

NEBRASKA

RENEWABLE CHEMICAL PRODUCTION TAX CREDIT ACT GUIDELINES

State of Nebraska
Department of Economic Development

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NOTICE:

This guidance document is advisory in nature but is binding on the Department of Economic Development (“DED”) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

OVERVIEW & CONTACT INFORMATION

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The Renewable Chemical Production Tax Credit Act is codified in Neb. Rev. Stat. §§ 77-6601 to 77-6611.

Application Portal and Management System

To administer the Renewable Chemical Production Tax Credit Act, DED uses a grants management system (“GMS”), AmpliFund. GMS User Guides, with instructions for accessing and using the system, along with other resources, are available on [DED's website](#) and on DED's [AmpliFund Resources](#) page.

CHAPTER 1: INTRODUCTION TO THE RENEWABLE CHEMICAL PRODUCTION TAX CREDIT ACT

1.1 PURPOSE & GENERAL INFORMATION

Tax credits under the Renewable Chemical Production Tax Credit Act (“Act”) are intended to stimulate the emerging biotechnology and bioproducts sector in Nebraska and incentivize the development of renewable chemicals.

The application opens March 1, 2022. Applications will be considered in the order in which completed applications are filed. DED shall have the sole discretion in evaluating applications for compliance with the Act. The application and guidelines can be found on the [Act webpage](#).

1.2 RENEWABLE CHEMICAL PRODUCTION TAX CREDIT ACT

A. Terms & Definitions

- **Biomass Feedstock:** A sugar, starch, polysaccharide, glycerin, lignin, fat, grease, or oil derived from plants, animals, or algae or a protein capable of being converted to a Building Block Chemical by means of a biological or chemical conversion process.
- **Building Block Chemical:** A molecule that is converted from Biomass Feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product.
- **Eligible Business:** A business that has been certified by DED as eligible to receive tax credits under the Act.
- **Expanded in Nebraska:** A business, that on or after January 1, 2021, did any of the following: (i) increased its Qualified Property located in Nebraska by 10% or more from the prior fiscal year, (ii) increased its Renewable Chemical production in Nebraska by more than 150% over the amount produced in Nebraska during the prior calendar year, or (iii) produced a Renewable Chemical in Nebraska that was not previously produced by the business in Nebraska.
- **Food Additive:** A Building Block Chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, shelf life, or nutritional content of food.
- **Pre-eligibility Production Threshold:** The number of pounds of Renewable Chemicals produced, if any, by an Eligible Business during the calendar year prior to the calendar year in which the business first qualified as an Eligible Business.
- **Qualification Date:** The calendar date a business satisfies all necessary criteria to be certified as an Eligible Business.
- **Qualified Property:** Any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that is located and used at a business’ Renewable Chemical production facility or facilities.
- **Related Persons:** Any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary business group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

- **Renewable Chemical:** A Building Block Chemical with a significant biobased content that can be used for products including polymers, plastics, food additives, solvents, intermediate chemicals, or other formulated products with a significant nonfossil carbon content.

B. Synopsis: How The Act Works

To be eligible to receive tax credits for the production of Renewable Chemicals, a business must first apply to DED to be certified as an Eligible Business. To be certified as an Eligible Business, the applicant must: (i) produce at least one million pounds of Renewable Chemicals in Nebraska during the calendar year for which tax credits are sought (an application should ordinarily be filed with DED during the same calendar year for which applicant seeks tax credits), (ii) be physically located in Nebraska, (iii) have organized, expanded, or located in Nebraska on or after January 1, 2021, and (iv) be compliant with all agreements entered into under the Act and any other tax credit or programs administered by DED or the Nebraska Department of Revenue (“DOR”). If an applicant is certified by DED as an Eligible Business, it will then enter into an agreement with DED to successfully fulfill all requirements under the Act. The agreement will certify an Eligible Business to receive tax credits under the Act. The agreement will also specify the maximum amount of tax credits which the Eligible Business is eligible to receive. Each agreement will be one year and may be renewed for a second year unless terminated by either party. The maximum amount of credits per agreement is \$1.5 million per year and the maximum agreement term is two years. DED will not certify an Eligible Business to receive more than \$3 million in tax credits within a six-year period.

