

TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 33 CERTIFICATION FOR TAX CREDIT FOR AGRICULTURAL BIOMASS

3.3.33.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
 [3.3.33.1 NMAC - N, 02/29/2012]

3.3.33.2 SCOPE: 3.3.33 NMAC applies to the application and certification procedures for administration of the agricultural biomass personal income tax credit for dairy or feedlot operations.
 [3.3.33.2 NMAC - N, 02/29/2012]

3.3.33.3 STATUTORY AUTHORITY: 3.3.33 NMAC is established under the authority of Subsection F of Section 7-2-18.26 NMSA 1978 and Section 9-1-5 NMSA 1978.
 [3.3.33.3 NMAC - N, 02/29/2012]

3.3.33.4 DURATION: Permanent.
 [3.3.33.4 NMAC - N, 02/29/2012]

3.3.33.5 EFFECTIVE DATE: February 12, 2012, unless a later date is cited at the end of a section.
 [3.3.33.5 NMAC - N, 02/29/2012; A, 09/29/2020]

3.3.33.6 OBJECTIVE: 3.3.33 NMAC's objective is to establish procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.
 [3.3.33.6 NMAC - N, 02/29/2012]

3.3.33.7 DEFINITIONS:

A. "Agricultural biomass" means wet manure from either dairy or feedlot commercial operations that meets specifications established by the energy minerals and natural resources department.

B. "Agricultural biomass production facility" means a dairy or feedlot that collects animal waste for the purpose of transporting that material to a facility where it will be used to generate electricity, make biocrude or other liquid or gaseous fuel for commercial use.

C. "Applicant" means a taxpayer that transports agricultural biomass to a qualified energy producing facility and who desires to have the department issue a certificate of transportation to be used in applying for an agricultural biomass personal income tax credit from the taxation and revenue department.

D. "Application package" means the application documents an applicant submits to the department to receive a certificate of transportation to support an agricultural biomass personal income tax credit application to the taxation and revenue department.

E. "Apron scrape" means biomass collected from concrete feeding aprons or bedding areas.

F. "Biocrude" means a non-fossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass.

G. "Certificate of transportation" means a document issued by the department to the applicant and the taxation and revenue department, enumerated with a unique system certification number and certifying the number of wet tons of agricultural biomass transported to a qualified facility during a specified taxable year.

The purpose of this document is to certify the number of wet tons of biomass qualifying for the biomass personal income tax credit.

H. "Corral scrape" means biomass collected from soil bedding or feed areas.

I. "Dairy" means a facility that raises livestock for milk production.

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

K. "Dry cow" means a fully grown cow that is not currently being milked.

L. "Feedlot" means an operation that fattens livestock for market.

M. "Greenwater" means milking parlor washwater.

- N. **“Heifer”** means a young replacement cow of at least 500 pounds that has not yet been milked.
- O. **“Livestock”** means domestic animals that produce usable agricultural biomass.
- P. **“Milking cow”** means a dairy cow that is lactating and which is milked on a daily basis.
- Q. **“Qualified facility”** or **“qualified energy producing facility”** means a facility that the department has determined uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.
- R. **“Transport”** means to convey or arrange for conveyance of biomass by vehicle or pipe from dairy or feedlot to a qualified facility.
- S. **“Taxable year”** means the annual accounting period for purposes of filing personal income tax returns as defined by the United States internal revenue service.
- T. **“Taxpayer”** means a dairy or feedlot operator or lessee who is liable for payment of gross receipts tax or personal income tax.
- U. **“Taxpayer identification number”** means an applicant’s social security number or 11 digit number issued to the applicant upon registration with the taxation and revenue department to pay gross receipts and individual taxes.
- V. **“Wet ton”** means 2000 pounds of agricultural biomass qualifying for a certificate of transportation from the department. The number of wet tons qualifying for the certificate of transportation from a dairy during a specific time period is the amount in tons transported from the agricultural biomass production facility calculated by adding:
- (1) the daily population of milking cows times 49 pounds of biomass per milking cow per day of apron scrape plus 70 pounds of biomass per day per milking cow of corral scrape; plus
 - (2) the daily population of dry cows times 30 pounds of biomass per dry cow per day of apron scrape plus 45 pounds of biomass per day per dry cow of corral scrape; plus
 - (3) the daily population of heifers times 17 pounds of biomass per heifer per day of apron scrape plus 26 pounds of biomass per day per heifer of corral scrape; plus
 - (4) 13 pounds of biomass per milking cow per day pumped from the agricultural biomass production facility as greenwater for each day of the time period. In the event that less than 100 percent of the biomass produced at the agricultural biomass production facility is transported to a qualified facility, the amount of calculated transported biomass qualifying for a certificate of transportation will be proportionally reduced by the percentage of each of the three categories (apron scrape, corral scrape and greenwater) of the biomass not transported to a qualifying facility during the time period.
- [3.3.33.7 NMAC - N, 02/29/2012]

