



Michelle Lujan Grisham
Governor

Stephanie Schardin Clarke
Cabinet Secretary

OFFICE OF THE SECRETARY

SEPTEMBER 9, 2025

NOTICE OF PROPOSED RULEMAKING

Enclosed is the following proposal:

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to repeal certain rules and regulations pertaining to the Income Tax General Provisions Act, Corporate Income and Franchise Tax Act, Gross Receipts and Compensating Tax Act and Alternative Energy Production Manufactures Tax Credit Act.

Summary of Proposed Changes:

The New Mexico Taxation and Revenue Department proposes to repeal the following rule(s):

Income Tax General Provisions Act

Section 7-2-18.14 NMSA 1978 (Repealed 07/01/2025)

- 3.3.28.1 – Issuing Agency*
- 3.3.28.2 – Scope*
- 3.3.28.3 – Statutory Authority*
- 3.3.28.4 -Duration*
- 3.3.28.5 – Effective Date*
- 3.3.28.6 – Objective*
- 3.3.28.7 – Definitions*
- 3.3.28.8 – General Provisions*
- 3.3.28.9 – Application*
- 3.3.28.10 – Application Review Process*
- 3.3.28.11 – Safety, Codes, and Standards*
- 3.3.28.12 – Solar Collector and Module Orientation and Sun Exposure*
- 3.3.28.14 – Innovative Solar Energy Systems*
- 3.3.28.15 – Certification*
- 3.3.28.16 – Calculating the Solar Energy System Cost*
- 3.3.28.17 – Calculating the State Tax Credit*
- 3.3.28.18 – Claiming the State Tax Credit*
- 3.3.28.19 – Consumer Information*
- 3.3.28.20 – Inspection of Solar Energy Systems*

Section 7-2-18.19 NMSA 1978 (Repealed 07/01/2025)

- 3.3.29.1 – Issuing Agency*
- 3.3.29.2 – Scope*
- 3.3.29.3 – Statutory Authority*
- 3.3.29.4 – Duration*
- 3.3.29.5 – Effective Date*
- 3.3.29.6 – Objective*
- 3.3.29.7 – Definitions*
- 3.3.29.8 – General Provisions*
- 3.3.29.9 – Verifier Eligibility*
- 3.3.29.10 – Application for the Sustainable Building Tax Credit*
- 3.3.29.11 – Application Review Process*

DIVISIONS

Office of the Secretary
(505) 827-0341
Administrative Services
(505) 827-0369
Audit and Compliance
(505) 827-0900
Motor Vehicle
(505) 827-2296
Property Tax
(505) 827-0870
Revenue Processing
(505) 827-0800
Tax Fraud Investigation
(505) 841-5578

- 3.3.29.12 – Calculating the Credit*
- 3.3.29.13 – Claiming the State Tax Credit*

- 3.3.30.1 – Issuing Agency*
- 3.3.30.2 – Scope*
- 3.3.30.3 – Statutory Authority*
- 3.3.30.4 – Duration*
- 3.3.30.5 – Effective Date*
- 3.3.30.6 – Objective*
- 3.3.30.7 – Definitions*
- 3.3.30.8 – General Provisions*
- 3.3.30.9 – Verifier Eligibility*
- 3.3.30.10 – Application for the Sustainable Building Tax Credit*
- 3.3.30.11 – Application Review Process*
- 3.3.30.12 – Verification of the Alternative Method used for the Energy Reduction Requirement*
- 3.3.30.13 – Calculating the Tax Credit*
- 3.3.30.14 – Claiming the State Tax Credit*

Corporate Income and Franchise Tax Act

Section 7-2A-21 NMSA 1978 (Repealed 07/01/2025)

- 3.4.16.1 – Issuing Agency*
- 3.4.16.2 – Scope*
- 3.4.16.3 – Statutory Authority*
- 3.4.16.4 – Duration*
- 3.4.16.5 – Effective Date*
- 3.4.16.6 – Objective*
- 3.4.16.7 – Definitions*
- 3.4.16.8 – General Provisions*
- 3.4.16.9 – Verifier Eligibility*
- 3.4.16.10 – Application for the Sustainable Building Tax Credit*
- 3.4.16.11 – Application Review Process*
- 3.4.16.12 – Claiming the Tax Credit*
- 3.4.16.13 – Claiming the State Tax Credit*

- 3.4.17.1 – Issuing Agency*
- 3.4.17.2 – Scope*
- 3.4.17.3 – Statutory Authority*
- 3.4.17.4 – Duration*
- 3.4.17.5 – Effective Date*
- 3.4.17.6 – Objective*
- 3.4.17.7 – Definitions*
- 3.4.17.8 – General Provisions*
- 3.4.17.9 – Verifier Eligibility*
- 3.4.17.10 – Application for the Sustainable Building Tax Credit*
- 3.4.17.11 – Application Review Process*
- 3.4.17.12 – Verification of the Alternative Method Used for the Energy Reduction Requirement*
- 3.4.17.13 – Claiming the Tax Credit*
- 3.4.17.14 – Claiming the State Tax Credit*

Gross Receipts and Compensating Tax Act

Section 7-9-10 NMSA 1978 (Repealed 07/01/2025)

- 3.2.13.1 – Issuing Agency*
- 3.2.13.2 – Scope*
- 3.2.13.3 – Statutory Authority*

- 3.2.13.4 – Duration*
- 3.2.13.5 – Effective Date*
- 3.2.13.6 – Objective*
- 3.2.13.7 – Definitions*
- 3.2.13.8 – Reserved*
- 3.2.13.9 – Reserved*
- 3.2.13.10 – Collection of Compensating Tax by Broadcasters*

Section 7-9-79.2 NMSA 1978 (Repealed 07/01/2025)

- 3.13.21.1 – Issuing Agency*
- 3.13.21.2 – Scope*
- 3.13.21.3 – Statutory Authority*
- 3.13.21.4 – Duration*
- 3.13.21.5 – Effective Date*
- 3.13.21.6 – Objective*
- 3.13.21.7 – Definitions*
- 3.13.21.8 – General Provisions*
- 3.13.21.9 – Certificate of Eligibility Applications*
- 3.13.21.10 – Application Review Process*
- 3.13.21.11 – Claiming the Biodiesel Blending Facility Tax Credit*

Alternative Energy Product Manufacturers Tax Credit Act

Section 7-9J-1 through 7-9J-8 NMSA 1978 (Repealed 07/01/2025)

- 3.13.7.1 – Issuing Agency*
- 3.13.7.2 – Scope*
- 3.13.7.3 – Statutory Authority*
- 3.13.7.4 – Duration*
- 3.13.7.5 – Effective Date*
- 3.13.7.6 – Objective*
- 3.13.7.7 – Definitions*
- 3.13.7.8 – [Reserved]*
- 3.13.7.9 – Items not “Manufacturing Equipment”*
- 3.13.7.10 – Items which may be included as “Manufacturing Equipment”*
- 3.13.7.11 – Value of Qualified “Manufacturing Equipment”*
- 3.13.7.12 – Application of the Credit*
- 3.13.7.13 – Carry Forward of Unused Credits*
- 3.13.7.14 – Using the Credit*
- 3.13.7.15 – Equivalent of One Full-Time Employee*
- 3.13.7.16 – Reporting Number of Employees - Estimates*

Technical Information: No technical information was consulted in drafting these proposed rule changes.

Purpose of Proposed Rule: The proposed repeals are associated with statutes that were repealed during the 2025 legislative session in House Bill-218. All statutes were repealed as of July 1, 2025.

Notice of Public Rule Hearing: A public hearing will be held on the proposed rule changes on Thursday, October 9, 2025, from 11AM to 12AM at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504. The hearing will be recorded, and oral comments can be made during the public hearing. Written comments can be submitted as outlined at the end of this notice.

Virtual meeting access also available using Microsoft Teams:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTQ5NjlmMzMtZDkzMC00ZGEzLTk3M2QtZGFhNmViMjgyYmZl%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22124fc7fc-ca47-4a9a-84d4-010bcce6239a%22%7d

Meeting ID: 227 240 579 610 5 Passcode: KK6gU2Q3

Dial in by phone +1 505-312-4308 Conference ID: 782 424 380#

The rule proposals were placed on file in the Office of the Secretary on August 24, 2025. Pursuant to Regulation 3.1.2.9 NMAC under Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about November 4, 2025.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Tax Information and Policy Office at policy.office@tax.nm.gov. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Copies of the proposed rules may be found at: <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> or are available upon request by contacting the Tax Policy Office at policy.office@tax.nm.gov.

Notice of Acceptance of Written Public Comment: Written comments on the proposals can be submitted by email to policy.office@tax.nm.gov or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or by 5PM on Thursday, October 9, 2025.

All written comments received by the agency will be posted on <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> no more than 3 business days following receipt to allow for public review.

Signed by:

Stephanie Schardin Clarke 9/8/2025

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Stephanie Schardin Clarke
Cabinet Secretary

Reviewed for legal sufficiency:

DocuSigned by:

Donnita Dee Wald 9/15/2025

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Donnita "Dee" Wald, Chief Legal Counsel
Interim Tax Policy Director
NM Taxation and Revenue Department

TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 28 SOLAR MARKET DEVELOPMENT TAX CREDIT

3.3.28.1 ~~ISSUING AGENCY:~~ Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division. [RESERVED]

[3.3.28.1 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.2 ~~SCOPE:~~ 3.3.28 NMAC applies to the application and certification procedures for administration of the solar market development tax credit. [RESERVED]

[3.3.28.2 NMAC - N, 7-1-06, R xx/xx/xxxx]

3.3.28.3 ~~STATUTORY AUTHORITY:~~ 3.3.28 NMAC is established under the authority of NMSA 1978, Sections 7-2-18.14 and 9-1-5(E). [RESERVED]

[3.3.28.3 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.4 ~~DURATION:~~ Permanent. [RESERVED]

[3.3.28.4 NMAC - N, 7-1-06, R xx/xx/xxxx]

3.3.28.5 ~~EFFECTIVE DATE:~~ July 1, 2006 unless a later date is cited at the end of a section. [RESERVED]

[3.3.28.5 NMAC - N, 7-1-06, R xx/xx/xxxx]

3.3.28.6 ~~OBJECTIVE:~~ 3.3.28 NMAC's objective is to establish procedures for administering the certification program for the solar market development tax credit. [RESERVED]

[3.3.28.6 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.7 ~~DEFINITIONS:~~

~~A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system and that desires to have the department certify the solar energy system pursuant to 3.3.28 NMAC so that the taxpayer may receive a state tax credit.~~

~~B. "Application package" means the application documents an applicant submits to the division for certification to receive a state tax credit.~~

~~C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.~~

~~D. "Balance of system" means portions of a solar energy system other than the array.~~

~~E. "Building code authority" means the New Mexico regulation and licensing department, construction industries division or the local government agency having jurisdiction for building, electrical and mechanical codes.~~

~~F. "Certified" or "certification" means department approval of a solar energy system, which makes the taxpayer owning the system eligible for a state tax credit.~~

~~G. "Collector" means the solar thermal system component that absorbs solar energy for conversion into heat.~~

~~H. "Collector aperture" means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.~~

~~I. "Component" means a solar energy system's equipment and materials.~~

~~J. "Department" means the energy, minerals and natural resources department.~~

~~K. "Division" means the department's energy conservation and management division.~~

~~L. "Energy system" means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters or controllers.~~

~~M. "Homeowner" means a taxpayer that may obtain a permit limited to construction of single family dwellings, private garages, carports, sheds, agricultural buildings and fences.~~

~~N. "Innovative" means an alternative method or material that is not commercialized for use in a solar energy system.~~

~~O. "Install" or "installation" means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size.~~

~~P. "Interconnection" means connection of a photovoltaic system that an electric utility customer operates to that utility's distribution grid system.~~

~~Q. "Interconnection agreement" means an agreement allowing the applicant to interconnect a solar energy system of a specified type and size to a suitable electric transmission or distribution line.~~