To receive tax credits, an Eligible Business must submit an application to DOR. The tax credit application must be filed with DOR during the calendar year following the calendar year in which the Eligible Business produced the Renewable Chemicals for which it seeks tax credits. The tax credit application must include: (i) the number of pounds of Renewable Chemicals produced in Nebraska by the Eligible Business during the calendar year for which tax credits are sought, (ii) the type of Renewable Chemicals produced, (iii) the aggregate sales of all Renewable Chemicals produced by the Eligible Business, (iv) a list of each type and the number of pounds of Biomass Feedstock used by the Eligible Business in the production of Renewable Chemicals in Nebraska, and (v) the number of employees of the Eligible Business that are located in Nebraska. DOR may specify any other information required to establish and verify the amount of credits earned under the Act.

If DOR determines that the tax credit application is complete, that the Eligible Business qualifies for tax credits, and the Eligible Business has fulfilled all requirements of its agreement with DED, DOR shall approve the tax credit application and certify the amount of tax credits approved. The amount of tax credits will be determined, in part, by the product of seven and one-half cents multiplied by the number of pounds of Renewable Chemicals produced by the Eligible Business in Nebraska after the Qualification Date in excess of the Eligible Business’ Pre-eligibility Production Threshold ($7.5\text{¢} \times \text{pounds of Renewable Chemicals produced in Nebraska after Qualification Date in excess of Pre-eligibility Production Threshold}$). The amount of tax credits certified by DOR shall be within the limit approved and specified by DED and shall not exceed \$1.5 million per year.

An Eligible Business will not receive tax credits for Renewable Chemicals produced before it’s Qualification Date. The Qualification Date is the calendar date a business satisfies all necessary criteria to be certified as an Eligible Business (See Chapter 1.2(C) of these Guidelines for criteria). The Qualification Date is distinct from and should predate the application date or certification date. Tax credits will not be available for any Renewable Chemicals produced before the 2022 calendar year.

To effectuate the Act, DED and DOR may share among their agencies any documents, communications, and relevant information related to applicants, Eligible Businesses, tax credits, or any other item pertaining to the Act.

C. Eligible Business Certification Criteria

To be certified by DED as an Eligible Business, the applicant must:

- i. Produce at least one million pounds of Renewable Chemicals in Nebraska during the calendar year for which tax credits are sought. To substantiate the amount of Renewable Chemicals produced in Nebraska by the applicant, the applicant will be required to upload documents to verify:
 - a. the type of Renewable Chemicals produced,
 - b. the amount of Renewable Chemicals produced,
 - c. the year in which the Renewable Chemicals were produced,
 - d. the end use of the Renewable Chemicals, and
 - e. the Nebraska location/facilities where the Renewable Chemicals were produced.
- ii. Be physically located in Nebraska. To be regarded as physically located in Nebraska, the applicant must produce Renewable Chemicals at a production facility located within the State of Nebraska.
- iii. Have organized, expanded, or located in Nebraska on or after January 1, 2021. To be regarded as having organized, expanded, or located in Nebraska on or after January 1, 2021, the applicant must have:
 - a. Organized: The applicant seeking certification as an Eligible Business must have been formed (e.g. a corporation, limited liability company, etc.) by filing all the necessary paperwork with the Nebraska Secretary of State (e.g. articles of incorporation, certificate of organization, etc.), on or after January 1, 2021. When evaluating whether the applicant organized in Nebraska on or after January 1, 2021, DED will consider any Related Persons to the applicant. Applicants with one or more Related Persons in existence in Nebraska prior to January 1, 2021, will not be deemed to have organized in Nebraska on or after January 1, 2021.
 - b. Expanded: The applicant seeking certification as an Eligible Business must have:
 1. On or after January 1, 2021, increased its Qualified Property located in Nebraska by 10% or more from the prior fiscal year,
 2. On or after January 1, 2021, increased Renewable Chemical production in Nebraska by more than 150% over the amount produced during the prior calendar year, or
 3. On or after January 1, 2021, produced a Renewable Chemical in Nebraska that was not previously produced by the applicant in Nebraska.
 - c. Located: The applicant seeking certification as an Eligible Business previously formed and operated in another state but on or after January 1, 2021, began production of a Renewable Chemical at a production facility located in Nebraska.
- iv. Be compliant with any and all agreement(s) entered into under the Act and any tax credit or other programs administered by DED or DOR.

D. Tax Credit Limitations

An Eligible Business may be certified for up to \$1.5 million dollars in tax credits per year for up to two years. DED may certify up to \$3 million in tax credits per calendar year for 2022 and 2023 and up to \$6 million in tax credits per calendar year for 2024 and beyond. DED will not approve an Eligible Business certification application after the annual tax credit limitation has been reached. DED will not certify an Eligible Business to receive more than \$3 million in tax credits within a six-year period.

