

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 6 TAX INCENTIVES

19.15.6.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.6.1 NMAC - N, 12/1/08]

19.15.6.2 SCOPE: 19.15.6 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.
[19.15.6.2 NMAC - N, 12/1/08]

19.15.6.3 STATUTORY AUTHORITY: 19.15.6 NMAC is adopted pursuant to NMSA 1978, Section 7-29A-1 *et seq.* and Section 7-29B-1 *et seq.*
[19.15.6.3 NMAC - N, 12/1/08]

19.15.6.4 DURATION: Permanent.
[19.15.6.4 NMAC - N, 12/1/08]

19.15.6.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.6.5 NMAC - N, 12/1/08]

19.15.6.6 OBJECTIVE: To establish procedures for the certification of eligibility for the enhanced oil recovery project tax incentive, the production restoration project tax incentive, the well workover project tax incentive and the stripper well tax incentive.
[19.15.6.6 NMAC - N, 12/1/08]

19.15.6.7 DEFINITIONS:

A. "Average daily production" means the number derived by dividing the total volume of oil or gas production from the stripper well property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year.

B. "Eligible well" means an oil or gas well that produces or an injection well that injects and is integral to production, for any period of time during the preceding calendar year.

C. "Expansion or expanded use" means a significant change or modification as the division determines in:

(1) the technology or process used for the displacement of oil from an oil well or division-designated pool; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity.

D. "Operator":

(1) for purposes of 19.15.6.8 NMAC, means the person responsible for an EOR project's actual physical operation; and

(2) for purposes of 19.15.6.9 NMAC, means the person responsible for an oil or gas well's actual physical operation.

E. "Positive production response" means that the rate of oil production from the wells or pools an EOR project affects is greater than the rate that would have occurred without the project.

F. "Project area" means a pool or a portion of a pool that EOR operations directly affect.

G. "Primary recovery" means the displacement of oil from an oil well or division-designated pool into the well bore by means of the natural pressure of the oil well or pool, including artificial lift.

H. "Production restoration incentive tax exemption" means the severance tax exemption for natural gas or oil produced from an approved production restoration project found in NMSA 1978, Section 7-29-4.

I. "Production restoration project" means returning to production a gas or oil well, including an injection well that has previously produced, which had no more than 30 days of production in a period of 24 consecutive months beginning on or after January 1, 1993 the division has approved and certified.

J. "Recovered oil tax rate" means the tax rate set forth in NMSA 1978, Section 7-29-4, on oil produced from an EOR project.

K. “Routine maintenance” means repair or like-for-like replacement of downhole equipment or other procedure an operator performs to maintain the well’s current production.

L. “Secondary recovery project” means an EOR project that:

- (1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;
- (2) involves the application, in accordance with sound engineering principles of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or other division accepted and approved secondary recovery method that can reasonably be expected to result in an increase, determined in light of the facts and circumstances, in the amount of oil that may ultimately be recovered; and
- (3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

M. “Stripper well property” means an oil or gas producing property that the taxation and revenue department assigns a single production unit number (PUN) and:

- (1) if an oil producing property, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year;
- (2) if a gas producing property, produced a daily average of less than 60,000 cubic feet of gas per eligible well per day during the preceding calendar year; or
- (3) if a property with wells that produce both oil and gas, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6000 cubic feet to one barrel of oil.

N. “Stripper well incentive tax rates” means the tax rates set for stripper well properties by NMSA 1978, Sections 7-29-4 and 7-31-4.

O. “Termination” means the operator’s discontinuance of an EOR project.

P. “Tertiary recovery project” means an EOR project that:

- (1) occurs subsequent to a secondary recovery project’s completion;
- (2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or other division accepted and approved tertiary recovery method that can reasonably be expected to result in an increase, determined in light of the facts and circumstances, in the amount of oil that may ultimately be recovered; and
- (3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

Q. “Well” means a well bore with single or multiple completions, including all horizons and producing formations from the surface to total depth.

R. “Well workover incentive tax rate” means the tax rate NMSA 1978, Section 7-29-4 imposes on gas or oil produced from a well workover project.

S. “Well workover project” means a procedure the operator of a gas or oil well undertakes that is intended to increase production from the well and that the division has approved and certified.

T. “Workover” means a procedure the operator undertakes that is intended to increase production but is not routine maintenance and includes:

- (1) re-entry into the well to drill deeper, to sidetrack to a different location, to recompleting for production or to restore production from a zone that has been temporarily abandoned;
- (2) recompleting by re-perforation of a zone from which gas or oil has been produced or by perforation of a different zone;
- (3) repair or replacement of faulty or damaged casing or related downhole equipment;
- (4) fracturing, acidizing or installing compression equipment; or
- (5) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well.

