

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.
[3.13.21.1 NMAC - N, 10-31-07]

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.
[3.13.21.2 NMAC - N, 10-31-07]

3.13.21.3 STATUTORY AUTHORITY: 3.13.21 NMAC is established under the authority of NMSA 1978, Section 7-9-79.2 and NMSA 1978, Section 9-1-5.
[3.13.21.3 NMAC - N, 10-31-07]

3.13.21.4 DURATION: Permanent.
[3.13.21.4 NMAC - N, 10-31-07]

3.13.21.5 EFFECTIVE DATE: October 31, 2007, unless a later date is cited at the end of a section.
[3.2.21.5 NMAC - N, 10-31-07]

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.
[3.13.21.6 NMAC - N, 10-31-07]

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 Unites 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.

[3.13.21.7 NMAC - N, 10-31-07]

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.

[3.13.21.8 NMAC - N, 10-31-07]

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.

[3.13.21.9 NMAC - N, 10-31-07]

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.

[3.13.21.10 NMAC - N, 10-31-07]

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.

[3.13.21.11 NMAC - N, 10-31-07]

HISTORY OF 3.13.21 NMAC: [RESERVED]