E. Qualifying Renewable Chemicals

Qualifying Renewable Chemicals consist of a Building Block Chemical with a significant biobased content that can be used for products including polymers, plastics, food additives, solvents, intermediate chemicals, or other formulated products with a significant nonfossil carbon content. Renewable Chemical includes: (i) biobased chemicals that can be a food, feed, or fuel additive and (ii) supplements, vitamins, nutraceuticals, and pharmaceuticals. Renewable Chemical does not include a chemical sold or used as fuel. For purposes of the Act, DED has deemed ethanol to be a fuel and not eligible for tax credits.

F. Trade Secrets, Confidentiality, and Sharing Information

Except for the identify of tax credit recipients and the amount of tax credits received, any information or record in the possession of DED or DOR with respect to the Act shall be presumed to be a trade secret and shall be kept confidential by such departments unless otherwise ordered by a court of law. Except for reporting the identity of tax credit recipients, the amount of tax credits received by the recipient, and the manner in which the recipient first qualified as an Eligible Business—whether by organizing, expanding, or locating in Nebraska—DED and DOR will comply with their statutory reporting obligations to the Nebraska Legislature by reporting information in an aggregate form. To effectuate the Act, DED and DOR may share among their agencies any documents, communications, and any relevant information related to applicants, certified Eligible Businesses, tax credits, or any other item pertaining to the Act.

CHAPTER 2: ELIGIBLE BUSINESS CERTIFICATION APPLICATION, REVIEW, AND APPROVAL PROCESS

2.1 FILING AN ELIGIBLE BUSINESS CERTIFICATION APPLICATION

A. Filing Instructions

All certification applications must be submitted to DED electronically using AmpliFund.

Application Form: Application forms and supporting documentation must be filed electronically using AmpliFund. Applicants are encouraged to review the Application Checklist prior to filling out the application for a list of documents and information required to successfully complete the application. To apply, applicants follow the “Apply Now” link on the DED Renewable Chemical Production Tax Credit Act webpage, create a user profile in the AmpliFund application portal, and complete the application. The user profile allows for saving a partially completed application after the application opens. The first date for DED to receive applications is March 1, 2022.

Questions and Assistance: Questions regarding the application process should be sent to:

Ben Goins
benjamin.goins@nebraska.gov
402-471-0822

Individuals who are hearing and/or speech impaired and have a TTY, may contact DED through the Statewide Relay System by calling (711) INSTATE (800) 833-7352 (TTY) or (800) 833-0920 (voice). The relay operator should

be asked to call NDED at (800) 426-6505 or (402) 471-3111. Additional information can be found at the Nebraska Relay website <http://www.nebraskarelay.com/>.

Nebraska Relay offers Spanish relay service for our Spanish-speaking customers. Spanish-to-Spanish (711) or 1-888-272-5528/ Spanish-to-English (711) or 1-877-564-3503. Nebraska le ofrece el servicio de relevo a nuestros clientes en español. Los consumidores de TTY pueden escribir por máquina en español y las conversaciones serán retransmitidas en español y inglés.

B. Required Documentation

The following documentation is required with the application:

- i. A description of the applicant's business, the type of business it conducts in Nebraska, and the business activity that makes it eligible under the Act.
- ii. A list of the Renewable Chemicals produced by the applicant including the scientific name and chemical formula, the end product of each Renewable Chemical, the previous calendar year production amount, a projection for the current calendar year production levels, a projection for the next calendar year production levels, the name and amount of Biomass Feedstock used to produce each Renewable Chemical in the previous calendar year,
- iii. Verifiable documentation showing applicant organized (e.g. articles of incorporation, certificate of organization, etc.), expanded (e.g. tax forms, inventory ledgers, etc.), or located (e.g. lease agreement(s), Nebraska Secretary of State filings, etc.), in Nebraska on or after January 1, 2021,
- iv. Verifiable documentation evidencing that applicant produced one million pounds of Renewable Chemicals in Nebraska during the calendar year for which tax credits are sought,
- v. Verifiable documentation evidencing the number of pounds of Renewable Chemicals produced, if any, by applicant during the calendar year prior to the calendar year in which the applicant is seeking tax credits (i.e. the Pre-eligibility Production Threshold).
- vi. Verifiable documentation evidencing the number of applicant's employees located in Nebraska: (i) at the time of application and (ii) at the close of the prior calendar year
- vii. A list of any and all DED or DOR programs in which applicant is participating.

The title of each PDF or Excel document should include the name of the applicant.

2.2 CERTIFICATION APPLICATION REVIEW

DED will consider certification applications in the order in which they are received. All required documentation must be uploaded with the application and received by DED for an application to be reviewed. Filing an application does not guarantee certification as an Eligible Business.