3.3.33.8 GENERAL PROVISIONS:

- A. The agricultural biomass personal income tax credit is available to taxpayers filing a personal income tax return for taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030. Certificates of transportation pursuant to 3.3.33 NMAC may be issued by the department for agricultural biomass transported during taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030.
- B. The amount of the agricultural biomass income tax credit is calculated at \$5.00 per wet ton. The maximum amount of the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed is \$5,000,000.
- [3.3.33.8 NMAC - N, 02/29/2012; A, 09/29/2020]

3.3.33.9 APPLICATION FOR CERTIFICATE OF TRANSPORTATION:

- A. To apply for the certificate of transportation, an applicant shall submit a complete application package to the energy conservation and management division of the department within 30 days of the end of the taxable year for which certification is sought. An applicant may obtain the application form from the energy conservation and management division of the department.
- B. A complete application package shall include a certificate of transportation application form and all required attachments. An applicant shall submit one application package for each dairy or feedlot operation. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.
- C. The completed application form shall include the following information and documents:

- (1) the applicant's name, mailing address, telephone number, social security number or taxpayer identification number and the dates of the taxable year for which application is being made;
- (2) the address or public land survey system description of the location of the dairy or feedlot operation, including the county;
- (3) a description of the dairy or feedlot operation, descriptions and photographs of equipment used to collect and to transport agricultural biomass;
- (4) daily data showing the number of milking cows, dry cows and heifers present at the dairy or feedlot during the specified time period;
- (5) a description of the qualified facility to which the biomass was transported, including the name and address of the operator;
- (6) dated weigh or volume tickets for each truckload of waste leaving the agricultural biomass production facility, the classification of each truckload as either apron scrape, corral scrape or greenwater, and the destination of each load beginning on the first day of the specified period and no later than the last day of the specified time period for which certification is sought;
- (7) totalizing flow meter readings showing the amount of pumped waste or greenwater leaving the agricultural biomass production facility and the amount and destination of any waste diverted from delivery to the qualified facility beginning on the first day of the specified time period and no later than the last day of the specified time period for which certification is sought;
- (8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, stipulating that:
 - (a) all information provided in the application package is true and correct;
 - (b) applicant has read the certification requirements contained in 3.3.33

NMAC;

- (c) applicant understands that there are annual aggregate limits to the amount of biomass that will qualify for the agricultural biomass income tax credit;
- (d) applicant understands that the department must certify the transportation of the biomass before the applicant is eligible for a tax credit; and
- (e) to ensure compliance with 3.3.33 NMAC, applicant agrees that the division or its authorized representative may inspect the dairy or feedlot operation that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and
- (9) a signed statement from the operator of the qualified facility specifying the amount of the biomass received and identifying the dairy or feedlot from which it was received.

D. The application package shall meet 3.3.33 NMAC's requirements and be materially complete. [3.3.33.9 NMAC - N, 02/29/2012]

3.3.33.10 APPLICATION REVIEW PROCESS AND CERTIFICATION:

A. The department shall review the application within 30 days of receipt. If the application package complies with 3.3.33 NMAC, the department will determine the number of wet tons of biomass transported, check accuracy of the applicant's documentation and determine whether the department is able to certify that the biomass was transported to a qualified facility.

B. If an application package fails to meet a requirement or is not materially complete, the department shall deny the application. The department shall also deny an application from which it is unable to determine from the materials presented in the application package the tonnage transported to or accepted at a qualified facility. The department's disapproval letter shall be issued within 30 days of the receipt of the application and shall state the reasons why the department denied the application.

C. If the department finds that the application package meets 3.3.33 NMAC's requirements, the department shall certify that the transportation of the biomass to a qualified facility did occur and so notify the taxpayer and the taxation and revenue department. The certificate shall include the taxpayer's contact information, social security number, taxpayer identification number, system certification number and the net amount of biomass eligible for the tax credit.

D. If the department denies the application, the applicant shall have 15 days from the date of denial to petition the department secretary for reconsideration. If no petition is received, the denial shall be

considered final on the 15th day. If a petition for reconsideration is received, it shall contain a statement of reasons the secretary should reconsider the application and any additional or updated material necessary to support that petition. The secretary shall have 15 days to reconsider and approve the amended application, set the matter for an examiner hearing or deny the application. If the secretary has not acted within 15 days of receipt of the petition for reconsideration, the denial of the original application shall be considered final.
[3.3.33.10 NMAC - N, 02/29/2012]

HISTORY OF 3.3.33 NMAC: [RESERVED]