~~R. "Module" means the photovoltaic system component that absorbs sunlight for conversion into electricity.~~

~~S. "New" means the condition of being recently manufactured and not used previously in any installation.~~

~~T. "Non-residential" means a business or agricultural enterprise.~~

~~U. "OG" means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics the SRCC defines in its directory. Operating guidelines shall be from the directory in effect on July 1, 2006 and all successive revisions.~~

~~V. "Photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.~~

~~W. "Portable" means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business or agricultural enterprise.~~

~~X. "Solar collector" means a solar thermal collector or photovoltaic module.~~

~~Y. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.~~

~~Z. "Solar energy system" means a solar thermal system or photovoltaic system.~~

~~AA. "Solar storage tank" means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.~~

~~BB. "Solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.~~

~~CC. "SRCC" means the solar rating and certification corporation.~~

~~DD. "Standard test conditions" means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.~~

~~EE. "State tax credit" means the solar market development tax credit.~~

~~FF. "Taxpayer" means the owner of a solar energy system and the residence, business or agricultural enterprise where the solar energy system is located who applies for certification of an operating solar energy system in order to receive a state tax credit.~~ [RESERVED]

[3.3.28.7 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

3.3.28.8 GENERAL PROVISIONS:

~~A. Only a New Mexico taxpayer having purchased and installed an operating solar energy system the department has certified is eligible for a state tax credit.~~

~~B. A corporation shall not be eligible for certification of a solar energy system the corporation owns under 3.3.28 NMAC's requirements. A corporation may install a solar energy system that complies with 3.3.28 NMAC's requirements and sell the solar energy system in a residence, business or agricultural enterprise to a taxpayer. If by this sale the taxpayer becomes the full owner of both the solar energy system and the residence, business or agricultural enterprise, and complies with 3.3.28 NMAC's requirements, that taxpayer is eligible for certification of that solar energy system.~~

~~C. A taxpayer owning a solar energy system the department certifies shall locate that system at the residence, business or agricultural enterprise that taxpayer owns. The taxpayer may rent a residence, business or agricultural enterprise that the taxpayer owns to another entity.~~

~~D. The annual aggregate amounts of the state tax credit available to taxpayers owning certified solar energy systems is limited to \$2,000,000 for solar thermal systems and \$3,000,000 for photovoltaic systems per calendar year. When the \$2,000,000 limit for solar thermal systems or the \$3,000,000 limit for photovoltaic systems is reached based on the total of taxpayers certified, the department will no longer certify taxpayers, but will accept them for future consideration in the next year, except for the last taxable year when the state tax credit is in effect. The division shall keep a record of the order of receipt of all application packages.~~

~~E. In the event of a discrepancy between a requirement of 3.3.28 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.28 NMAC's adoption, the existing rule shall govern.~~ [RESERVED]

[3.3.28.8 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.9 APPLICATION:

~~A. To apply for a state tax credit an applicant shall submit an application package to the division. An applicant may obtain a state tax credit application form and system installation form from the division.~~

~~B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. The applicant shall submit the state tax credit application form and any attachments required at the same time as a complete application package. An applicant shall submit one application package for each solar energy system. All material submitted in the application package shall be capable of being provided on 8½ inch x 11-inch paper.~~

~~C. The application package shall meet 3.3.28 NMAC's requirements. If an application package fails to meet a requirement, the department shall disapprove the application.~~

~~D. The completed application form shall consist of the following information:~~

- ~~_____ (1) the taxpayer's name, mailing address, telephone number and social security number;~~
- ~~_____ (2) the address where the solar energy system is located, if located at a residence, business or agricultural facility or, a location description if located at an agricultural enterprise;~~
- ~~_____ (3) the solar energy system's type and description;~~
- ~~_____ (4) the date the solar energy system started continuous operation or that an upgrade to an existing system became operational, if applicable;~~
- ~~_____ (5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, license category and license number;~~
- ~~_____ (6) acknowledgement that the homeowner installed the solar energy system; if applicable;~~
- ~~_____ (7) the net cost of equipment, materials and labor of the solar energy system, excluding the expenses and income listed in 3.3.28 NMAC;~~
- ~~_____ (8) a statement that the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:~~
 - ~~_____ (a) all information provided in the application package is true and correct to the best of the applicant's knowledge;~~
 - ~~_____ (b) applicant has read the certification requirements contained in 3.3.28 NMAC;~~
 - ~~_____ (c) applicant understands that there are annual aggregate state tax credit limits in place for solar thermal systems and photovoltaic systems;~~
 - ~~_____ (d) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;~~
 - ~~_____ (e) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.28 NMAC; and~~
 - ~~_____ (f) to ensure compliance with 3.3.28 NMAC applicant agrees to allow the division or its authorized representative to inspect the solar energy system that is described in the application package at any time from the application package's submittal to three years after the department has certified the solar energy system, upon the division providing a minimum of five days notice to the applicant; and~~
- ~~_____ (9) a project number the division assigns to the application.~~
- ~~_____ E. The application form shall request the following as optional information provided by the applicant:~~
 - ~~_____ (1) taxpayer's email address; and~~
 - ~~_____ (2) contractor's email address.~~
- ~~_____ F. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions:~~
 - ~~_____ (1) adding energy monitoring equipment to the solar energy system;~~
 - ~~_____ (2) conducting an analysis of solar energy system operation and performance; or~~
 - ~~_____ (3) conducting an analysis of taxpayer's utility bill records.~~
- ~~_____ G. The application package shall consist of the following information provided as attachments:~~
 - ~~_____ (1) a copy of a current property tax bill to the taxpayer for the residence, business or agricultural enterprise where the solar energy system is located;~~
 - ~~_____ (2) a copy of the invoice of itemized equipment and labor costs for the solar energy system;~~
 - ~~_____ (3) a copy of the solar energy system's design schematic and technical specifications as described in 3.3.28 NMAC;~~
 - ~~_____ (4) a photographic record of the solar energy system after installation is completed;~~
 - ~~_____ (5) a completed system installation form;~~
 - ~~_____ (6) a completed taxpayer and contractor statement of understanding that shall include 3.3.28.19 NMAC;~~
 - ~~_____ (7) if application is for a solar thermal system, a completed solar thermal list form that includes the:~~
 - ~~_____ (a) manufacturer or supplier of system components and their model numbers;~~
 - ~~_____ (b) number of collectors;~~
 - ~~_____ (c) collector aperture dimensions;~~
 - ~~_____ (d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;~~
 - ~~_____ (e) SRCC solar collector certification identification number or, if SRCC has not certified the collector and the application package is submitted on January 1, 2007 or later but before January 1, 2010, a copy of the application for solar collector certification form the manufacturer has submitted to the SRCC and report status of SRCC certification process;~~
 - ~~_____ (f) a description of the freeze protection;~~
 - ~~_____ (g) a description of overheating protection;~~
 - ~~_____ (h) thermal storage fluid or material and its volume, if thermal storage is a part of the system and if the thermal storage does not have energy provided from a non-solar or non-renewable source; and~~
 - ~~_____ (i) manufacturer's specifications for collectors, if collectors are unglazed;~~
 - ~~_____ (8) if application is for a photovoltaic system, a completed solar photovoltaic list form that includes the:~~

~~(a) manufacturer or supplier of major system components and their model numbers;~~
~~(b) number of modules;~~
~~(c) module rated direct current power output in watts under manufacturer's standard test conditions;~~
~~(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;~~
~~(e) inverter capacity in kilowatts, if an inverter is a part of the system;~~
~~(f) battery storage capacity in kilowatt hours, if battery storage is a part of the system; and~~
~~(g) a copy of the signature and specifications pages of the fully executed interconnection agreement with the electric utility if the photovoltaic system is interconnected to a utility transmission line or distribution system; and~~
~~(9) other information the department needs to evaluate the specific system type for certification.~~
H. The completed system installation form shall include the following information:
~~(1) printed name of the taxpayer who is identified on the application form;~~
~~(2) printed name, title and telephone number of the contractor's authorized representative, if applicable, who approves the system installation form;~~
~~(3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;~~
~~(4) date on which solar energy system installation was complete and ready to operate;~~
~~(5) if a contractor installed the solar energy system, a statement that the contractor's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:~~
~~(a) the solar energy system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;~~
~~(b) contractor has read 3.3.28 NMAC's certification requirements;~~
~~(c) the date on which the solar energy system was ready to operate;~~
~~(d) the installed solar energy system will work properly with regular maintenance; and~~
~~(e) contractor provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and which is near or at the solar energy system's array or balance of system components;~~
~~(6) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the solar energy system was installed in full compliance with all applicable codes; and~~
~~(7) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:~~
~~(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;~~
~~(b) an official document from the building code authority that includes the:~~
~~(i) agency's name;~~
~~(ii) authorized representative's name, title, telephone number and signature;~~
~~(iii) date of authorized representative's signature; and~~
~~(iv) permit number; or~~
~~(c) a web-based application the building code authority approves.~~
I. The division shall return an incomplete application to the applicant. [RESERVED]
 [3.3.28.9 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

3.3.28.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. The department gives applications received on the same day equal consideration. If the department approves applications received on the same day and the applications would exceed the overall limit of state tax credit availability, then the department divides the available state tax credit among those applications on a prorated, net solar energy system cost basis.
B. The division reviews the application package to calculate the state tax credit, checks accuracy of the applicant's documentation and determines whether the department certifies the solar energy system.
C. If the division finds that the application package meets 3.3.28 NMAC's requirements and a state tax credit is available, the department certifies the applicant's solar energy system and documents the taxpayer as eligible for a state tax credit. If a state tax credit is not available in the taxable year of certification of the solar energy system submitted in the application package, the division places the taxpayer on a waiting list for inclusion in the following taxable year, if a state tax credit remains available. The department provides approval through written notification to the applicant. The notification shall include the taxpayer's contact information, social security number, system certification number, net solar energy system cost eligible for the state tax credit, the state tax credit amount and waiting list status, if applicable.
D. The division reports to the taxation and revenue department the information required to verify, process, and distribute each state tax credit by providing a copy of the department's approval notification.

~~E. The applicant may submit a revised application package to the division. The division shall place the resubmitted application in the review schedule as if it were a new application.~~

~~F. The department disapproves an application that is not complete or correct or does not meet the approval criteria. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application. [RESERVED]~~

[3.3.28.10 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.11 SAFETY, CODES AND STANDARDS:

~~A. Solar energy systems that the department may certify shall meet the following requirements:~~

~~(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package;~~

~~(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a solar energy system is also served by utility electricity or a heating fuel;~~

~~(3) compliance with the building code authority's structural design requirements, as applicable to new and existing structures upon which solar energy system components may be mounted and support structures of solar energy system components;~~

~~(4) permitted and inspected by the building code authority for building, electrical or mechanical code compliance, as applicable to the type of solar energy system installed; and~~

~~(5) a written final inspection approval obtained from the building code authority after the solar energy system's installation, as applicable to the solar energy system type, or alternative system approval as allowed by 3.3.28 NMAC.~~

~~B. The department may certify a solar energy system that a taxpayer who is also the homeowner of the residence at which the solar energy system is located has installed and shall not certify a solar energy system that the owner of a non-residential facility has installed.~~

~~C. Solar thermal systems that the department may certify shall meet the following requirements:~~

~~(1) if installed at a residence by a~~

~~(a) contractor, installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision;~~

~~(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for plumbing work the building code authority administers;~~

~~(2) if installed at a non-residential facility, installation by a certified mechanical journeyman who is an employee of a company holding a New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and~~

~~(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2—5 NMAC), Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes (14.7.2—8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6.~~

~~D. Photovoltaic systems that the department may certify shall meet the following requirements:~~

~~(1) if installed at a residence by a:~~

~~(a) contractor, installation by a certified electrical journeyman who is an employee of a company holding a valid New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; or~~

~~(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for electrical work the building code authority administers;~~

~~(2) if installed at a non-residential facility, installation by a certified electrical journeyman who is an employee of a company holding a New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and~~

~~(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Electrical Code (14.10.4 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6. [RESERVED]~~

[3.3.28.11 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

3.3.28.12 SOLAR COLLECTOR AND MODULE ORIENTATION AND SUN EXPOSURE:

~~_____ A. _____~~ A solar energy system array the department certifies shall have an azimuth angle or sun exposure reduction due to shading or other factors that results in annual energy production of the total solar energy system having a combined derating of not more than 25 percent when compared to an ideal solar energy system at the same location that has an unshaded array tilt equal to local latitude and azimuth of true south. For cases in which the combined impact of orientation and sun exposure of an array is evaluated, the applicant shall estimate a derating using a department approved method or model.

