

199—15.19 (476C) Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C. Any person applying for certification of eligibility for state tax credits for wind energy or renewable energy pursuant to Iowa Code section 476C.3 is subject to this rule.

15.19(1) Filing requirements. Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner. The “legal status of each owner” refers to either ownership of a small wind energy system operating in a small wind innovation zone as defined in Iowa Code section 476.48(1) and 199—15.22(476), or, alternatively, the ownership requirements of Iowa Code section 476C.1(6) “*b*,” which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

- (1) A resident of Iowa;
- (2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;
- (3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;
- (4) A revocable trust as defined in Iowa Code section 9H.1;
- (5) A testamentary trust as defined in Iowa Code section 9H.1;
- (6) A small business as defined in Iowa Code section 15.102;
- (7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499, a municipally owned city utility as defined in Iowa Code section 362.2, or a public utility subject to rate regulation pursuant to Iowa Code chapter 476;
- (8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 489 whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or
- (9) A school district located in Iowa.

c. A statement attesting that each owner meeting the eligibility requirements of Iowa Code section 476C.1(6) “*b*” does not have an ownership interest in more than two eligible renewable energy facilities.

d. For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6) “*b*” with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

e. For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6) “*b*” with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

f. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility, or refuse conversion facility, as defined in Iowa Code section 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code section 476C.1. For applications filed on or after July 1, 2011, the facility’s combined nameplate capacity or energy production capacity equivalent must be no less than three-fourths of a megawatt if all or part of the facility’s renewable energy production is used for the owners’ on-site consumption, and no more than 60 megawatts if the facility is not a wind energy conversion facility;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service; that is, placed in service on or after July 1, 2005, but before January 1, 2017, for eligibility under Iowa Code chapter 476C; and

(5) For eligibility under Iowa Code chapter 476C, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

g. A signed statement from the owners attesting that the owners intend to either sell all the renewable energy produced by the facility, consume all the renewable energy on site, or use all the renewable energy through a combination of sale and consumption. For purposes of the signed statement, renewable energy consumed on site means any renewable energy produced by the facility and not sold.

h. If the owners intend to sell renewable energy produced by the facility, a copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; that designation shall not be subject to change.

i. A statement indicating the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476C (1.5 cents per kWh, wind and other renewable energy tax credits).

15.19(2) Review and notification. Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code section 476C.3(2). In the absence of a timely appeal, the preliminary determination shall be final.

15.19(3) Incomplete application and additional information. If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

15.19(4) Loss of eligibility status.

a. Within 30 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 30 months of board approval, the facility will lose eligibility status.

b. If the facility is a wind energy conversion facility and is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the 30-month limit, attesting to the unavailability of necessary equipment. After granting the 12-month extension, if the board determines that the facility was not operational within 42 months of board approval, the facility will lose eligibility status.

c. Prior to expiration of the time periods specified in paragraphs 15.19(4) "a" and "b," the applicant may apply for a further 12-month extension if the facility is still expected to become operational. Extensions may be renewed for succeeding 12-month periods if the applicant applies for the extension prior to expiration of the current extension period. If the applicant does not apply for further extension, the facility will lose eligibility status.

d. If the owners of a facility discontinue efforts to achieve operational status, the owners shall notify the board. Upon the board's receipt of such notification, the facility will lose eligibility status.

e. If the facility loses eligibility status, the applicant may reapply to the board for new eligibility.

15.19(5) Allocation of capacity among eligible applicants. Iowa Code section 476C.3(4) establishes the maximum amounts of nameplate generating capacities and energy production capacity equivalents eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with subrule 15.19(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

15.19(6) Waiting lists for excess applications. The board will maintain waiting lists of excess eligibility applications for facilities that might have received preliminary eligibility under subrule 15.19(2), but for the maximum capacity and capability restrictions under subrule 15.19(5). The priorities of the waiting lists will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under subrule 15.19(5), the board will review the applications on the waiting lists based on their priorities, before reviewing new applications. Applications will be removed from the waiting lists after they are either approved or denied. Beginning August 31, 2007, each applicant on a waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

This rule is intended to implement Iowa Code chapter 476C.

[**ARC 8060B**, IAB 8/26/09, effective 9/30/09; **ARC 8949B**, IAB 7/28/10, effective 9/1/10; **ARC 9752B**, IAB 9/21/11, effective 10/26/11; **ARC 1716C**, IAB 11/12/14, effective 12/17/14; **ARC 2244C**, IAB 11/25/15, effective 12/30/15]