocation of certificate

- (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a certificate issued under [ORS 469B.332](#) if the director finds that:
 - (a) The certification was obtained by fraud or misrepresentation;
 - (b) The holder of the certificate or the operator of the transportation project has failed to acquire or perform the project in compliance with the plans, specifications and contract terms in the certificate;
or
 - (c) The project is no longer in operation.
- (2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under [ORS 315.336](#), from the certificate holder or a successor in interest to the business interests of the certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.
- (3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or any successor in interest to the business interests of that person. An assessment of tax is not necessary and a statute of limitation does not preclude the collection of taxes described in subsection (2) of this section.

(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires an interest through bankruptcy or through foreclosure of a security interest is not considered to be a successor in interest to the business interests of the person that obtained certification.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under [ORS 315.336](#) in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under [ORS 469B.323](#) may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under [ORS 469B.323](#) may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section.

Credits Added by [Laws 2011, c. 730, § 63, eff. Sept. 29, 2011](#).

469B.344. Limit on amount of potential tax credits; allocation of issuance of preliminary certifications

<Text of section applicable to tax years prior to Jan. 1, 2015. See, also, section applicable to tax years beginning on or after Jan. 1, 2015.>

(1)(a) The total amount of potential tax credits for all transportation projects in this state may not, at the time of preliminary certification under [ORS 469B.329](#), exceed \$20 million for any biennium.

(b) For each tax year, the Director of the State Department of Energy may allocate a percentage of the amount allowed in paragraph (a) of this subsection to alternative fuel vehicle infrastructure projects and a percentage to transit services.

(2) Notwithstanding [ORS 315.336](#), in the event that the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limits set by the director pursuant to subsection (1)(b) of this section, the director shall allocate the issuance of preliminary certifications among applicants as follows:

(a) If an excess of applications for credits for transit services is received, the director shall allocate the issuance of preliminary certifications among applicants for credits for transit services and proportionately reduce the amount of allowed credit, with no applicant receiving more than 20 percent of the amount established under subsection (1)(b) of this section for transit services.

(b) The director may allocate the issuance of preliminary certifications among applicants for credits for alternative fuel vehicle infrastructure projects and may award credits for less than the amount otherwise allowed applicants.

(c) If, after making any reductions required under paragraph (a) of this subsection, an unallocated amount remains, the director shall allocate this additional amount among applicants affected by the percentage restriction in paragraph (a) of this subsection.

Credits Added by [Laws 2011, c. 730, § 64, eff. Sept. 29, 2011](#). Amended by [Laws 2012, c. 45, § 10, eff. June 4, 2012](#).

469B.344. Limit on amount of potential tax credits; allocation of issuance of preliminary certifications

<Text of section applicable to tax years beginning on or after Jan. 1, 2015. See, also, section applicable to tax years prior to Jan. 1, 2015.>

(1)(a) The total amount of potential tax credits for all transportation projects in this state may not, at the time of preliminary certification under [ORS 469B.329](#), exceed \$20 million for any biennium.

(b) For each tax year, the Director of the State Department of Energy may allocate a percentage of the amount allowed in paragraph (a) of this subsection to alternative fuel vehicle projects and a percentage to transit services.

(2) Notwithstanding [ORS 315.336](#), in the event that the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limits set by the director pursuant to subsection (1)(b) of this section, the director shall allocate the issuance of preliminary certifications among applicants as follows:

(a) If an excess of applications for credits for transit services is received, the director shall allocate the issuance of preliminary certifications among applicants for credits for transit services and proportionately reduce the amount of allowed credit, with no applicant receiving more than 20 percent of the amount established under subsection (1)(b) of this section for transit services.

(b) The director may allocate the issuance of preliminary certifications among applicants for credits for alternative fuel vehicle projects and may award credits for less than the amount otherwise allowed applicants.

(c) If, after making any reductions required under paragraph (a) of this subsection, an unallocated amount remains, the director shall allocate this additional amount among applicants affected by the percentage restriction in paragraph (a) of this subsection.

Credits Added by [Laws 2011, c. 730, § 64, eff. Sept. 29, 2011](#). Amended by [Laws 2012, c. 45, § 10, eff. June 4, 2012](#); [Laws 2013, c. 774, § 15, eff. Oct. 7, 2013](#).

469B.347. Establishment of policies and procedures

The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of [ORS 315.336](#) and [469B.320](#) to 469B.347, including standards for what constitutes a single transportation project.

Credits Added by [Laws 2011, c. 730, § 65, eff. Sept. 29, 2011](#).