[19.15.6.7 NMAC - Rp, 19.15.1.30 NMAC, 19.15.1.31 NMAC; 19.15.1.32 NMAC, and 19.15.1.33 NMAC, 12/1/08]

19.15.6.8 ENHANCED OIL RECOVERY PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of EOR projects or expansions of EOR projects for the recovered oil tax rate pursuant to the New Mexico Enhanced Oil Recovery Act, NMSA 1978, Sections 7-29A-1 through 7-29A-5.

B. 19.15.6.8 NMAC applies to:

- (1) EOR projects;
- (2) expansions of existing EOR projects;

- (3) the expanded use of enhanced oil recovery technology in existing EOR projects; and
- (4) the change from a secondary recovery project to a tertiary recovery project.

C. To be eligible for the tax rate the operator shall apply for and receive division approval. No project or expansion the division approved prior to March 6, 1992 qualifies.

D. Application.

(1) The operator shall file applications with the division's Santa Fe office. The operator shall also file one copy of the application and attachments with the appropriate division district office.

(2) The operator or its authorized representative having knowledge of the facts in the application shall execute and certify an application, which shall contain:

- (a) the operator's name and address;
- (b) the project area's description including:
 - (i) a plat outlining the project area;
 - (ii) a description of the project area by section, township and range; total acres; and
 - (iii) the name of the subject pool and formation;
- (c) the status of operations in the project area:
 - (i) if unitized, the unit name and the date and number of the division order approving the unit plan of operation;
 - (ii) if an application for approval of a unit plan has been made, the date the application was filed with the division; and
 - (iii) if not unitized, identification of each lease in the project area by lessor, lessee and legal description;
- (d) the method of recovery to be used:
 - (i) identification of the fluids to be injected;
 - (ii) if the division has approved the project, the date and number of the division order; and
 - (iii) if the division has not approved the project, the date the application for approval was filed with the division on form C-108;
- (e) the project description:
 - (i) a list of producing wells;
 - (ii) a list of injection wells;
 - (iii) the capital costs of additional facilities;
 - (iv) the total project cost;
 - (v) the estimated total value of the additional production that will be recovered as a result of the project;
 - (vi) the anticipated date for commencement of injection;
 - (vii) the type of fluid to be injected and the anticipated volumes; and if the application is made for an expansion of an existing project, an explanation of what changes in technology the operator will use or what additional geographic area the operator will add to the project area; and
- (f) production data including graphs, charts and other supporting data showing the production history and production forecast of oil, gas, casinghead gas and water from the project area.

E. Approval and certification.

(1) Project approval. The division shall approve an EOR project and designate the project area for the recovered oil tax rate when the operator proves that:

- (a) the application of the proposed enhanced recovery techniques to the reservoir should result in an increase in the amount of oil that may be ultimately recovered;
- (b) the project area has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of oil; and
- (c) the application is economically and technically reasonable and has not been prematurely filed.

(2) Positive production response certification.

(a) For the recovered oil tax rate to apply to oil produced from an approved qualified EOR project, the operator shall demonstrate a positive production response to the division and file an application for certification of a positive production response with the division's Santa Fe office, which shall include:

- (i) a copy of the division's approval of the EOR project or expansion;
- (ii) a plat of the affected area showing all injection and producing wells with completion dates; and

(iii) production graphs and supporting data demonstrating a positive production response and showing the volumes of water or other substances that have been injected on the lease or unit since initiation of the EOR project.

(b) The director may administratively approve an application and certify a positive production response or, at the director's discretion or at the applicant's request, may set the application for hearing.

(c) The division shall certify that a positive production response occurred and notify the secretary of taxation and revenue; this certification and notice shall set forth the date the certification was made and the date the positive production response occurred provided however:

(i) for a secondary recovery project, the application for certification of a positive production response shall occur not later than five years from the date the division issued the certification of approval for the EOR project or expansion; and

(ii) for a tertiary recovery project, the application for certification of a positive production response must occur not later than seven years from the date the division issues the certification of approval for the EOR project or expansion.

F. Reporting requirements.

(1) The operator of an approved EOR project shall report annually on the project's status and confirm that the project is still a viable EOR project as approved. The operator shall file the report for the year ending May 31 with the division's Santa Fe office. The report shall contain:

(a) the date and number of the division's certification order for the project;

(b) production graphs showing oil, gas and water production;

(c) a graph showing the volumes of fluid injected and the average injection pressures; and

(d) additional data the director deems necessary for continued approval.

(2) The director may set for hearing the continued approval of an EOR project.

G. Termination. When the operator terminates active operation of an EOR project or expansion, the operator shall notify the division and the secretary of taxation and revenue in writing not later than the 30th day after the EOR project's termination or expansion.

[19.15.6.8 NMAC - Rp, 19.15.1.30 NMAC, 12/1/08]

19.15.6.9 PRODUCTION RESTORATION PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of production restoration projects for the production restoration incentive tax exemption pursuant to the Natural Gas and Crude Oil Production Incentive Act, NMSA 1978, Sections 7-29B-1 through 7-29B-6.

