

This is an amendment to 3.3.14 NMAC, amending Sections 3, 7, 8, 9, 10, 11, 15, 17 and 19, effective 12/13/2022.

3.3.14.3 STATUTORY AUTHORITY: 3.3.14 NMAC is established under the authority of [~~Laws 2020, Chapter 13, Section 1~~] Section 7-2-18.31 NMSA 1978 and Section 9-1-5 NMSA 1978. [3.3.14.3 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.7 DEFINITIONS:

- A.** “**Applicant**” means a New Mexico taxpayer that has installed a solar energy system at a residence, business or agricultural enterprise that the taxpayer owns who desires to have the department certify the solar energy system pursuant to 3.3.14 NMAC so that the [~~tax payer~~] taxpayer may receive a state tax credit.
- B.** “**Application package**” means the application documents an applicant submits to the department 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 department 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 applicant 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 or electricity.
- 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.** “**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, which shall include completion of any required final inspections or contractor certification of installation on tribal or pueblo land.
- ~~[N.]~~ “**Interconnection**” means connection of a photovoltaic system that an electric utility customer operates to that utility’s distribution grid system.
- ~~[O.]~~ “**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.]
- ~~[P.]~~ **N.** “**Module**” means the photovoltaic system component that absorbs sunlight for conversion into electricity.
- ~~[Q.]~~ **O.** “**New**” means the condition of being recently manufactured and not used previously in any installation.
- ~~[R.]~~ **P.** “**New solar market development income 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 pursuant to 3.3.14 NMAC.
- ~~[S.]~~ **Q.** “**Non-residential**” means a business or agricultural enterprise.
- ~~[T.]~~ **R.** “**OG**” means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics as defined in the applicable SRCC [~~defines in its~~] directory. Operating guidelines shall be from the SRCC directory in effect on March 1, 2006 [~~and all~~] or any applicable successive revisions.
- ~~[U.]~~ **S.** “**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.
- ~~[V.]~~ **T.** “**Solar collector**” means a solar thermal collector or photovoltaic module.
- ~~[W.]~~ **U.** “**Solar energy system**” means a solar thermal system or photovoltaic system.

~~[X.]~~ **V.** “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.

~~[Y.]~~ **W.** “SRCC” means the solar rating and certification corporation.

~~[Z.]~~ **X.** “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.

~~[AA.]~~ **Y.** “State tax credit” means the new solar market development income tax credit.
[3.3.14.7 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.8 GENERAL PROVISIONS:

A. Only a New Mexico ~~applicant~~ individual taxpayer, business or agricultural enterprise who has purchased and installed, on property they own, an operating solar energy system ~~on property he or she owns and that~~ the department has certified pursuant to 3.3.14 NMAC is eligible for a state tax credit for the tax year in which the system is installed.

B. An applicant must own the residence, business, or agriculture enterprise on which the solar energy system is located to qualify for the tax credit. The applicant may rent a residence, business or agricultural enterprise that the applicant owns to another entity ~~The~~; however, the renter does not qualify for the tax credit.

C. The annual aggregate amounts of the state tax credit available to applicants owning certified solar energy systems is limited to ~~[\$8,000,000]~~ \$12,000,000 per calendar year. When the ~~[\$8,000,000]~~ \$12,000,000 limit for solar energy systems is reached based on the total of applicants certified, the department will no longer certify systems in that year. Applications received after the aggregate limit is reached shall not be approved and will be returned to applicant. The department shall keep a record of the order of receipt of all application packages to ensure the annual aggregate amount is not exceeded in any given year.