~~_____ B. _____~~ A tracking array of a solar energy system that the department certifies shall have a mechanism to track the sun so that the array absorber surface consistently receives the sun's direct beam at all times when the direct beam of full sun is available, without requiring manual adjustment, except for a solar energy system having the following tracking array control features:

~~_____ (1) _____~~ automatic and intentional stowage of the array due to high velocity wind to avoid damage to the array and its support structure;

~~_____ (2) _____~~ automatic and intentional adjustment to off direct beam array orientations at low sun angles to optimize the solar energy system's annual energy production; or

~~_____ (3) _____~~ other automatic and intentional array control features that demonstrate to the department's satisfaction that the solar energy system's annual energy production is optimized.

~~_____ C. _____~~ A solar energy system that the department certifies shall have an array and balance of system components that are automatically controlled to collect sunlight or solar heat and deliver to an end use, without requiring manual operation.

~~_____ D. _____~~ It is the applicant's sole responsibility to take action or meet the Solar Rights Act's requirements, if applicable. ~~[RESERVED]~~

[3.3.28.12 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

3.3.28.13 ~~_____~~ MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

~~_____ A. _____~~ Solar energy systems or their portions that the department may certify shall meet the following requirements:

~~_____ (1) _____~~ be made of new equipment, components and materials;

~~_____ (2) _____~~ if installed by a contractor, have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions;

~~_____ (a) _____~~ the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship;

~~_____ (b) _____~~ in the case of an expansion of an existing system, the warranty provided by the contractor shall be limited to cover only parts, equipment and labor directly related to the upgrade or expansion; and

~~_____ (c) _____~~ the owner of the solar energy system shall bear the actual cost of shipping the product for the repair and replacement.

~~_____ (3) _____~~ be a complete energy system that collects, converts and distributes solar energy to the residence, business or agricultural enterprise it serves, unless requirements are met for expansion of an existing solar energy system or replacement of an existing solar energy system's components;

~~_____ (4) _____~~ if an expansion of an existing solar energy system, end use annual energy production of the new system shall be increased in comparison to the existing system by the amount of the minimum system size requirement and the contractor or homeowner shall provide a written summary of the condition of each major component of the system;

~~_____ (5) _____~~ if replacement of one or more components of an existing system, end use annual energy production of the new system shall be increased in comparison to the system's operation under existing conditions and the contractor or homeowner shall provide a written summary of the condition of each of the system's major components; and

~~_____ (6) _____~~ if a specialty or retrofit component is required for a complete solar energy system, then that component shall be included as part of the solar energy system that is eligible for department certification.

~~_____ B. _____~~ Solar energy systems or their portions that the department shall not certify are as follows:

~~_____ (1) _____~~ a system or portion of a system that uses non solar or non renewable sources in its operation, with the exception of the following:

~~_____ (a) _____~~ power necessary to provide for solar energy system components' incidental electricity needs; and

~~_____ (b) _____~~ non solar or non renewable sources that do not exceed 25 percent of the system's annual energy production;

~~_____ (2) _____~~ a system or portion of a system that would be present if the solar energy system was not installed;

~~_____ (3) _____~~ a system that increases an existing residence, business or agricultural enterprise's average annual energy consumption;

~~_____ (4) _____~~ a system that is mobile and does not serve a permanent end use energy load or is not permanently located in New Mexico;

~~_____ (5) _____~~ a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

~~_____ (6) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise;~~

~~_____ (7) a system installed on a recreational vehicle;~~

~~_____ (8) a system not serving an end use energy load; or~~

~~_____ (9) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.~~

~~_____ C. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.28 NMAC for certification or may deem it innovative, if the applicant requests in the application package.~~

~~_____ D. Solar thermal systems that the department may certify include:~~

~~_____ (1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.28 NMAC;~~

~~_____ (2) the collector types of flat plate, parabolic trough and evacuated tube; and~~

~~_____ (3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers and heat exchangers.~~

~~_____ E. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.~~

~~_____ F. Solar thermal systems or their components that the department shall not certify are as follows:~~

~~_____ (1) a heating system or heating system components necessary for a swimming pool or a hot tub;~~

~~_____ (2) equipment sheds, wall preparation, cabinetry, site built enclosures, distribution piping and associated installation costs;~~

~~_____ (3) a building design element used for passive solar space heating, space cooling, daylighting or other environmental comfort attribute;~~

~~_____ (4) a water quality distillation or processing system;~~

~~_____ (5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;~~

~~_____ (6) systems without adequate freeze protection;~~

~~_____ (7) systems incorporating drain down as a freeze protection method; and~~

~~_____ (8) systems without adequate overheating protection.~~

~~_____ G. Solar thermal systems that the department may certify shall meet the following requirements:~~

~~_____ (1) minimum system size of 15 square feet of solar collector aperture area;~~

~~_____ (2) for solar domestic hot water systems installed at a residence or business, a minimum of 50 percent of the total domestic water heating load provided by solar energy;~~

~~_____ (3) a collector that is:~~

~~_____ (a) listed as certified by the SRCC by OG 100 collector certification or OG 300 system certification processes or, if collector is not certified by the SRCC and application package is submitted on January 1, 2007 or later but before January 1, 2010, submitted by the manufacturer to the SRCC for certification and is active in the SRCC certification process;~~

~~_____ (b) if glazed, made of all metal enclosures, absorber plates, fasteners and fittings; aperture glazing of tempered glass; and fiberglass or polyisocyanurate insulation; or~~

~~_____ (c) if unglazed, made of durable materials having a minimum 12-year warranty period for full replacement; and~~

~~_____ (4) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.~~

~~_____ H. Photovoltaic systems that the department may certify include:~~

~~_____ (1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with battery storage, stand alone with battery storage, stand alone with utility backup capability and water pumping;~~

~~_____ (2) the flat plate module types of crystalline, poly-crystalline or thin film amorphous silicon;~~

~~_____ (3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and~~

~~_____ (4) disconnect components, safety components, standard electrical materials and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe and fully operational system.~~

~~_____ I. Photovoltaic systems that the department may certify shall meet the following requirements:~~

~~_____ (1) a minimum total array power output of 100 watts direct current at manufacturer's standard test conditions; and~~

~~_____ (2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category.~~

~~_____ J. _____ Photovoltaic systems or their portions that the department shall not certify are as follows:~~
~~_____ (1) _____ a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system;~~
~~_____ (2) _____ power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;~~
~~_____ (3) _____ the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and~~
~~_____ (4) _____ a packaged product powered by photovoltaic cells that a taxpayer purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including watches, calculators, walkway lights and toys. [RESERVED]~~
[3.3.28.13 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

~~3.3.28.14 _____ INNOVATIVE SOLAR ENERGY SYSTEMS:~~

~~_____ A. _____ The department may certify an innovative solar energy system.~~
~~_____ B. _____ A taxpayer shall request that the department review an application package as an innovative solar energy system.~~
~~_____ C. _____ The division shall conduct a design review of a solar energy system when the taxpayer has requested innovative status.~~
~~_____ D. _____ The department may determine that a solar energy system is innovative if~~
~~_____ (1) _____ it does not include a system application, component, packaged system, solar thermal collector type or photovoltaic module type that the department may certify; and~~
~~_____ (2) _____ the division approves the design.~~
~~_____ E. _____ Design approval by the division does not indicate department approval of actual system operation, energy production or code compliance.~~
~~_____ F. _____ The application package of an innovative solar energy system shall include attachments in addition to those required in other sections of 3.3.28 NMAC that fully describe the solar energy system, as follows:~~
~~_____ (1) _____ a request for innovative status and a description of the innovative feature;~~
~~_____ (2) _____ a design schematic detail of each system application, component, packaged system, solar thermal collector type or photovoltaic module type that makes the solar energy system innovative;~~
~~_____ (3) _____ a description of system operation; and~~
~~_____ (4) _____ an energy analysis of the solar energy system, including an estimate of annual energy production.~~
~~_____ G. _____ Innovative solar energy systems that the department may certify shall meet all requirements of 3.3.28 NMAC, with the exception of the specific system application, component, packaged system, solar thermal collector type or photovoltaic module type that is to be installed.~~
~~_____ H. _____ The department may approve an innovative component or system for inclusion on the department's list of certified components, if that component or system has been tested, certified, approved or listed by the applicable organization for the specific type of component or system and if such testing, certification, approval or listing is available. Upon the department listing a component or system as certified, subsequent applicants are not required to submit that component or system as an innovative system. [RESERVED]~~
[3.3.28.14 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

~~3.3.28.15 _____ CERTIFICATION:~~

~~_____ A. _____ The purpose of the department's certification program is to evaluate certification of complete solar energy systems for state tax credit eligibility that are comprised of components and materials that are tested, certified, approved, or listed, as applicable, by other organizations identified or referenced in 3.3.28 NMAC.~~
~~_____ B. _____ When a taxpayer has installed a solar energy system, submits an application package, and complies with 3.3.28 NMAC's certification requirements, then the solar energy system the taxpayer owns is eligible to receive department certification. The taxpayer shall submit a completed application package.~~
~~_____ C. _____ For purposes of monitoring compliance with 3.3.28 NMAC, the division or its authorized representative shall have the authority to inspect a solar energy system owned by a taxpayer who has submitted an application for certification, upon the division providing five days notice to the taxpayer. [RESERVED]~~
[3.3.28.15 NMAC - N, 7-1-06, R xx/xx/xxxx]

~~3.3.28.16 _____ CALCULATING THE SOLAR ENERGY SYSTEM COST:~~

~~_____ A. _____ A state tax credit shall be based on the equipment, materials and labor costs of a solar energy system the department has certified.~~
~~_____ B. _____ The equipment, materials and labor costs of a solar energy system the department certifies shall be documented in writing.~~

~~C.~~ The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and shall not include the following:

- ~~(1)~~ expenses, including but not limited to:
 - ~~(a)~~ unpaid labor or the applicant's labor;
 - ~~(b)~~ unpaid equipment or materials;
 - ~~(c)~~ land costs or property taxes;
 - ~~(d)~~ costs of structural, surface protection and other functions in building elements that would be included in building construction if a solar energy system were not installed;
 - ~~(e)~~ mortgage, lease or rental costs of the residence, business or agricultural enterprise;
 - ~~(f)~~ legal and court costs;
 - ~~(g)~~ research fees or patent search fees;
 - ~~(h)~~ fees for use permits or variances;
 - ~~(i)~~ membership fees;
 - ~~(j)~~ financing costs or loan interest;
 - ~~(k)~~ marketing, promotional or advertising costs;
 - ~~(l)~~ repair, operating, or maintenance costs;
 - ~~(m)~~ extended warranty costs;
 - ~~(n)~~ system resale costs;
 - ~~(o)~~ system visual barrier costs;
 - ~~(p)~~ adjacent structure modification costs; and
 - ~~(q)~~ vegetation maintenance costs;
- ~~(2)~~ income, including:
 - ~~(a)~~ payments the solar energy system contractor or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company solar incentives;
 - ~~(b)~~ services, benefits or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal; and
 - ~~(c)~~ other financial incentives provided for solar energy system installation, if applicable.