Within thirty (30) days after receiving a complete certification application, DED will either: (i) certify the applicant as an Eligible Business, (ii) request additional information, or (iii) deny the certification application. Applicants will be notified in writing of all DED determinations.

If certified as an Eligible Business, the applicant and DED will execute an agreement governing their responsibilities and commitments under the Act (See Chapter 3 below).

If DED requests additional information, the applicant will be given no more than thirty (30) days to provide the requested information. Within thirty (30) days of receiving the additional information, DED shall either certify the applicant as an Eligible Business or deny the application.

A business that applies for certification and is denied may reapply.

CHAPTER 3: AWARD PROCESS

The following are, unless otherwise directed by DED, guidelines for all agreements under the Act. All applicants should review this section.

The GMS User Guides or GMS-generated emails may include additional instructions for applicants. For any correspondence, please include the applicant's name and, if applicable, agreement number in the subject line.

3.1 NOTIFICATION, ACCOUNT SETUP, & PROGRAM MANAGER

A. Notification

DED will issue a written notice to applicants informing them whether the certification application has been approved, denied, or whether DED is requesting additional information.

B. Account Setup

Following a notice of approval, a successful applicant will receive a GMS-generated email from AmpliFund Administrator, "no-reply@gotomygrants.com", with further instructions. This email is sent to the Primary Contact as identified in the application. Applicants should check their spam or junk mail folder as email settings may direct this system-generated email there. If the Primary Contact's information is no longer valid, the links in the email are expired, or the email is not received within thirty (30) days of the notice of approval, the applicant should contact the Act Coordinator.

C. Identify Program Manager

Following a notice of approval, the applicant's Primary Contact should identify a Program Manager to receive notifications and to execute or assign various tasks (e.g. sign the agreement). In AmpliFund, the Program Manager will be referred to as the "Grant Manager." The Applicant's Program Manager is the primary point of contact for all program-related matters. All DED and GMS automated emails are directed to the Program Manager.

NOTE: The application portal is distinct from the award management side of the GMS. The URL used to apply is different from the URL used to manage the program.

3.2 AGREEMENT REQUIREMENTS

A. Executing the Agreement

If an applicant's certification application is approved by DED, a Renewable Chemical Production Tax Credit Act agreement ("Agreement") will be issued to the applicant/certified Eligible Business within thirty (30) days of DED's notice of approval. The Agreement is entered into between DED and the Eligible Business. The Eligible

Business must review, sign, date, and submit the Agreement to DED. DED will execute the Agreement after it is signed by the Eligible Business. Signatures for the Agreement are facilitated using DocuSign.

B. Content

The Agreement will specify: (i) the maximum amount of tax credits approved for the Eligible Business, (ii) the length of time for which the Eligible Business is certified to receive tax credits, and (iii) the types of Renewable Chemicals being produced by the Eligible Business. Among other requirements, the Agreement will require the Eligible Business to collect and provide any information reasonably required by DED or DOR to carry out their responsibilities under the Act. In executing the Agreement with DED, the Eligible Business agrees to undertake the continued production of Renewable Chemicals in Nebraska.

3.3 REPORTING REQUIREMENTS

A. Annual Report

An Eligible Business that enters into an Agreement with DED will be required to submit annual reports with supporting documentation to DED for the duration of the Agreement. The annual report covering the prior calendar year is due to DED no later than January 7th of each year. The annual report is used to provide DED with the information it needs to fulfill its statutory reporting obligation. DED may share information contained in the annual reports with DOR. To effectuate the Act, DED and DOR may share among their agencies any documents, communications, and any relevant information related to applicants, certified Eligible Businesses, tax credits, or any other item pertaining to the Act.

Any failure by the Eligible Business to timely submit the annual report and supporting documentation may result in DED terminating the Agreement. An Eligible Business must complete its annual reporting obligation in the form and manner required by DED. If the Eligible Business' annual report is incomplete or requires clarification, DED may request missing items and/or request clarification. The annual report and supporting documentation must include, but is not limited to:

- i. The aggregate number of pounds, and a list of each type of Renewable Chemical produced in Nebraska:
 - a. During the calendar year prior to the calendar year in which the Eligible Business first received tax credits under the Act,
 - b. During the calendar year for which the Eligible Business is submitting its annual report, and
 - c. During any other calendar year(s) in which the Eligible Business produced Renewable Chemicals in Nebraska while the Eligible Business was a participating party to an Agreement with DED pursuant to the Act;
- ii. The aggregate sales of all Renewable Chemicals produced in Nebraska by the Eligible Business:
 - a. During the calendar year prior to the calendar year in which the Eligible Business first received tax credits under the Act,
 - b. During the calendar year for which the Eligible Business is submitting its annual report, and
 - c. During any other calendar year(s) in which the Eligible Business produced Renewable Chemicals in Nebraska while the Eligible Business was a participating party to an Agreement with DED pursuant to the Act;
- iii. The aggregate number of pounds, and a list of each type of Biomass Feedstock used by the Eligible Business in the production of Renewable Chemicals in Nebraska:
 - a. During the calendar year prior to the calendar year in which the Eligible Business first received tax credits under the Act,