D. In the event of a discrepancy between a requirement of 3.3.14 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.14 NMAC’s adoption, the existing rule shall govern.
[3.3.14.8 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application ~~package~~ for a certificate of eligibility to the division ~~through a secure~~ using either a department-developed application or an approved electronic portal or by mail application system as directed by the division director. The department will not accept applications submitted by ~~email~~ e-mail unless specifically authorized by 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~~ To be considered complete, an application must include the state tax credit application form and any required attachments ~~required at the same time as a complete application package~~, partial applications will not be accepted. An applicant shall submit one application package for each eligible solar energy system. If there are multiple owners of the property where the solar energy system is installed a joint application must be submitted. ~~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 3.3.14 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 applicant’s name, mailing address, e-mail address, telephone number and social security number or employer identification number (EIN) provided by a business or agricultural enterprise;
- (2) the address where the solar energy system is located, if located at a residence, business or agricultural enterprise, 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~~ was installed;
- (5) if a contractor installed the solar energy system, the contractor’s name, address, telephone number, e-mail address, license category and license number;
- (6) acknowledgement ~~that~~ the applicant 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 3.3.14 NMAC; and

(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 3.3.14 NMAC;

(c) applicant understands that there is annual aggregate cap on available state tax ~~[credit limit]~~ credits in place for solar energy systems and they are only eligible for a credit in the year the system was installed;

(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 3.3.14 NMAC; and

(f) to ensure compliance with 3.3.14 NMAC applicant agrees to allow the department or its authorized representative to inspect the solar energy system ~~[that is]~~ described in the application package at any time after the date of submittal of the application package until three years after the department has certified the solar energy system, upon the department providing a minimum of five days' notice to the applicant.

~~E. [The application form shall request the following information from the applicant:~~

~~(1) applicant's email address; and~~

~~(2) contractor's email address.~~

~~F.]~~ The application package shall consist of the following information provided as attachments:

(1) a copy of a current property tax bill ~~[to the applicant]~~ or other equivalent proof of ownership in the applicant's name 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 3.3.14 NMAC;

(4) a completed system installation form;

(5) 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;

(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;

(6) 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) total inverter capacity in kilowatts, if an inverter is a part of the system; and

(f) battery storage size and capacity in kilowatts and kilowatt-hours, if battery storage is a part of the system; and

~~[(g) the contract number and a copy of the signature pages of the interconnection agreement with the electric utility if the photovoltaic system is interconnected to a utility transmission line or distribution system; and]~~

(7) other information the department needs to evaluate the specific system type for certification.

~~[G.]~~ **F.** The completed system installation form shall include the following information:

- (1) printed name of the applicant who is identified on the application form;
- (2) printed name, title and telephone number of the contractor's authorized representative, if applicable, who approved the system installation form;
- (3) printed organizational name, e-mail address and telephone number of the building code authority issuing the building permit, if applicable;
- (4) date on which solar energy system installation was ~~[substantially]~~ complete and ~~[ready to operate]~~ received a passing inspection pursuant to applicable rules or code if applicable;
- (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 3.3.14 NMAC's certification requirements;
 - (c) the date on which the solar energy system ~~[was ready to operate]~~ received a passing inspection pursuant to applicable rules or code if applicable;
 - (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 applicant and which is near or at the solar energy system's array or balance of system components; and
- (6) the building code authority's permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker or a web-based report the applicable building code authority approves.

[3.3.14.9 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.10 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received. If the department receives multiple applications on the same day that would cumulatively exceed the overall limit of state tax credit availability, the department shall certify the first application received for the last remaining tax credit.

B. The department shall review the application package to calculate the state tax credit, check the accuracy of the applicant's documentation and determine whether the department shall certify the solar energy system. The department shall disapprove an application that is not complete, correct or does not meet the approval criteria.

C. If the department finds ~~[that]~~ the application package meets 3.3.14 NMAC's requirements and a state tax credit is available, the department shall certify the applicant's solar energy system and document the applicant as eligible for a state tax credit. If a state tax credit is not available in the calendar year when the application was submitted, the applicant is notified ~~[that]~~ the program has reached the tax credit cap and their application is not certified. The department provides certification through written notification to the applicant. The notification shall include the applicant's contact information, last four digits of the social security number or EIN, system certification number and the state tax credit amount.

D. The department shall report 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 certification notification.

E. The applicant may submit a revised application package to the department ~~[The department]~~; however, the division shall place the resubmitted application in the review schedule as if it were a new application unless the application is disapproved because the annual cap has been reached.