~~D.~~ The division shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.28 NMAC. [RESERVED]
 [3.3.28.16 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.17 ~~CALCULATING THE STATE TAX CREDIT:~~

- ~~A.~~ A state tax credit to a taxpayer for a solar energy system the department has certified shall not exceed:
 - ~~(1)~~ 10 percent of the net solar energy system cost as provided in 3.3.28.16 NMAC; and
 - ~~(2)~~ \$9000.
- ~~B.~~ The total sum of the state tax credit and the federal tax credit shall not exceed 10 percent of the net solar energy system cost.
- ~~C.~~ The taxation and revenue department shall make the final determination of the amount of a state tax credit. [RESERVED]
 [3.3.28.17 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

3.3.28.18 ~~CLAIMING THE STATE TAX CREDIT:~~

- ~~A.~~ To claim the state tax credit, a taxpayer owning a solar energy system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the notification the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.
- ~~B.~~ If the amount of state tax credit claimed exceeds the taxpayer's individual income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.
- ~~C.~~ A taxpayer who has both a carryover state tax credit and a new state tax credit derived from a certified solar energy system in the taxable year for which the return is being filed shall first apply the amount of carryover state tax credit against the income tax liability. If the amount of liability exceeds the carryover state tax credit, then the taxpayer may apply the current year credit against the liability.
- ~~D.~~ A taxpayer claiming a state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs. [RESERVED]
 [3.3.28.18 NMAC - N, 7-1-06; A, 1-31-08, R xx/xx/xxxx]

3.3.28.19 ~~CONSUMER INFORMATION:~~

- ~~_____ A. _____ If a contractor installs the solar energy system, the contractor shall inform the taxpayer about system design, installation, performance, operation and maintenance by providing the following:~~
- ~~_____ (1) _____ prior to system installation, a summary of the specific system type that meets all 3.3.28 NMAC's requirements, the system's capacity or size, and the system's estimated annual energy production;~~
 - ~~_____ (2) _____ upon completion of system installation, written operation and maintenance instructions, including how to conduct simple diagnostic observations and tests to determine if the solar energy system is working properly to produce energy;~~
 - ~~_____ (3) _____ upon completion of system installation, a written summary of operation and maintenance instructions on one page, posted at an accessible location acceptable to the taxpayer and that is near or at the solar energy system's array or balance of system components; and~~
 - ~~_____ (4) _____ upon completion of system installation, written warranties in effect for equipment and contractor's labor, including their start and end dates and telephone, address and website contact information, as applicable, for honoring or extending warranties.~~
- ~~_____ B. _____ If the solar energy system is a solar thermal system, the following information shall be displayed:~~
- ~~_____ (1) _____ pump or fan status by a visual indicator, as applicable;~~
 - ~~_____ (2) _____ outlet temperature of the collector loop;~~
 - ~~_____ (3) _____ if a liquid collector, the collector loop's pressure; and~~
 - ~~_____ (4) _____ the solar storage tank's temperature, if applicable.~~
- ~~_____ C. _____ If the solar energy system is a photovoltaic system, the following information shall be displayed:~~
- ~~_____ (1) _____ for all photovoltaic systems, a visual indicator for operating status;~~
 - ~~_____ (2) _____ for an electric utility interconnected system without batteries~~
 - ~~_____ (a) _____ daily and cumulative energy production in kilowatt-hours alternating current of the inverter output; and~~
 - ~~_____ (b) _____ instantaneous power output in kilowatts alternating current of the inverter output;~~
 - ~~_____ (3) _____ for an electric utility interconnected system with batteries, a method to enable real-time evaluation of system power or energy production; and~~
 - ~~_____ (4) _____ for a stand-alone system with battery storage~~
 - ~~_____ (a) _____ voltage and amperes of module array; and~~
 - ~~_____ (b) _____ battery storage level. [RESERVED]~~

[3.3.28.19 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

3.3.28.20 INSPECTION OF SOLAR ENERGY SYSTEMS:

~~_____ A. _____ The inspections required through the application process for certification of a taxpayer's solar energy system are:~~

- ~~_____ (1) _____ inspection by the building code authority for building, electrical or mechanical code compliance, as applicable to the solar energy system type; and~~
- ~~_____ (2) _____ inspection for compliance with electric utility company requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company, if applicable.~~

~~_____ B. _____ For purposes of inspecting the solar energy system's installation, the division or its authorized representative shall have the right to inspect a solar energy system an applicant owns and the department has certified, within three years after the department's certification, upon the division providing a minimum of five days notice to the taxpayer. [RESERVED]~~

[3.3.28.20 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09, R xx/xx/xxxx]

TITLE 3	TAXATION
CHAPTER 3	PERSONAL INCOME TAXES
PART 29	SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS

3.3.29.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department. [RESERVED]

[3.3.29.1 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.2 SCOPE: 3.3.29 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable residential buildings. [RESERVED]

[3.3.29.2 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.3 STATUTORY AUTHORITY: 3.3.29 NMAC is established under the authority of NMSA 1978, Section 7-2-18.19 and NMSA 1978, Section 9-1-5. [RESERVED]

[3.3.29.3 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.4 DURATION: Permanent. [RESERVED]

[3.3.29.4 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.5 ~~—————~~ **EFFECTIVE DATE:** October 31, 2007, unless a later date is cited at the end of a section. ~~—————~~ **[RESERVED]**
[3.3.29.5 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.6 ~~—————~~ **OBJECTIVE:** 3.3.29 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings. ~~—————~~ **[RESERVED]**
[3.3.29.6 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.7 ~~—————~~ **DEFINITIONS:**

- ~~—————~~ **A.** "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.
- ~~—————~~ **B.** "Applicant" means a taxpayer who owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.
- ~~—————~~ **C.** "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.
- ~~—————~~ **D.** "Build green New Mexico certification" means the verification by a department approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.
- ~~—————~~ **E.** "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.
- ~~—————~~ **F.** "Certification" means build green New Mexico certification, LEED certification or energy star qualified.
- ~~—————~~ **G.** "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.
- ~~—————~~ **H.** "Certification level" means one of the following:
 - ~~—————~~ (1) LEED H silver or build green New Mexico silver;
 - ~~—————~~ (2) LEED H gold or build green New Mexico gold; or
 - ~~—————~~ (3) LEED H platinum or build green New Mexico emerald.
- ~~—————~~ **I.** "Department" means the energy, minerals and natural resources department.
- ~~—————~~ **J.** "Division" means the department's energy conservation and management division.
- ~~—————~~ **K.** "Energy reduction requirements" means has achieved a HERS index of 60 or lower.
- ~~—————~~ **L.** "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.
- ~~—————~~ **M.** "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.
- ~~—————~~ **N.** "HERS" means home energy rating system as developed by RESNET.
- ~~—————~~ **O.** "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.
- ~~—————~~ **P.** "LEED" means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.
- ~~—————~~ **Q.** "LEED certification" means the verification by the U.S. green building council, or a department approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED H rating system resulting in the issuance of a certification document.
- ~~—————~~ **R.** "LEED H" means the LEED rating system for homes.
- ~~—————~~ **S.** "Manufactured housing" means a multisectioned home that is:
 - ~~—————~~ (1) a manufactured home or modular home;
 - ~~—————~~ (2) a single family dwelling with a heated area of at least thirty six feet by twenty feet and a total area of at least eight hundred sixty four square feet;
 - ~~—————~~ (3) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit's construction; and
 - ~~—————~~ (4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.
- ~~—————~~ **T.** "Person" does not include state, local government, public school district or tribal agencies.
- ~~—————~~ **U.** "Qualified occupied square footage" means the occupied spaces of the building as determined by:
 - ~~—————~~ (1) the United States green building council for those buildings obtaining LEED certification;
 - ~~—————~~ (2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or
 - ~~—————~~ (3) the United States environmental protection agency for energy star certified manufactured homes.

~~V. “Rating system” means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.~~

~~W. “RESNET” means the residential energy services network, an industry not for profit membership corporation and national standards making body for building energy efficiency rating systems.~~

~~X. “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.~~

~~Y. “Sustainable building tax credit” means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.~~

~~Z. “Sustainable residential building” means:~~

~~(1) a building used as a single family residence that meets the energy reduction requirements and has been awarded:~~

~~(a) LEED-H certification at the certification level of silver, gold or platinum; or~~

~~(b) build green New Mexico certification at the silver, gold or emerald certification level; or~~

~~(2) an energy star qualified manufactured home.~~

~~AA. “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 et seq.~~

~~BB. “Taxpayer identification number” means the taxpayer’s nine digit social security number.~~

~~CC. “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.~~

~~DD. “Verifier” means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems. [RESERVED]~~

~~[3.3.29.7 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]~~

3.3.29.8 GENERAL PROVISIONS:

~~A. A person who is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.~~

~~B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$4,000,000. When the \$4,000,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:~~

~~(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or~~

~~(2) the department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect; or~~

~~(3) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.~~

~~C. No more than \$1,250,000 of the \$4,000,000 annual cap is for manufactured housing.~~

~~D. In the event of a discrepancy between a requirement of 3.3.29 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.29 NMAC’s adoption, the existing rule governs. [RESERVED]~~

~~[3.3.29.8 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]~~

3.3.29.9 VERIFIER ELIGIBILITY:

~~A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:~~

~~(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;~~

~~(2) the verifier has adequate staff and expertise to provide certification services, including:~~

~~(a) experience in green home building services;~~

~~(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;~~

~~(c) a method of auditing the certification process to maintain adequate stringency; and~~

~~(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;~~

~~(3) the verifier can identify the geographic area being served; and~~

~~(4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.~~

~~_____ B. _____ The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.~~

~~_____ C. _____ The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.~~

~~_____ D. _____ The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.~~

~~_____ (1) _____ The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.~~

~~_____ (2) _____ The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the 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 verifier within 20 calendar days after receiving the request or the date the hearing concludes. [RESERVED]~~

[3.3.29.9 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.3.29.10 ~~_____ APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:~~

~~_____ A. _____ In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division developed form. An applicant may obtain an application form from the division.~~

~~_____ B. _____ An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.~~

~~_____ C. _____ The completed application form shall consist of the following information:~~

- ~~_____ (1) _____ the applicant's name, mailing address, telephone number and taxpayer identification number;~~
- ~~_____ (2) _____ the name of the applicant's authorized representative;~~
- ~~_____ (3) _____ the ending date of the applicant's taxable year;~~
- ~~_____ (4) _____ the address of the sustainable residential building, including the property's legal description;~~
- ~~_____ (5) _____ whether the applicant was the building owner at time of certification or a subsequent purchaser;~~
- ~~_____ (6) _____ the qualified occupied square footage of the sustainable residential building;~~
- ~~_____ (7) _____ the rating system under which the sustainable residential building was certified;~~
- ~~_____ (8) _____ the certification level achieved, if applicable;~~
- ~~_____ (9) _____ the HERS index;~~
- ~~_____ (10) _____ the date of rating system certification;~~
- ~~_____ (11) _____ a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:~~

~~_____ (a) _____ all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;~~

~~_____ (b) _____ applicant has read the requirements contained in 3.3.29 NMAC;~~

~~_____ (c) _____ if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;~~

~~_____ (d) _____ applicant understands that there are annual caps for the sustainable building tax credit;~~

~~_____ (e) _____ applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and~~

~~_____ (f) _____ applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and~~

~~_____ (12) _____ a project number the division assigns to the tax credit application.~~

~~_____ D. _____ In addition to the application form, the application package shall consist of the following information provided as attachments:~~

- _____ (1) _____ a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;
- _____ (2) _____ a copy of the rating system certification form;
- _____ (3) _____ a copy of the final certification review checklist that shows the points achieved, if applicable;
- _____ (4) _____ a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and
- _____ (5) _____ other information the department needs to review the building project for the sustainable building tax credit.