B. 19.15.6.9 NMAC applies to gas or oil wells division records show had 30 days or less production in a period of 24 consecutive months beginning on or after January 1, 1993 upon which the operator commenced operations to restore production after June 16, 1995.

C. To be eligible for the exemption, the operator shall apply for and receive division approval. No production restoration project commenced prior to June 16, 1995 qualifies.

D. Applications.

(1) An operator shall file an application with the division within 12 months of the production restoration.

(2) The operator shall file the application on behalf of the project's interest owners.

(3) The operator shall file the application on form C-139 using the division's web-based online application.

E. Approval, certification, notification and hearing.

(1) Project approval and certification.

(a) The division shall approve a project and issue a certification to the operator designating the gas or oil well as a production restoration project when the operator proves that:

(i) after June 16, 1995, the operator has commenced a process to return the well to production; and

(ii) division records show the well had 30 days or less of production in any period of 24 consecutive months beginning on or after January 1, 1993.

(b) The exemption shall apply beginning the first day of the month following the date the operator returned the well to production as certified by the division.

(2) Notification to the secretary of taxation and revenue. The division shall notify the secretary of taxation and revenue of the approval. This notice shall identify the gas or oil well as a production restoration project and certify the date production was restored.

(3) Hearing. The division shall consider applications without a hearing. If the appropriate division district office denies an application, the division upon the applicant's request shall set the application for hearing. An application the appropriate division district office has not acted upon within 30 days from the date it is filed shall be deemed denied.

[19.15.6.9 NMAC - Rp, 19.15.1.31 NMAC, 12/1/08]

19.15.6.10 WELL WORKOVER PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of well workover projects for the well workover incentive tax rate pursuant to the Natural Gas and Crude Oil Production Incentive Act, NMSA 1978, Sections 7-29B-1 through 7-29B-6.

B. 19.15.6.10 NMAC applies to a gas or oil well upon which the operator has commenced a workover after June 16, 1995 that is intended to increase the well's production.

C. To be eligible for the incentive tax rate, the operator shall apply for and receive division approval. No well workover project the operator commences prior to June 16, 1995 qualifies.

D. Application.

(1) The operator shall file the application with the division within 12 months of the workover's completion.

(2) The operator shall file on behalf of the project's interest owners.

(3) The operator shall retain the data used in the application in its files during the period of time the well qualifies for and receives the well workover incentive tax rate.

(4) The operator shall file the application on form C-140 using the division's web-based online application.

E. Approval, certification, notification and hearing.

(1) Project approval and certification.

(a) The division shall approve a workover and issue a certification of approval to the operator designating the gas or oil well as a well workover project when the operator proves that:

(i) the operator has undertaken approved workover procedures on the well that are intended to increase production; and

(ii) the production curve or data tabulation from production data reflects a positive production increase from the workover.

(b) The incentive tax rate shall apply beginning the first day of the month following the date the operator completed the workover as certified by the division.

(2) Notification to the secretary of taxation and revenue. The division shall notify the secretary of taxation and revenue of the approval by identifying the gas or oil well as a well workover project and certifying the date the operator completed the project.

(3) Hearings and requests for additional information.

(a) The division shall consider applications without a hearing. If the appropriate division district office denies an application, the division upon the applicant's request shall set the application for hearing. An application the division district office does not act on within 30 days from the date it is filed is deemed denied.

(b) The division may request additional information from the operator to support an application. When the division requests additional information, the 30-day approval period shall begin to run on the date the operator provides the requested data.

F. Certifications prior to July 1, 1999. Well workover projects the division certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective July 1, 1999.

[19.15.6.10 NMAC - Rp, 19.15.1.32 NMAC, 12/1/08]

19.15.6.11 STRIPPER WELL TAX INCENTIVE:

A. Qualification of stripper well properties for the stripper well incentive tax rates in NMSA 1978, Sections 7-29-4 and 7-31-4, requires division certification. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

B. 19.15.6.11 NMAC applies to a property that the division certifies as a stripper well property after June 30, 1999.

C. Certification, notification and hearing.

- (1) The division shall determine which wells qualify as stripper well properties.
 - (2) Upon certification of properties as stripper well properties, the division shall notify the operator and the secretary of taxation and revenue of that certification.
 - (3) The operator shall notify the interest owners of the certification of the property as a stripper well property.
 - (4) An operator may make a written request that the division reevaluate a property for stripper well status.
 - (5) If the division denies stripper well certification to a property, the division upon the operator's request shall set the matter for hearing.
- [19.15.6.11 NMAC - Rp, 19.15.1.33 NMAC, 12/1/08]

HISTORY of 19.15.6 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 30, 31, 32, and 33) (filed 04/27/2001), were replaced by 19.15.6 NMAC, Tax Incentives, effective 12/1/08.