

TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX CREDITS
PART 19 RENEWABLE ENERGY PRODUCTION TAX CREDIT

3.13.19.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[3.13.19.1 NMAC - N, 3-15-03]

3.13.19.2 SCOPE: This part applies to the application and certification procedures for administration of the renewable energy production tax credit.
[3.13.19.2 NMAC - N, 3-15-03]

3.13.19.3 STATUTORY AUTHORITY: These rules are established under the authority of NMSA 1978, Sections 7-2A-19 (2002) and 9-1-5E.
[3.13.19.3 NMAC - N, 3-15-03]

3.13.19.4 DURATION: Permanent.
[3.13.19.4 NMAC - N, 3-15-03]

3.13.19.5 EFFECTIVE DATE: March 15, 2003 unless a later date is cited at the end of a section.
[3.13.19.5 NMAC - N, 3-15-03]

3.13.19.6 OBJECTIVE: The objective of this part is to establish procedures for administering the renewable energy production tax credit.
[3.13.19.6 NMAC - N, 3-15-03]

3.13.19.7 DEFINITIONS:

- A. "Applicant" means a corporate entity that is planning to develop a qualified energy generator and that desires to receive the renewable energy production tax credit pursuant to this part.
- B. "Certified Taxpayer" means the owner of a qualified energy generator who is certified pursuant to this part to be eligible to receive the renewable energy production tax credit.
- C. "Confidential Information" means information included in the renewable energy production tax credit application package or required to be submitted as part of the approval process that the applicant requests in writing to be held confidential.
- D. "Department" means the energy, minerals and natural resources department.
- E. "Director" means the director or head of the energy conservation and management division of the department.
- F. "Division" means the energy conservation and management division of the department.
- G. "Generating Capacity" means the nominal rated electrical power output (nameplate capacity) in megawatts of a qualified energy generator during optimum resource conditions, as specified by the generator's manufacturer. Generating capacity shall be at least 20 megawatts. If the prevailing resource conditions at a project site are insufficient for a facility to attain full nameplate capacity output at the time of certification, the power output shall be that which corresponds to at least 20 megawatts nominal rating according to the equipment manufacturer's published performance ratings for those prevailing conditions.
- H. "Interconnection Agreement" means an agreement allowing the applicant to interconnect the qualified energy generator, of a specified type and size, to a suitable electric transmission or distribution line.
- I. "Land Rights Agreement" means an agreement providing to the applicant the control of land and the rights necessary to construct and operate a qualified energy generator.
- J. "Owner" means a taxpayer that owns at least five percent of the qualified energy generator. The owner may be a different entity than the applicant.
- K. "Power Purchase Agreement" means an agreement that binds an applicant to provide power at a specified price and a buyer to purchase power from the qualified energy generator.
- L. "Project Finance Agreement" means an agreement that binds a capable entity to provide the financing necessary for construction of a qualified energy generator.
- M. "Qualified Energy Generator" means a facility with at least 20 megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells electricity to an unrelated person.

N. "Qualified Energy Resource" means a resource that generates electrical energy by means of a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources: solar light, solar heat or wind.

O. "Related Person" means a partner, joint venture participant, shareholder, subsidiary, affiliate or parent company.

P. "Renewable Energy Production Tax Credit Application Package" or "Application Package" means the application documents submitted by an applicant to the division for certification to receive the renewable energy production tax credit.

Q. "Secretary" means the head of the department.

R. "Unrelated Person" means a person who is not a related person, including a customer to whom a utility sells electricity.

[3.13.19.7 NMAC - N, 3-15-03]

3.13.19.8 GENERAL PROVISIONS:

A. Only a qualified energy generator located within New Mexico is eligible for a renewable energy production tax credit.

B. The proposed project shall meet these required milestones. If a project fails to meet a milestone, the division shall reject the application.

(1) Applicant submits a complete renewable energy production tax credit application package to the division.

(2) Construction of a qualified energy generator shall commence within 12 months of approval of the application. This requirement shall be met by entering into a construction contract and by the placement of a permanent, physical part of the facility, such as a poured concrete foundation. Applicant shall submit to the division a copy of the contract accompanied by a letter certifying that such construction has occurred.

(3) A qualified energy generator shall generate electrical power and achieve commercial operation, demonstrating at least 20 megawatts generating capacity, within 24 months of approval of the application.

(4) Within 24 months of approval of the application, the owner shall submit to the division:

(a) the name of the qualified energy generator;

(b) electric output meter readings documenting commercial operation and indicating at least 20 megawatts output;

(c) a copy of the bill of sale or other documentation sufficient to evidence a sale of the power indicating the amount of electrical energy produced, precise time period of production and the name of the buyer of the electricity;

(d) records to verify that the owner is selling to unrelated persons; and

(e) evidence of ownership (whole or partial) of the facility.

C. NMSA 1978, Section 7-2A-19 limits the power production of a qualified energy generator eligible for a tax credit to 400,000 megawatt-hours per year. It also limits the eligible power production of all qualified energy generators to 800,000 megawatt-hours per year. When the 800,000 megawatt-hours limit is reached based on the total of applications approved, the division will no longer approve applications, but will accept them for future consideration in the event that approved facilities are not completed on schedule and tax credit becomes available. The division shall keep a record of the order of receipt of all applications.

[3.13.19.8 NMAC - N, 3-15-03]

3.13.19.9 APPLICATION:

A. A renewable energy production tax credit application form can be obtained from the division.

B. An applicant shall submit an application package to the division. The division will accept applications beginning March 15, 2003.