[RESERVED]

[3.3.29.10 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.3.29.11 _____ APPLICATION REVIEW PROCESS:

- _____ A. _____ The department considers applications in the order received, according to the day they are received, but not the time of day.
- _____ B. _____ The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.
- _____ C. _____ The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.
- _____ D. _____ If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.
- _____ E. _____ If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years. [RESERVED]

[3.3.29.11 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.3.29.12 _____ CALCULATING THE TAX CREDIT:

- _____ A. _____ The division calculates the maximum sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
LEED-H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
LEED-H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus

next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

~~B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.~~

~~C. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit. [RESERVED]~~

[3.3.29.12 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

~~3.3.29.13 CLAIMING THE STATE TAX CREDIT:~~

~~A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.~~

~~B. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.~~

~~C. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act. [RESERVED]~~

[3.3.29.13 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

TITLE 3 TAXATION

CHAPTER 3 PERSONAL INCOME TAXES

PART 30 SUSTAINABLE BUILDING TAX CREDIT FOR COMMERCIAL BUILDINGS

~~3.3.30.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department. [RESERVED]~~

[3.3.30.1 NMAC - Rp, 3.3.30.1 NMAC, 1-1-14, R xx/xx/xxxx]

~~3.3.30.2 SCOPE: 3.3.30 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable commercial buildings. [RESERVED]~~

[3.3.30.2 NMAC - Rp, 3.3.30.2 NMAC, 1-1-14, R xx/xx/xxxx]

~~3.3.30.3 STATUTORY AUTHORITY: 3.3.30 NMAC is established under the authority of NMSA 1978, Section 7-2-18.19 and NMSA 1978, Section 9-1-5. [RESERVED]~~

[3.3.30.3 NMAC - Rp, 3.3.30.3 NMAC, 1-1-14, R xx/xx/xxxx]

~~3.3.30.4 DURATION: Permanent. [RESERVED]~~

[3.3.30.4 NMAC - Rp, 3.3.30.4 NMAC, 1-1-14, R xx/xx/xxxx]

~~3.3.30.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section. [RESERVED]~~

[3.3.30.5 NMAC - Rp, 3.3.30.5 NMAC, 1-1-14, R xx/xx/xxxx]

~~3.3.30.6 OBJECTIVE: 3.3.30 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable commercial buildings. [RESERVED]~~

[3.3.30.6 NMAC - Rp, 3.3.30.6 NMAC, 1-1-14, R xx/xx/xxxx]

~~3.3.30.7 DEFINITIONS:~~

~~A. "Annual cap" means the annual aggregate amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings.~~

~~B. "Applicant" means a taxpayer who owns a sustainable commercial building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.~~

~~C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.~~

~~_____ D. “Build green New Mexico certification” means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.~~

~~_____ E. “Build green New Mexico rating system” means the certification standards adopted by the homebuilders association of central New Mexico.~~

~~_____ F. “Building project” means a new construction or renovation project that will result in one or more sustainable commercial buildings.~~

~~_____ G. “Building type” means the primary use of a building or section of a building as defined in target finder.~~

~~_____ H. “Certificate of eligibility” means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.~~

~~_____ I. “Certification level” means one of the following:~~

~~_____ (1) LEED H silver or build green New Mexico silver;~~

~~_____ (2) LEED H gold or build green New Mexico gold; or~~

~~_____ (3) LEED H platinum or build green New Mexico emerald.~~

~~_____ J. “Department” means the energy, minerals and natural resources department.~~

~~_____ K. “Division” means the department’s energy conservation and management division.~~

~~_____ L. “Energy reduction requirements”:~~

~~_____ (1) for a non multi-family commercial building means beginning January 1, 2012, a 60 percent energy reduction based on the national average for that building type as published by the United States department of energy;~~

~~_____ (2) for a multi-family dwelling unit means that it has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network.~~

~~_____ M. “HERS” means home energy rating system as developed by RESNET.~~

~~_____ N. “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.~~

~~_____ O. “LEED” means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the U. S. green building council.~~

~~_____ P. “LEED certification” means the U. S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.~~

~~_____ Q. “LEED CI” means the LEED rating system for commercial interiors.~~

~~_____ R. “LEED CS” means the LEED rating system for the core and shell of buildings.~~

~~_____ S. “LEED EB” means the LEED rating system for existing buildings.~~

~~_____ T. “LEED NC” means the LEED rating system for new buildings and major renovations.~~

~~_____ U. “LEED rating system” means one of the following:~~

~~_____ (1) LEED CI;~~

~~_____ (2) LEED CS;~~

~~_____ (3) LEED EB; or~~

~~_____ (4) LEED NC.~~

~~_____ V. “LEED registration” means the notification to the U. S. green building council that a project is pursuing LEED certification.~~

~~_____ W. “Most current” means the LEED rating system available and selected at the time of LEED registration.~~

~~_____ X. “Person” does not include state, local government, public school district or tribal agencies.~~

~~_____ Y. “Qualified occupied square footage” means the building’s occupied spaces as determined by the U. S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification.~~

~~_____ Z. “RESNET” means the residential energy services network, an industry not for profit membership corporation and national standards making body for building energy efficiency rating systems.~~

~~_____ AA. “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.~~

~~_____ BB. “Sustainable building tax credit” means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.~~

~~_____ CC. “Sustainable commercial building” means one of the following:~~

~~_____ (1) a building that is registered with and certified by the U.S. green building council under the LEED NC, LEED-EB, LEED CS or LEED CI rating system at the certification level of silver, gold or platinum and that:~~

~~_____ (a) achieves any prerequisite for and at least one point related to commissioning under the “energy and atmosphere” credits of LEED, if included in the applicable rating system; and~~

_____ (b) has met the energy reduction requirements as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development, or an alternative method the division approved pursuant to 3.3.30.12 NMAC;

_____ (2) a building used as multi-family residences where all dwelling units have met the energy reduction requirements and the building has been awarded:

_____ (a) LEED-H certification at the certification level of silver, gold or platinum; or

_____ (b) build green New Mexico certification at the certification level of silver, gold or emerald.

_____ DD. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

_____ EE. "Taxpayer" means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 et seq.

_____ FF. "Taxpayer identification number" means the taxpayer's nine digit social security number.

_____ GG. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

_____ HH. "Verifier" means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems. [RESERVED]

[3.3.30.7 NMAC - Rp, 3.3.30.7 NMAC, 1-1-14, R xx/xx/xxxx]

3.3.30.8 GENERAL PROVISIONS:

_____ A. A person who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

_____ B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to \$1,000,000. When the \$1,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

_____ (1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

_____ (2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

_____ C. The department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect.

_____ D. In the event of a discrepancy between a requirement of 3.3.30 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.30 NMAC's adoption, the existing rule governs. [RESERVED]

[3.3.30.8 NMAC - Rp, 3.3.30.8 NMAC, 1-1-14, R xx/xx/xxxx]

3.3.30.9 VERIFIERS'S ELIGIBILITY:

_____ A. The division reviews the qualification for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

_____ (1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

_____ (2) the verifier has adequate staff and expertise to provide certification services, including:

_____ (a) experience in green home building services;

_____ (b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

_____ (c) a method of auditing the certification process to maintain adequate stringency; and

_____ (d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

_____ (3) the verifier can identify the geographic area being served; and

_____ (4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

_____ B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

_____ C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

_____ D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

~~_____ (1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.~~

~~_____ (2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the 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 verifier within 20 calendar days after receiving the request or the date the hearing concludes. [RESERVED]~~

[3.3.30.9 NMAC - N, 1-1-14, R xx/xx/xxxx]

3.3.30.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

~~_____ A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the sustainable building tax credit has not been met. An applicant may obtain an application form from the division.~~

~~_____ B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.~~

~~_____ C. An applicant shall submit a complete application package to the division no later than April 30 of the calendar year for which the applicant seeks the sustainable building tax credit. If an applicant does not submit a complete application package by April 30, any remaining sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed sustainable residential building applications. The division may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.~~

~~_____ D. The completed application form shall consist of the following information:~~

~~_____ (1) the applicant's name, mailing address, telephone number and taxpayer identification number;~~

~~_____ (2) the address of the sustainable commercial building, including the property's legal description;~~

~~_____ (3) whether the applicant was the building owner at time of certification or a subsequent purchaser;~~

~~_____ (4) the rating system under which the sustainable commercial building was certified;~~

~~_____ (5) the certification level achieved;~~

~~_____ (6) for non multi-family commercial buildings, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;~~

~~_____ (7) for non multi-family commercial buildings, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent;~~

~~_____ (8) the qualified occupied square footage of the sustainable commercial building;~~

~~_____ (9) the date of certification;~~

~~_____ (10) for multi-family commercial buildings, the HERS index; and~~

~~_____ (11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:~~

~~_____ (a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;~~

~~_____ (b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;~~

~~_____ (c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;~~

~~_____ (d) applicant understands that there are annual caps in place for the sustainable building tax credit;~~

~~_____ (e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and~~

~~_____ (f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after April 30 or the sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.~~

~~_____ E. _____~~ In addition to the application form, the application package shall consist of the following information provided as attachments:

- ~~_____ (1) _____~~ a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;
- ~~_____ (2) _____~~ a copy of the rating system certification form;
- ~~_____ (3) _____~~ a copy of the final LEED project info or project summary that shows the building's square footage;
- ~~_____ (4) _____~~ a copy of the final certification review LEED checklist that shows the LEED credits achieved;
- ~~_____ (5) _____~~ for non multi-family commercial buildings, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;
- ~~_____ (6) _____~~ for non multi-family commercial buildings, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and
- ~~_____ (7) _____~~ a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;
- ~~_____ (8) _____~~ for multi-family commercial buildings, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and
- ~~_____ (9) _____~~ other information the department needs to review the building project for the sustainable building tax credit.

[RESERVED]

[3.3.30.10 NMAC - Rp, 3.3.30.11 NMAC, 1-1-14, R xx/xx/xxxx]

3.3.30.11 ~~_____~~ APPLICATION REVIEW PROCESS:

- ~~_____ A. _____~~ The department considers applications in the order received, according to the day they are received, but not the time of day.
- ~~_____ B. _____~~ The department approves or disapproves an application package following the receipt of the complete application package.
- ~~_____ C. _____~~ The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.
- ~~_____ D. _____~~ If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.
- ~~_____ E. _____~~ If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.
- ~~_____ F. _____~~ The department shall disapprove an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application. [RESERVED]

[3.3.30.11 NMAC - Rp, 3.3.30.12 NMAC, 1-1-14, R xx/xx/xxxx]

3.3.30.12 ~~_____~~ VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

- ~~_____ A. _____~~ In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:
 - ~~_____ (1) _____~~ a narrative describing the methodology used;

~~_____ (2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and~~

~~_____ (3) all formulas, assumptions and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.~~

~~_____ B. The division uses the following criteria to evaluate the alternative method:~~

~~_____ (1) clarity and completeness of the description of the alternative method;~~

~~_____ (2) reasonableness of assumptions and comparisons; and~~

~~_____ (3) thoroughness of justification of the method.~~

~~_____ C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.~~

~~_____ D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the division may:~~

~~_____ (1) reconsider the decision and accept the alternative method;~~

~~_____ (2) recommend a revised alternative method; or~~

~~_____ (3) reaffirm the rejection of the alternative method. [RESERVED]~~

[3.3.30.12 NMAC - Rp, 3.3.30.13 NMAC, 1-1-14, R xx/xx/xxxx]

3.3.30.13 ~~CALCULATING THE TAX CREDIT:~~

~~_____ A. The division calculates the maximum sustainable building tax credit for non multi-family commercial buildings based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:~~

LEED NC silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED NC gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00
LEED NC platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00
LEED EB OR LEED CS silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50
LEED EB OR LEED CS gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus

next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED EB OR LEED CS platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40
LEED CI silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30
LEED CI gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40
LEED CI platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80

B. The division calculates the maximum sustainable building tax credit for multi-family residences based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50.
LEED H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40.
LEED H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45.

C. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

D. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit. ~~[RESERVED]~~

[3.3.30.13 NMAC - Rp, 3.3.30.14 NMAC, 1-1-14, R xx/xx/xxxx]

3.3.30.14 CLAIMING THE STATE TAX CREDIT:

~~_____ A. _____ To claim the sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that calendar year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.~~

~~_____ B. _____ If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.~~

~~_____ C. _____ A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act. [RESERVED]~~

~~[3.3.30.14 NMAC - Rp, 3.3.30.15 NMAC, 1-1-14, R xx/xx/xxxx]~~

TITLE 3 TAXATION
CHAPTER 4 CORPORATE INCOME TAXES
PART 16 SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS

3.4.16.1 ~~_____ **ISSUING AGENCY:** Energy, Minerals and Natural Resources Department. [RESERVED]~~

~~[3.4.16.1 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.4.16.2 ~~_____ **SCOPE:** 3.4.16 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable residential buildings. [RESERVED]~~

~~[3.4.16.2 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.4.16.3 ~~_____ **STATUTORY AUTHORITY:** 3.4.16 NMAC is established under the authority of NMSA 1978, Section 7-2A-21 and NMSA 1978, Section 9-1-5. [RESERVED]~~

~~[3.4.16.3 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.4.16.4 ~~_____ **DURATION:** Permanent. [RESERVED]~~

~~[3.4.16.4 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.4.16.5 ~~_____ **EFFECTIVE DATE:** October 31, 2007, unless a later date is cited at the end of a section. [RESERVED]~~

~~[3.4.16.5 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.4.16.6 ~~_____ **OBJECTIVE:** 3.4.16 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings. [RESERVED]~~

~~[3.4.16.6 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.4.16.7 ~~_____ **DEFINITIONS:**~~

~~_____ A. _____ "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.~~

~~_____ B. _____ "Applicant" means a taxpayer that owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.~~

~~_____ C. _____ "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.~~

~~_____ D. _____ "Build green New Mexico certification" means the verification by a department approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.~~

~~_____ E. _____ "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.~~

~~_____ F. _____ "Certification" means build green New Mexico certification, LEED certification or energy star qualified.~~

~~_____ G. _____ "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.~~

~~_____ H. _____ "Certification level" means one of the following:~~

~~_____ (1) LEED H silver or build green New Mexico silver;~~

~~_____ (2) LEED H gold or build green New Mexico gold; or~~

~~_____ (3) LEED H platinum or build green New Mexico emerald.~~

~~_____ I. _____ "Department" means the energy, minerals and natural resources department.~~

~~_____ J. _____ "Division" means the department's energy conservation and management division.~~

~~_____ K. “Energy reduction requirements” means the sustainable residential building has achieved a HERS index of 60 or lower.~~

~~_____ L. “Energy star” means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.~~

~~_____ M. “Energy star qualified manufactured home” means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star’s guidelines.~~

~~_____ N. “HERS” means home energy rating system as developed by RESNET.~~

~~_____ O. “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.~~

~~_____ P. “LEED” means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.~~

~~_____ Q. “LEED certification” means the verification by the U. S. green building council, or a department approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED H rating system resulting in the issuance of a certification document.~~

~~_____ R. “LEED H” means the LEED rating system for homes.~~

~~_____ S. “Manufactured housing” means a multisectioned home that is:~~

~~_____ (1) a manufactured home or modular home;~~

~~_____ (2) a single family dwelling with a heated area of at least thirty six feet by twenty feet and a total area of at least eight hundred sixty four square feet;~~

~~_____ (3) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit’s construction; and~~

~~_____ (4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.~~

~~_____ T. “Person” does not include state, local government, public school district or tribal agencies.~~

~~_____ U. “Qualified occupied square footage” means the occupied spaces of the building as determined by:~~

~~_____ (1) the United States green building council for those buildings obtaining LEED certification;~~

~~_____ (2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or~~

~~_____ (3) the United States environmental protection agency for energy star certified manufactured homes.~~

~~_____ V. “Rating system” means the LEED H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.~~

~~_____ W. “RESNET” means the residential energy services network, an industry not for profit membership corporation and national standards making body for building energy efficiency rating systems.~~

~~_____ X. “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.~~

~~_____ Y. “Sustainable building tax credit” means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.~~

~~_____ Z. “Sustainable residential building” means:~~

~~_____ (1) a building used as a single family residence that meets the energy reduction requirements and has been awarded:~~

~~_____ (a) LEED H certification at the certification level of silver, gold or platinum; or~~

~~_____ (b) build green New Mexico certification at the gold certification level; or~~

~~_____ (2) an energy star qualified manufactured home.~~

~~_____ AA. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 et seq.~~

~~_____ BB. “Taxpayer” means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 et seq.~~

~~_____ CC. “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.~~

~~_____ DD. “Verifier” means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED H rating systems. [RESERVED]~~

~~[3.4.16.7 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]~~

3.4.16.8 ~~_____~~ **GENERAL PROVISIONS:**

~~_____ A. A person is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.~~

~~_____ B. _____ The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$4,000,000. When the \$4,000,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:~~

~~_____ (1) _____ if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or~~

~~_____ (2) _____ the department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect; or~~

~~_____ (3) _____ if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.~~

~~_____ C. _____ No more than \$1,250,000 of the \$4,000,000 annual cap is for manufactured housing.~~

~~_____ D. _____ In the event of a discrepancy between a requirement of 3.4.16 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.16 NMAC's adoption, the existing rule governs. [RESERVED]~~
[3.4.16.8 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.4.16.9 VERIFIER ELIGIBILITY:

~~_____ A. _____ The division reviews the qualifications for verifiers of the build green New Mexico or LEED H certifications based on the following criteria:~~

~~_____ (1) _____ the verifier is independent from the homebuilders or homeowners that may apply for certification;~~

~~_____ (2) _____ the verifier has adequate staff and expertise to provide certification services, including:~~

~~_____ (a) _____ experience in green home building services;~~

~~_____ (b) _____ ability to enlist and serve builders and provide training, consulting and other guidance as necessary;~~

~~_____ (c) _____ a method of auditing the certification process to maintain adequate stringency; and~~

~~_____ (d) _____ ability to administer the program and report on the certifications, audits and other relevant information the department may request; and~~

~~_____ (3) _____ the verifier can identify the geographic area being served; and~~

~~_____ (4) _____ the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.~~

~~_____ B. _____ The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.~~

~~_____ C. _____ The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.~~

~~_____ D. _____ The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met.~~

~~_____ (1) _____ The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.~~

~~_____ (2) _____ The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the 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 verifier within 20 calendar days after receiving the request or the date the hearing concludes. [RESERVED]~~

[3.4.16.9 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

~~_____ A. _____ In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division developed form. An applicant may obtain an application form from the division.~~

~~_____ B. _____ An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the~~

application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

~~C. The completed application form shall consist of the following information:~~

- ~~(1) the applicant's name, mailing address, telephone number and taxpayer identification number;~~
- ~~(2) the name of the applicant's authorized representative;~~
- ~~(3) the ending date of the applicant's taxable year;~~
- ~~(4) the address of the sustainable residential building, including the property's legal description;~~
- ~~(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;~~
- ~~(6) the qualified occupied square footage of the sustainable residential building;~~
- ~~(7) the rating system under which the sustainable residential building was certified;~~
- ~~(8) the certification level achieved, if applicable;~~
- ~~(9) the HERS index;~~
- ~~(10) the date of rating system certification;~~
- ~~(11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:~~
 - ~~(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;~~
 - ~~(b) applicant has read the requirements contained in 3.4.16 NMAC;~~
 - ~~(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;~~
 - ~~(d) applicant understands that there are annual caps for the sustainable building tax credit;~~
 - ~~(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and~~
 - ~~(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and~~
 - ~~(12) a project number the division assigns to the tax credit application.~~

~~D. In addition to the application form, the application package shall consist of the following information provided as attachments:~~

- ~~(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;~~
- ~~(2) a copy of the rating system certification form;~~
- ~~(3) a copy of the final certification review checklist that shows the points achieved, if applicable;~~
- ~~(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and~~
- ~~(5) other information the department needs to review the building project for the sustainable building tax credit.~~

~~[RESERVED]~~

~~[3.4.16.10 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]~~

3.4.16.11— APPLICATION REVIEW PROCESS:

~~A. The department considers applications in the order received, according to the day they are received, but not the time of day.~~

~~B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.~~

~~C. The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.~~

~~D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.~~

~~_____ E. _____ If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer’s contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit’s taxable year or years. [RESERVED]~~
[3.4.16.11 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.4.16.12 ~~_____ CALCULATING THE TAX CREDIT:~~

~~_____ A. _____ The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:~~

LEED H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
LEED H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
LEED H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

~~_____ B. _____ An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.~~
~~_____ C. _____ The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit. [RESERVED]~~
[3.4.16.12 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.4.16.13 ~~_____ CLAIMING THE STATE TAX CREDIT:~~

~~_____ A. _____ To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department’s issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.~~
~~_____ B. _____ If the amount of the sustainable building tax credit the applicant claims exceeds the applicant’s income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.~~
~~_____ C. _____ A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act. [RESERVED]~~
[3.4.16.13 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

TITLE 3 TAXATION
CHAPTER 4 CORPORATE INCOME TAXES
PART 16 SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS

3.4.16.1 ~~_____ ISSUING AGENCY:~~ Energy, Minerals and Natural Resources Department. ~~[RESERVED]~~
[3.4.16.1 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.2 SCOPE: 3.4.16 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable residential buildings. [RESERVED]

[3.4.16.2 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.3 STATUTORY AUTHORITY: 3.4.16 NMAC is established under the authority of NMSA 1978, Section 7-2A-21 and NMSA 1978, Section 9-1-5. [RESERVED]

[3.4.16.3 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.4 DURATION: Permanent. [RESERVED]

[3.4.16.4 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.5 EFFECTIVE DATE: October 31, 2007, unless a later date is cited at the end of a section. [RESERVED]

[3.4.16.5 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.6 OBJECTIVE: 3.4.16 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings. [RESERVED]

[3.4.16.6 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.7 DEFINITIONS:

A. "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.

B. "Applicant" means a taxpayer that owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

F. "Certification" means build green New Mexico certification, LEED certification or energy star qualified.

G. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

H. "Certification level" means one of the following:

(1) LEED H silver or build green New Mexico silver;

(2) LEED H gold or build green New Mexico gold; or

(3) LEED H platinum or build green New Mexico emerald.

I. "Department" means the energy, minerals and natural resources department.

J. "Division" means the department's energy conservation and management division.

K. "Energy reduction requirements" means the sustainable residential building has achieved a HERS index of 60 or lower.

L. "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.

M. "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.

N. "HERS" means home energy rating system as developed by RESNET.

O. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

P. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.

Q. "LEED certification" means the verification by the U. S. green building council, or a department approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED H rating system resulting in the issuance of a certification document.

R. "LEED H" means the LEED rating system for homes.

S. "Manufactured housing" means a multisectioned home that is:

(1) a manufactured home or modular home;

_____ (2) a single family dwelling with a heated area of at least thirty six feet by twenty feet and a total area of at least eight hundred sixty four square feet;

_____ (3) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit's construction; and

_____ (4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

_____ T. "Person" does not include state, local government, public school district or tribal agencies.

_____ U. "Qualified occupied square footage" means the occupied spaces of the building as determined by:

_____ (1) the United States green building council for those buildings obtaining LEED certification;

_____ (2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or

_____ (3) the United States environmental protection agency for energy star certified manufactured homes.

_____ V. "Rating system" means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

_____ W. "RESNET" means the residential energy services network, an industry not for profit membership corporation and national standards making body for building energy efficiency rating systems.

