

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 89 QUALIFIED GENERATING FACILITY CERTIFICATION**

**20.2.89.1 ISSUING AGENCY.** New Mexico Environment Department.  
[20.2.89.1 NMAC - N, 12/20/08]

**20.2.89.2 SCOPE.** All entities that have an interest in a qualified generating facility pursuant to NMSA 1978, Sections 7-9G-2, 7-2-18.25, and 7-2A-25.  
[20.2.89.2 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.3 STATUTORY AUTHORITY.** NMSA 1978, Sections 7-9G-2, 7-2-18.25, and 7-2A-25, and NMSA 1978, Section 62-6-28.  
[20.2.89.3 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.4 DURATION.** Permanent.  
[20.2.89.4 NMAC - N, 12/20/08]

**20.2.89.5 EFFECTIVE DATE.** December 20, 2008, except where a later date is cited at the end of a section.  
[20.2.89.5 NMAC - N, 12/20/08]  
[The latest effective date of any section in this part is 09/26/09.]

**20.2.89.6 OBJECTIVE.** The objective of this part is to establish requirements for issuance of a certificate of eligibility for advanced energy tax credits pursuant to NMSA 1978, Sections 7-9G-2, 7-2-18.25, and 7-2A-25.  
[20.2.89.6 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

**A. "Department"** means the environment department.

**B. "Entity"** means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality.

**C. "Geothermal electric generating facility"** means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part.

**D. "Interest in a qualified generating facility"** means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility.

**E. "Name-plate capacity"** means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement.

**F. "Qualified generating facility"** means a facility for which construction is anticipated to begin not later than December 31, 2015 and is:

(1) a solar thermal electric generating facility that begins or began construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(2) a recycled energy project if that facility begins or began construction on or after July 1, 2007;

(3) a solar photovoltaic electric generating facility that begins or began construction on or after July 1, 2009 and that may include an associated renewable energy storage facility; or

(4) a geothermal electric generating facility that begins or began construction on or after July 1, 2009.

**G. "Recycled energy"** means energy produced by a generation unit with a name-plate capacity of not more than 15 megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

**H. "Small business"** means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees. In addition, "small business" does not include any

source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and any major source for hazardous air pollutants under 20.2.70 NMAC.

**I. "Solar photovoltaic electric generating facility"** means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity.

**J. "Solar thermal electric generating facility"** means an electric generating facility with a name-plate capacity of one megawatt or more that utilizes solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part. Examples of these systems include, but are not limited to, central receiver systems, parabolic dish, and solar trough.

[20.2.89.7 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.8 SEVERABILITY.** If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.89.8 NMAC - N, 12/20/08]

**20.2.89.9 CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.

[20.2.89.9 NMAC - N, 12/20/08]

**20.2.89.10 SAVINGS CLAUSE.** Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.89.10 NMAC - N, 12/20/08]

**20.2.89.11 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.89.11 NMAC - N, 12/20/08]

**20.2.89.12 to 20.2.89.199 [RESERVED]**

**20.2.89.200 APPLICABILITY.** Any entity that has an interest in a qualified generating facility located in New Mexico may apply for a certificate of eligibility under this part. Only one certificate shall be granted to a qualified generating facility. If changes to the facility are planned or made that could result in the facility no longer meeting certification requirements as a qualified generating facility, the entity that has an interest in a qualified generating facility shall apply to the department for a reevaluation of the certification under this part. A complete application including fees pursuant to section 20.2.89.400 NMAC shall be submitted with that application for reevaluation.

[20.2.89.200 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.201 APPLICATION REQUIREMENTS.**

**A.** Entities that have an interest in a qualified generating facility may submit an application for a certificate of eligibility for an advanced energy tax credit.

**B.** All applications shall include all of the following items and information.

(1) Be filled out on the form(s) furnished by the department.

(2) State the applicant's name and address.

(3) Include a topographical map, at least as detailed as the 7.5 minute topographic quadrangle map published by the United States geological survey, showing the exact location and geographical coordinates of the proposed construction or installation of the facility or project.

(4) Include a full description of the process, including a process flow sheet, or, if the department so requires, layout and assembly drawings.

(5) All information relied upon by the applicant to support its position that the facility meets the criteria for a qualified generating facility.

(6) Contain other information requested by the department to determine whether the facility meets the criteria for a qualified generating facility.

(7) Be notarized and signed under oath or affirmation by an entity that has an interest in the facility

certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any.

(8) Contain payment of any fees which are specified in 20.2.89.400 NMAC, payable at the time the application is submitted.

[20.2.89.201 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.202 CERTIFICATION PROCEDURES.**

**A.** The department shall either grant or deny the certification within 180 days after the department receives the application.

**B.** The department shall grant or deny the certification based on information contained in the department's administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, and any other evidence considered by the department. The applicant has the burden of demonstrating that a certificate should be issued.

[20.2.89.202 NMAC - N, 12/20/08]

**20.2.89.203 CANCELLATION OF CERTIFICATION.** The department shall cancel a previously issued certification and notify the department of taxation and revenue if the department finds that the plans for the facility are changed, or the facility is changed, so that the facility no longer meets the requirements of this part as a qualified generating facility.

[20.2.89.203 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.204 to 20.2.89.399 [RESERVED]**

**20.2.89.400 FEES.**

**A.** Fees for the review of applications for certification shall be \$5,000 per application.

**B.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.89.7 NMAC, the permit fee determined by Subsection A of this section shall be divided by two.

**C.** Fees collected pursuant to this part shall be included with the application for certification. The department shall refuse to accept any application without inclusion of the fee.

**D.** All fees paid pursuant to this part shall be remitted in the form of a corporate or certified check or money order made payable to the environment department at the address specified on the application form. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).

**E.** All fees shall be paid in U.S. dollars.

**F.** Beginning on January 1, 2010, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[20.2.89.400 NMAC - N, 12/20/08; A, 09/26/09]

**HISTORY of 20.2.89 NMAC: [RESERVED]**