C. The application package shall consist of a completed renewable energy production tax credit application form, with the following required attachments:

(1) a copy of the land rights agreement;

(2) a copy of the interconnection agreement or a system impact study agreement between the applicant and the interconnect utility, or its functional equivalent; and

(3) a copy of the power purchase agreement, project finance agreement or evidence of self-financing.

D. The division shall return an incomplete application to the applicant.

[3.13.19.9 NMAC - N, 3-15-03]

3.13.19.10 APPLICATION REVIEW PROCESS

A. Applications shall be considered in the order received, according to the day they are received, but not the time of day. Applications received on the same day will receive equal consideration. If applications received on the same day are approved and would exceed the overall limit of credit availability, then the available credit will be divided among those applications on a prorated, per megawatt-hour basis.

B. The division shall approve or reject an application within 30 days following receipt of the package, or if more time is required the division shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

C. The division shall review the application package to determine if the proposed generator will be a qualified energy generator and if the requisite documentation specified in Subsection C of 3.13.19.9, above, is valid.

D. The division shall check the accuracy of the applicant's estimate of annual production and make any necessary adjustments to ensure the estimate is reasonably achievable in an average year. The division will approve an estimate that shall be the limit of the qualified energy generator's energy production eligible for the tax credit for the taxable year.

E. If the division finds that the application package meets the required criteria and production tax credit is available, the division shall approve the application. The division's approval is given by the issuance of a letter to the applicant. This letter shall include the estimate of the qualified energy generator's annual production approved by the division.

F. The division shall reject an application that is not complete or correct, does not meet the criteria for approval or fails to meet a required milestone. The division's rejection letter shall state the reasons why the application was rejected. The applicant may resubmit the application package for the rejected project. The division shall place the resubmitted application in the review schedule as if it were a new project.

[3.13.19.10 NMAC - N, 3-15-03]

3.13.19.11 CONFIDENTIALITY REQUESTS, WAIVERS, REVIEWS AND APPEALS

A. An applicant may request in writing that the department hold confidential materials submitted as part of the application package and certification process pursuant to NMSA 1978, Section 71-2-8. The request shall be addressed to the director.

B. An applicant may request in writing a waiver of any provision of the application unless the provision is required by NMSA 1978, Section 7-2A-19 (2002). The request shall be addressed to the director. The applicant shall include in the request for waiver the facts and circumstances to support a waiver.

C. The applicant shall have the right to request in writing review of the decision to reject an application or review of the estimate of annual production. The request shall be addressed to the director and include the reasons that the decision should be reviewed.

D. Any person having an interest that is or may be adversely affected has the right to oppose the request to hold confidential materials submitted as part of an application package or the granting of a waiver of a provision of the application. The opposition shall be in writing, within ten days of the request, addressed to the director with a copy sent to the applicant and shall include the reasons that the information should not be held confidential or that a waiver should not be granted.

(1) The director shall consider the request and the opposition, if any. The director may hold a hearing and appoint a hearing officer to conduct the hearing. The director shall send a final decision to the applicant and any person or entity opposing the request within 20 days of receipt of the request, the opposition, if the request is opposed or the date the hearing is held.

(2) The applicant or the person or entity opposing the request may appeal in writing an adverse decision from the director to the secretary. The notice of appeal shall include the reasons that the decision should be overturned.

E. The secretary shall consider any appeal from a decision of the director. The appeal and the reasons for it must be filed with the secretary within ten working days of the issuance of the director's decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the appellant within 20 days of receipt of the request or the date the hearing concludes.

[3.13.19.11 NMAC - N, 3-15-03]

3.13.19.12 CERTIFICATION:

A. When a qualified energy generator, for which the division has approved a renewable energy production tax credit application package, produces power and it is sold to an unrelated person, then the owner is eligible to receive certification from the division. If the owner of the generator is different from the original

applicant then a revised application form shall be submitted to the division indicating the name of the owner who is eligible for the credit. The qualified energy generator must demonstrate at least 20 megawatts generating capacity. The owner shall submit:

- (1) the name of the qualified energy generator;
- (2) electric power output meter readings indicating at least 20 megawatts generating capacity;
- (3) a copy of the bill of sale or equivalent documentation indicating the amount of electrical energy produced, precise time period of production and the name and relationship, if any, of the buyer of the electricity; and
- (4) evidence of ownership (whole or partial) of a qualified energy generator.

B. For purposes of monitoring compliance with this part, the division or its authorized representative shall have the right to visit a qualified energy generator upon five days notice being given to the owner.

C. If the division finds that a qualified energy generator, for which an application package has been approved, meets the criteria of this part, the division shall issue a certificate to the taxpayer stating that the facility is an eligible qualified energy generator and the estimated annual production potential of the facility, which shall be the limit of that facility.

[3.13.19.12 NMAC - N, 3-15-03]

3.13.19.13 CLAIMING THE TAX CREDIT:

A. To claim the renewable energy production tax credit, a taxpayer who has been certified as eligible shall submit to the New Mexico taxation and revenue department, the certificate issued by the department, documentation of the amount of energy produced by the taxpayer's facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the credit due to the taxpayer.

B. If the amount of tax credit claimed exceeds the certified taxpayer's corporate tax liability, the excess may be carried forward for up to five consecutive taxable years.

C. Once a taxpayer has been certified for a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain its original date of application for tax credits for that facility until either the facility is out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

[3.13.19.13 NMAC - N, 3-15-03]

HISTORY OF 3.13.19 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]