_____ X. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

_____ Y. "Sustainable building tax credit" means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

_____ Z. "Sustainable residential building" means:

_____ (1) a building used as a single family residence that meets the energy reduction requirements and has been awarded:

_____ (a) LEED-H certification at the certification level of silver, gold or platinum; or

_____ (b) build green New Mexico certification at the gold certification level; or

_____ (2) an energy star qualified manufactured home.

_____ AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq.*

_____ BB. "Taxpayer" means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

_____ CC. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

_____ DD. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems. [RESERVED]

[3.4.16.7 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.4.16.8 **GENERAL PROVISIONS:**

_____ A. A person is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

_____ B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$4,000,000. When the \$4,000,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

_____ (1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

_____ (2) the department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect; or

_____ (3) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

_____ C. No more than \$1,250,000 of the \$4,000,000 annual cap is for manufactured housing.

_____ D. In the event of a discrepancy between a requirement of 3.4.16 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.16 NMAC's adoption, the existing rule governs. [RESERVED]

[3.4.16.8 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.4.16.9 VERIFIER ELIGIBILITY:

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

- (1)** the verifier is independent from the homebuilders or homeowners that may apply for certification;
- (2)** the verifier has adequate staff and expertise to provide certification services, including:
 - (a)** experience in green home building services;
 - (b)** ability to enlist and serve builders and provide training, consulting and other guidance as necessary;
 - (c)** a method of auditing the certification process to maintain adequate stringency; and
 - (d)** ability to administer the program and report on the certifications, audits and other relevant information the department may request; and
- (3)** the verifier can identify the geographic area being served; and
- (4)** the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the 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 verifier within 20 calendar days after receiving the request or the date the hearing concludes. [RESERVED]

[3.4.16.9 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.4.16.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. The completed application form shall consist of the following information:

- (1)** the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2)** the name of the applicant's authorized representative;
- (3)** the ending date of the applicant's taxable year;
- (4)** the address of the sustainable residential building, including the property's legal description;
- (5)** whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (6)** the qualified occupied square footage of the sustainable residential building;
- (7)** the rating system under which the sustainable residential building was certified;
- (8)** the certification level achieved, if applicable;
- (9)** the HERS index;
- (10)** the date of rating system certification;
- (11)** a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:
 - (a)** all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;
 - (b)** applicant has read the requirements contained in 3.4.16 NMAC;

- ~~_____ (c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;~~
- ~~_____ (d) applicant understands that there are annual caps for the sustainable building tax credit;~~
- ~~_____ (e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and~~
- ~~_____ (f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and~~
- ~~_____ (12) a project number the division assigns to the tax credit application.~~

~~_____ D. In addition to the application form, the application package shall consist of the following information provided as attachments:~~

- ~~_____ (1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;~~
- ~~_____ (2) a copy of the rating system certification form;~~
- ~~_____ (3) a copy of the final certification review checklist that shows the points achieved, if applicable;~~
- ~~_____ (4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and~~
- ~~_____ (5) other information the department needs to review the building project for the sustainable building tax credit.~~

~~[RESERVED]~~

~~[3.4.16.10 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]~~

3.4.16.11— APPLICATION REVIEW PROCESS:

~~_____ A. The department considers applications in the order received, according to the day they are received, but not the time of day.~~

~~_____ B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.~~

~~_____ C. The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.~~

~~_____ D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.~~

~~_____ E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.~~~~[RESERVED]~~

~~[3.4.16.11 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]~~

3.4.16.12— CALCULATING THE TAX CREDIT:

~~_____ A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:~~

LEED H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus

next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
LEED-H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
LEED-H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit. [RESERVED]

[3.4.16.12 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

3.4.16.13 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

C. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act. [RESERVED]

[3.4.16.13 NMAC - N, 10-31-07; A, 1-1-14, R xx/xx/xxxx]

TITLE 3: TAXATION

CHAPTER 2: GROSS RECEIPTS TAXES

PART 13: AGENTS FOR COLLECTION OF COMPENSATING TAX - DUTIES

3.2.13.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504 0630 [RESERVED]

[11/15/1996; 3.2.13.1 NMAC - Rn, 3 NMAC 2.10.1, 4/30/2001, R xx/xx/xxxx]

3.2.13.2 SCOPE: This part applies to each person using property in New Mexico. [RESERVED]

[11/15/1996; 3.2.13.2 NMAC - Rn, 3 NMAC 2.10.2, 4/30/2001, R xx/xx/xxxx]

3.2.13.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978. [RESERVED]

[11/15/1996; 3.2.13.3 NMAC - Rn, 3 NMAC 2.10.3, 4/30/2001, R xx/xx/xxxx]

3.2.13.4 DURATION: Permanent. [RESERVED]

[11/15/1996; 3.2.13.4 NMAC - Rn, 3 NMAC 2.10.4, 4/30/2001, R xx/xx/xxxx]

3.2.13.5 EFFECTIVE DATE: 11/15/1996, unless a later date is cited at the end of a section, in which case the later date is the effective date. [RESERVED]

[11/15/1996; 3.2.13.5 NMAC - Rn & A, 3 NMAC 2.10.5, 4/30/2001, R xx/xx/xxxx]

3.2.13.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act. [RESERVED]

[11/15/1996; 3.2.13.6 NMAC - Rn, 3 NMAC 2.10.6, 4/30/2001, R xx/xx/xxxx]

3.2.13.7 DEFINITIONS: [RESERVED]

[11/15/1996; 3.2.13.7 NMAC - Rn, 3 NMAC 2.10.7, 4/30/2001, R xx/xx/xxxx]

3.2.13.8 [RESERVED]

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.13.8 NMAC - Rn, 3 NMAC 2.10.8, 4/30/2001; Repealed, 7/7/2021, R xx/xx/xxxx]

3.2.13.9 [RESERVED]

[6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.13.9 NMAC - Rn, 3 NMAC 2.10.9, 4/30/2001; Repealed, 7/7/2021, R xx/xx/xxxx]

3.2.13.10 ~~COLLECTION OF COMPENSATING TAX BY BROADCASTERS:~~

~~A. Receipts from the sale by a New Mexico radio or television broadcaster to an out of state advertising agency of broadcast time which is intended for subsequent sale to a national or regional seller or advertiser not having its principal place of business in or being incorporated in New Mexico but which broadcast time is resold instead to an in state seller or advertiser (a New Mexico seller or advertiser or a national or regional seller or advertiser having its principal place in or incorporated in New Mexico) are subject to compensating tax pursuant to Subsection B of Section 7-9-7 NMSA 1978. The initial sale to the advertising agency was not subject to gross receipts tax but the subsequent use of that service by the in state seller or advertiser means the sale should have been subject to the gross receipts tax. The New Mexico radio or television broadcaster providing the broadcast service used by the in state seller or advertiser under these circumstances shall act as agent for collection of compensating tax from the in state seller or advertiser pursuant to Section 7-9-10 NMSA 1978 and shall collect, report and pay over such compensating tax unless the out of state advertising agency pays gross receipts tax or collects, reports and pays over the compensating tax on the transaction.~~

~~B. The New Mexico radio or television broadcaster may effect collection of such compensating tax from the in state seller or advertiser or the national or regional seller or advertiser having its principal place of business in or being incorporated in New Mexico by collecting the compensating tax through the out of state advertising agency representing the seller or advertiser. When collecting the compensating tax from the advertising agency, the radio or television broadcaster must identify the seller or advertiser and the amount of compensating tax due in its billing to the advertising agency. Payment of the compensating tax by the advertising agency to the broadcaster discharges the liability, under Section 7-9-9 NMSA 1978, of the in state seller or advertiser for the compensating tax arising from the use of the broadcast services.~~

~~C. If the out of state advertising agency resells the time to another out of state entity ("cooperative advertising group") which, in turn, resells the time to in state sellers or advertisers, the broadcaster is relieved from responsibility for identifying the seller or advertiser if the broadcaster's records identify the out of state other entity to which the out of state advertising agency resold the time. When the advertising agency resells the time to an out of state cooperative advertising group, the in state seller or advertiser is discharged from liability for compensating tax if, on audit, the seller or advertiser presents an accounting from the out of state cooperative advertising group showing payment of the applicable compensating tax by the out of state cooperative advertising group to the advertising agency. [RESERVED]~~

[2/14/1986, 3/3/1986, 4/2/1986, 12/29/1989, 11/26/1990, 12/31/1991, 11/15/1996; 3.2.13.10 NMAC - Rn & A, 3 NMAC 2.10.10, 4/30/2001, R xx/xx/xxxx]

**TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX CREDITS
PART 21 BIODIESEL BLENDING FACILITY TAX CREDIT**

3.13.21.1 ~~ISSUING AGENCY:~~ Energy, Minerals and Natural Resources Department. [RESERVED]

[3.13.21.1 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.2 ~~SCOPE:~~ 3.13.21 NMAC applies to the application and certification procedures for administration of the biodiesel blending facility tax credit for rack operations. [RESERVED]

[3.13.21.2 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.3 ~~STATUTORY AUTHORITY:~~ 3.13.21 NMAC is established under the authority of NMSA 1978, Section 7-9-7.2 and NMSA 1978, Section 9-1-5. [RESERVED]

[3.13.21.3 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.4 ~~DURATION:~~ Permanent. [RESERVED]

[3.13.21.4 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.5 ~~—————~~ **EFFECTIVE DATE:** October 31, 2007, unless a later date is cited at the end of a section. [RESERVED]
[3.2.21.5 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.6 ~~—————~~ **OBJECTIVE:** 3.13.21 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the biodiesel blending facility tax credit for rack operators. [RESERVED]
[3.13.21.6 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.7 ~~—————~~ **DEFINITIONS:**

- ~~—————~~ **A.** "Annual cap" means the annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers.
- ~~—————~~ **B.** "Applicant" means a taxpayer that installs biodiesel blending equipment for the purpose of establishing or expanding a biodiesel blending facility and that desires to have the department issue a certificate of eligibility for a biodiesel blending facility tax credit.
- ~~—————~~ **C.** "Application package" means the application documents an applicant submits to the department to receive a certificate of eligibility for a biodiesel blending facility tax credit.
- ~~—————~~ **D.** "Biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the ASTM International D 6751 standard specification for biodiesel B100 blend stock for distillate fuels (Copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing only at the New Mexico state records center and archives and may not be reproduced, in full or part. A copy of this publication may be obtained from ASTM International, www.astm.org.)
- ~~—————~~ **E.** "Biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel.
- ~~—————~~ **F.** "Biodiesel blending facility" means an installation that is part of a rack operation for the purpose of blending biodiesel fuel, including reactivating existing blending and storage equipment in place, expanding storage equipment at an existing facility, installing a new blending facility or site specific blending at a retail facility.
- ~~—————~~ **G.** "Biodiesel blending facility tax credit" means the gross receipts or compensating tax credit the state of New Mexico issues to an applicant for a biodiesel blending facility.
- ~~—————~~ **H.** "Blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel.
- ~~—————~~ **I.** "Bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose.
- ~~—————~~ **J.** "Bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles that the user owns or operates.
- ~~—————~~ **K.** "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved biodiesel blending facility tax credit.
- ~~—————~~ **L.** "Dealer" means any person who sells and delivers special fuel to a user.
- ~~—————~~ **M.** "Department" means the energy, minerals and natural resources department.
- ~~—————~~ **N.** "Diesel fuel" means any diesel engine fuel used for the generation of power to propel a motor vehicle.
- ~~—————~~ **O.** "Installation of equipment" means to assemble and construct biodiesel blending equipment, including equipment necessary for receiving and off loading B100 or pre-blended biodiesel, equipment for storage of B100 or blended biodiesel fuel and equipment for on loading and dispensing B100 or blended biodiesel fuel.
- ~~—————~~ **P.** "Motor vehicle" means a self-propelled vehicle or device that is either subject to registration pursuant to NMSA 1978 Section 66-3-1 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer.
- ~~—————~~ **Q.** "Rack operations" means a facility that is a refinery in this state, any facility where special fuel is blended in this state or where special fuel is stored at a pipeline terminal in this state.
- ~~—————~~ **R.** "Rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state.
- ~~—————~~ **S.** "Supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it.
- ~~—————~~ **T.** "Taxable year" means the annual accounting period for purposes of filing corporate income taxes, as defined by the United States internal revenue service.
- ~~—————~~ **U.** "Taxpayer" means a rack operator who owns the rack operation where the rack operator installs biodiesel blending equipment and who applies for certification of an operating biodiesel blending facility in order to receive a biodiesel blending facility tax credit and is liable for payment of gross receipts or compensating taxes.