- b. During the calendar year for which the Eligible Business is submitting its annual report, and
 - c. During any other calendar year(s) in which the Eligible Business produced Renewable Chemicals in Nebraska while the Eligible Business was a participating party to an Agreement with DED pursuant to the Act;
- iv. The number of employees located in Nebraska:
- a. At the close of the calendar year prior to the calendar year in which the Eligible Business first received tax credits under the Act,
 - b. At the close of the calendar year for which the Eligible Business is submitting its annual report, and
 - c. At the close of any other calendar year(s) in which the Eligible Business produced Renewable Chemicals in Nebraska while the Eligible Business was a participating party to an Agreement with DED pursuant to the Act.

NOTE: Independent of its annual reporting obligations, Eligible Businesses should notify DED immediately of any material changes to its production of Renewable Chemicals.

3.4 TAX CREDITS

A. Application to Receive Tax Credits

To receive tax credits, an Eligible Business must submit a tax credit application to DOR. The tax credit application must be submitted in the form and manner prescribed by DOR. The tax credit application must be made during the calendar year following the calendar year in which the Eligible Business produced the Renewable Chemicals for which it seeks tax credits. The tax credit application will request, at a minimum, the following information:

- i. The number of pounds of Renewable Chemicals produced in Nebraska by the Eligible Business during the calendar year for which tax credits are sought,
- ii. The number of pounds of Renewable Chemicals produced, if any, in Nebraska by the Eligible Business in the year prior to certification as an Eligible Business (i.e. the Pre-eligibility Production Threshold)
- iii. A list of the Renewable Chemicals produced in Nebraska,
- iv. The number of aggregate sales of all Renewable Chemicals produced in Nebraska,
- v. A list of each type of Biomass Feedstock used in the production of Renewable Chemicals in Nebraska, and
- vi. The number of employees located in Nebraska.

DOR may require additional information and documentation to determine and verify the amount of tax credits earned under the Act.

B. DOR Review of Tax Credit Applications

DOR will review an Eligible Business' tax credit application to ensure: (i) the tax credit application is complete, (ii) the Eligible Business qualifies for tax credits, and (iii) the Eligible Business has fulfilled all requirements under the Act and all requirements under its Agreement with DED. DOR will provide a written notice to the Eligible Business informing it whether its application has been certified and, if so, the amount of tax credits approved.

C. Calculating Tax Credits

If an Eligible Business' tax credit application is approved by DOR, the amount of tax credit will be determined, in part, by the product of seven and one-half cents multiplied by the number of pounds of Renewable Chemicals produced in Nebraska after the Qualification Date in excess of the Eligible Business' Pre-eligibility Production Threshold. The Eligible Business' Pre-eligibility Production Threshold is determined by DOR. The amount of tax credits certified by DOR shall be within the limit approved and specified by DED and shall not exceed \$1.5 million.

Tax credits shall be a refundable credit that may be used against any income tax imposed by the Nebraska Revenue Act of 1967. Any credit in excess of the Eligible Business' tax liability shall be refunded to the taxpayer. Any tax credit allowable to a partnership, limited liability company, subchapter S corporation, or estate or trust may be distributed to the partners, limited liability company members, shareholders, or beneficiaries in the same manner as income is distributed. An Eligible Business will claim the tax credit by attaching the tax credit certification received from DOR to its tax return for the tax year in which the credit was approved.

An Eligible Business will not receive tax credits for Renewable Chemicals produced before its Qualification Date. The Qualification Date is the calendar date a business satisfies all necessary criteria to be certified as an Eligible Business (See Chapter 1.2(C) of these Guidelines for criteria). The Qualification Date is distinct from and should predate the application date or certification date. Tax credits will not be available for any Renewable Chemicals produced before the 2022 calendar year.

D. Reduction, Termination, Rescission, and Repayment of Tax Credits

An Eligible Business' failure to fulfill any requirement of the Act or its Agreement with DED may result in the termination of the Agreement, the reduction or rescission of tax credits, and may subject the Eligible Business to the repayment or recapture of tax credits already claimed.