F. ~~[The department shall disapprove an application that is not complete or correct or does not meet the approval criteria. The department shall also disapprove applications received after the annual cap for that calendar year is reached. The]~~ If applicable, the department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for [the] a disapproved project [The department places the resubmitted application in the review schedule], but it shall be reviewed as if it were a new application.

[3.3.14.10 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.11 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)~~ (3) permitted and inspected by the applicable building code authority for building, electrical or mechanical code compliance, as applicable to the type of solar energy system installed, if applicable; and
 - ~~(5)~~ (4) a written final inspection approval obtained from the applicable building code authority after the solar energy system's installation, as applicable to the solar energy system type, if applicable.
- B. Solar thermal systems that the department may certify shall meet the following requirements:
- (1) installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license; and
 - (2) 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 NMAC, Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes, 14.7.2 to 14.7.7 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.
- C. Photovoltaic systems ~~[that]~~ the department may certify shall meet the following requirements:
- (1) installed by a certified electrical journeyman who is an employee of a company holding a valid New Mexico electrical contractor license; and
 - (2) 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 Sections 3-17-6 and 3-18-6 NMSA 1978. [3.3.14.11 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.15 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]~~ by an itemized invoice.
- 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) design fees, permitting inspection fees, review stamp fees and interconnection fees;
 - (j) membership fees;
 - ~~(j)~~ (k) financing costs or loan interest;
 - ~~(k)~~ (l) marketing, promotional or advertising costs;
 - ~~(l)~~ (m) repair, operating or maintenance costs;
 - ~~(m)~~ (n) warranty or extended warranty costs;
 - ~~(n)~~ (o) system resale costs;
 - ~~(o)~~ (p) system visual barrier costs;

~~[(p)] (q)~~ adjacent structure modification costs, costs for building structures such as portals, garages or pergolas to hold solar panels or costs for modifications or roof repairs to hold solar panels; ~~[and]~~

- ~~[(q)] (r)~~ vegetation maintenance costs including tree trimming; ~~[or]~~
- ~~(s)~~ contractor or inspector travel, mileage or overnight hotel stays;
- ~~(t)~~ recreational vehicle or hot tub ports;
- ~~(u)~~ trenching exceeding 50 feet; and
- ~~(v)~~ donations to food banks on the applicant's behalf; and

(2) income, including:

- (a) payments the solar energy system contractor or other parties provide that reduce the system cost, including rebates, discounts and refunds except for 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 department shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.14 NMAC.
[3.3.14.15 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.17 CLAIMING THE STATE TAX CREDIT:

A. An applicant shall apply for the state tax credit with the taxation and revenue department and provide the EMNRD certification and any other information the tax and revenue department requires within 12 months following the calendar year in which the system was installed.

B. ~~[If the amount of state tax credit claimed exceeds the applicant's individual income tax liability, the applicant may carry the excess forward for up to five consecutive taxable years.~~

~~C.]~~ An applicant 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.
[3.3.14.17 NMAC - N, 8/25/2020; A, 12/13/2022]

3.3.14.19 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The ~~[inspections]~~ only inspection required through the application process for certification of an applicant's solar energy system ~~[are:~~

- ~~(1)]~~ is an inspection by the applicable building code authority for building, electrical or mechanical code compliance, as applicable to the solar energy system type ~~;~~ and
- ~~(2)]~~ inspection for compliance with, if applicable. But an applicant should be aware their electric utility company may have additional inspection requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company ~~;~~ if applicable. The applicant is solely responsible for compliance with such requirements.

B. ~~[For purposes of inspecting the solar energy system's installation, the]~~ The department ~~[or its authorized representative shall have]~~ retains the right to inspect a solar energy system ~~[an applicant owns and the department]~~ it has certified, within three years after the department's certification, upon the department providing a minimum of five days' notice to ~~[the]~~ an applicant with a certified system.
[3.3.14.19 NMAC - N, 8/25/2020; A, 12/13/2022]