~~_____ V. _____ “Taxpayer identification number” means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes. [RESERVED]~~
~~[3.13.21.7 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.13.21.8 _____ GENERAL PROVISIONS:

~~_____ A. _____ Only a taxpayer who on or after July 1, 2007 installs biodiesel blending equipment in New Mexico for the purpose of establishing or expanding a biodiesel blending facility may receive a certificate of eligibility for a biodiesel blending facility tax credit.~~

~~_____ B. _____ The biodiesel blending facility tax credit is an amount equal to 30 percent of the biodiesel blending equipment’s purchase cost plus 30 percent of the biodiesel blending equipment’s installation cost.~~

~~_____ C. _____ The biodiesel blending facility tax credit shall not exceed \$50,000 for biodiesel blending equipment installed at any one facility.~~

~~_____ D. _____ The annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers is limited to \$1,000,000. When the \$1,000,000 limit for rack operations is reached based on the total certificates of eligibility the department has issued and New Mexico department of taxation and revenue has recorded, the department shall:~~

~~_____ (1) _____ if part of the eligible biodiesel blending facility tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable taxable year and issue a certificate of eligibility for the balance for the subsequent taxable year; or~~

~~_____ (2) _____ if no biodiesel blending facility tax credit funds are available, issue a certificate of eligibility for the next subsequent taxable year in which funds are available.~~

~~_____ E. _____ In the event of a discrepancy between a requirement of 3.13.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.13.21 NMAC’s adoption, the existing rule governs. [RESERVED]~~
~~[3.13.21.8 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.13.21.9 _____ CERTIFICATE OF ELIGIBILITY APPLICATION:

~~_____ A. _____ An applicant may obtain a certificate of eligibility application form from the department.~~

~~_____ B. _____ An application package shall include a completed certificate of eligibility application form and attachments as specified on the certificate of eligibility application form. The applicant shall submit the completed certificate of eligibility application form and required attachments at the same time. An applicant shall submit one certificate of eligibility application for each biodiesel blending facility. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper.~~

~~_____ C. _____ An applicant shall submit a complete application package to the department no later than 90 days before the end of taxable year for which the applicant seeks the biodiesel blending facility tax credit to allow time for approval and issuance of an approved certificate of eligibility. The department reviews application packages it receives after that date for the subsequent taxable year.~~

~~_____ D. _____ The completed certificate of eligibility application shall consist of the following information:~~

~~_____ (1) _____ taxpayer information, including the applicant’s name, mailing address, telephone number, biodiesel blending facility tax credit’s taxable year or years and CRS or taxpayer identification number;~~

~~_____ (2) _____ blending equipment information, including project location with county and legal description, blending equipment type (splash or injection), blending equipment description, blending equipment cost, blending equipment installation cost and date on which the biodiesel blending equipment and facility went into operation;~~

~~_____ (3) _____ proof of ownership of the rack, design schematic, equipment specifications and serial numbers, photographs, installation/construction documents, storage and blending capacities, description of operation, construction permit and environmental protection agency related plans with engineer’s stamp and final inspection report;~~

~~_____ (4) _____ evidence of purchase of equipment and installation including receipts and invoices; and~~

~~_____ (5) _____ applicant agreement stating that the taxpayer agrees that all information in the application packet is true and correct to the best of the applicant’s knowledge, that the applicant has read the certification requirements of 3.13.21 NMAC, that the applicant understands that there is an annual aggregate biodiesel blending facility tax credit limit, that the department must certify the biodiesel blending facility documented in the application package is eligible for the biodiesel blending facility tax credit and that the applicant allows the department or its authorized representative to inspect the biodiesel blending facility that is described in the application package from the application package’s submittal to three years after the department has certified the biodiesel blending facility upon the department providing a minimum of five days notice to the applicant. [RESERVED]~~
~~[3.13.21.9 NMAC - N, 10-31-07, R xx/xx/xxxx]~~

3.13.21.10 _____ APPLICATION REVIEW PROCESS:

~~_____ A. _____ The department considers certificate of eligibility applications in the order received, according to the day they are received, but not the time of day.~~

~~_____B._____ The department reviews the application package to calculate the biodiesel blending facility tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the biodiesel blending facility tax credit.~~

~~_____C._____ If the department verifies that no person has applied for a biodiesel blending facility tax credit for that biodiesel blending facility and if the department finds that the application package meets the requirements and funds for a biodiesel blending facility tax credit are available, the department issues the certificate of eligibility for a biodiesel blending facility tax credit. If funds for a biodiesel blending facility tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available. The certificate of eligibility shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility project number, the biodiesel blending facility tax credit amount or amounts and the biodiesel blending facility tax credit's taxable year or years.~~

~~_____D._____ The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application. [RESERVED]~~

[3.13.21.10 NMAC - N, 10-31-07, R xx/xx/xxxx]

3.13.21.11 ~~_____ CLAIMING THE BIODIESEL BLENDING FACILITY TAX CREDIT:~~

~~_____A._____ Upon receipt of a certificate of eligibility from the department, the taxpayer shall submit a completed form RPD 41339, biodiesel blending facility tax credit approval request form, to the taxation and revenue department. The taxpayer shall attach the certificate of eligibility received from the department and a copy of the invoice for the qualified equipment and installation costs. Once the taxation and revenue department notifies the taxpayer of approval for the biodiesel blending facility tax credit, the taxpayer may apply the biodiesel blending facility tax credit to gross receipts and compensating tax due. To apply the biodiesel blending facility tax credit, the taxpayer shall submit form RPD 41321, biodiesel blending facility tax credit claim form, along with a CRS 1 long form for the report period to which the taxpayer wishes to apply the biodiesel blending facility tax credit. Unused biodiesel blending facility tax credit may be carried forward for four years from the date the department issues the certificate of eligibility.~~

~~_____B._____ If a rack operator who has claimed biodiesel blending facility tax credit against gross receipts tax or compensating tax due ceases biodiesel blending without completing at least 180 days of availability of the facility within the first 365 days after the department's issuance of a certificate of eligibility, the taxpayer shall notify taxation and revenue department that the taxpayer is no longer eligible for the approved biodiesel blending facility tax credit and that the liabilities for the reports to which the biodiesel blending facility tax credit had been applied are now due. The taxation and revenue department will extinguish any amount of the approved biodiesel blending facility tax credit not applied against the taxpayer's gross receipts tax or compensating tax liability and assess the taxpayer for the tax owed. The taxpayer shall pay the assessment within 425 days of the date of issuance of the certificate of eligibility. The taxpayer may still qualify for subsequent biodiesel blending facility tax credits, within the first 365 days after the department's issuance of the certificate of eligibility. When applying for biodiesel blending facility tax credits the taxpayer shall use only the CRS 1 long form.~~

~~_____C._____ Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department applies 30 percent of the amount on the certificate of eligibility against the applicant's gross receipts or compensating tax liability for four years, unless the amount is less than or equal to \$50,000, in which case the taxation and revenue department applies the entire biodiesel blending facility tax credit in the taxable year on the certificate.~~

~~_____D._____ If the amount of the biodiesel blending facility tax credit the applicant claims exceeds the applicant's gross receipts or compensating tax liability, the applicant may carry the excess forward for up to four consecutive taxable years.~~

~~[RESERVED]~~

[3.13.21.11 NMAC - N, 10-31-07, R xx/xx/xxxx]

TITLE 3: TAXATION

CHAPTER 13: BUSINESS TAX CREDITS

PART 7: ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT

3.13.7.1 ~~_____ ISSUING AGENCY:~~ Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504 0630 ~~[RESERVED]~~

[3.13.7.1 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.2 ~~_____ SCOPE:~~ This part applies to all persons carrying on a manufacturing operation in New Mexico that produce alternative energy products and who may be eligible to obtain the alternative energy product manufacturers tax credit.

~~[RESERVED]~~

[3.13.7.2 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.3 ~~—————~~ **STATUTORY AUTHORITY:** Section 7-9J-1 through 8 and 9-11-6.2 NMSA 1978. ~~—————~~ **[RESERVED]**
[3.13.7.3 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.4 ~~—————~~ **DURATION:** Permanent. ~~—————~~ **[RESERVED]**
[3.13.7.4 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.5 ~~—————~~ **EFFECTIVE DATE:** 12/31/08, unless a later date is cited at the end of a section, in which case the later date is the effective date. ~~—————~~ **[RESERVED]**
[3.13.7.5 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.6 ~~—————~~ **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Energy Product Manufacturers Tax Credit Act. ~~—————~~ **[RESERVED]**
[3.13.7.6 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.7 ~~—————~~ **DEFINITIONS: “SUBJECT TO DEPRECIATION” DEFINED:** For purposes of Section 7-9J-2 NMSA 1978 “subject to depreciation” means the taxpayer’s federal income tax return must include a depreciation expense with respect to the manufacturing equipment for which an alternative energy product manufacturer’s tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is “subject to depreciation”. ~~—————~~ **[RESERVED]**
[3.13.7.7 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.8 ~~—————~~ **[RESERVED]**

3.13.7.9 ~~—————~~ **ITEMS NOT “MANUFACTURING EQUIPMENT”:** Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not “manufacturing equipment” for the purpose of the Alternative Energy Product Manufacturers Tax Credit Act. Accordingly such items as furniture, shelving and supplies are not “manufacturing equipment”. Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the alternative energy product manufacturers tax credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area. ~~—————~~ **[RESERVED]**
[3.13.7.9 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.10 ~~—————~~ **ITEMS WHICH MAY BE INCLUDED AS “MANUFACTURING EQUIPMENT”:** The term “manufacturing operation” is defined as a plant where personnel perform production tasks “in conjunction with equipment not previously existing at the site” to produce alternative energy products. “Manufacturing equipment” must be exclusively and directly employed in the manufacturing process and must be physically located in the plant and used in conjunction with the production of alternative energy products. Therefore, equipment used in conjunction with the production of alternative energy products may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products. ~~—————~~ **[RESERVED]**
[3.13.7.10 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.11 ~~—————~~ **VALUE OF QUALIFIED “MANUFACTURING EQUIPMENT”:** The value of qualified manufacturing equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986. ~~—————~~ **[RESERVED]**
[3.13.7.11 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.12 ~~—————~~ **APPLICATION OF THE CREDIT:**

~~—————~~ **A.** ~~—————~~ The credit allowed by Section 7-9J-4 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

~~—————~~ **B.** ~~—————~~ The credit may not be applied to a report period prior to the report period that includes the first day on which qualified expenditures were made for equipment included on the application for which the credit was approved by the department. ~~—————~~ **[RESERVED]**

[3.13.7.12 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.13 ——— CARRY FORWARD OF UNUSED CREDITS: Unused alternative energy product manufacturers tax credit may be carried forward for five years from the end of the calendar year in which the credit was first approved by the department. [RESERVED]

[3.13.7.13 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.14 ——— USING THE CREDIT:

~~A. Any amount of alternative energy product manufacturers tax credit claimed and approved may be applied by the claimant only against the modified combined tax liability owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.~~

~~B. Examples:~~

~~(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for \$50,000 in alternative energy product manufacturer's tax credit. After applying \$13,000 to its own modified combined tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the \$37,000 remaining authorized alternative energy product manufacturer's tax credit to S nor may S apply any of the remaining tax credit to S's modified combined tax liability. T, to the extent T still has modified combined tax obligations, may apply the \$37,000 balance against those obligations.~~

~~(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for alternative energy product manufacturers tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed alternative energy product manufacturers tax credit held by a predecessor.~~ [RESERVED]

[3.13.7.14 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.15 ——— EQUIVALENT OF ONE FULL TIME EMPLOYEE: To calculate the number of full time equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than 40 hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full time equivalent employees. [RESERVED]

[3.13.7.15 NMAC - N, 12/31/08, R xx/xx/xxxx]

3.13.7.16 ——— REPORTING NUMBER OF EMPLOYEES — ESTIMATES: To meet the employment requirement, the credit claimant must report the number of full time equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full time equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full time equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full time equivalent employees within 45 days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided. [RESERVED]

[3.13.7.16 NMAC - N, 12/31/08, R xx/xx/xxxx]