

# Renewable Energy Laws

Republic Act 9513 - Renewable Energy Act of 2008  
Republic Act 9367 - Biofuels Act of 2006



**REPUBLIC ACT NO. 9513**

**AN ACT PROMOTING THE DEVELOPMENT,  
UTILIZATION AND COMMERCIALIZATION  
OF RENEWABLE ENERGY RESOURCES  
AND FOR OTHER PURPOSES**

— и от кирзича.

Да что тут скажешь? Глядя  
на большую группу из семидесяти  
девятнадцати человек, я не мог не  
вспомнить японский концепт

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[ REPUBLIC ACT NO. 9513 ]

AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

CHAPTER I  
TITLE AND DECLARATION OF POLICIES

SECTION 1. *Short Title.* — This Act shall be known as the "Renewable Energy Act of 2008". It shall hereinafter be referred to as the "Act".

SEC. 2. *Declaration of Policies.* — It is hereby declared the policy of the State to:

- (a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;
- (b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;
- (c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and
- (d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

**SEC. 3. Scope.** – This Act shall establish the framework for the accelerated development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization.

**SEC. 4. *Definition of Terms.*** – As used in this Act, the following terms are herein defined.

- (a) "Biomass energy systems" refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to this Act.

- (b) "Biomass resources" refers to non-fossilized, biodegradable organic material originating from naturally occurring or cultured plants, animals and micro-organisms, including agricultural products, by-products and residues such

as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can be used in bioconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials.

(c) "Board of Investments (BOI)" refers to an attached agency of the Department of Trade and Industry created under Republic Act No. 5186, as amended.

(d) "Co-generation systems" refers to facilities which produce electrical and/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy.

(e) "Department of Energy (DOE)" refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in this Act.

(f) "Department of Environment and Natural Resources (DENR)" refers to the government agency created pursuant to Executive Order No. 192.

(g) "Department of Finance (DOF)" refers to the government agency created pursuant to Executive Order No. 127, as amended.

(h) "Department of Science and Technology (DOST)" refers to the government agency created pursuant to Executive Order No. 128.

(i) "Department of Trade and Industry (DTI)" refers to the government agency created pursuant to Executive Order No. 133.

(j) "Distributed generation" refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed one hundred kilowatts (100 kW) in capacity.

(k) "Distribution of Electricity" refers to the conveyance of electricity by a Distribution Utility through its distribution system pursuant to the provision of Republic Act No. 9136.

(l) "Distribution Utility (DU)" refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136.

(m) "Electric Power Industry Reform Act of 2001" or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation (NPC).

(n) "Energy Regulatory Commission (ERC)" refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136.

(o) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.

(p) "Generation Facility" refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water.

(q) "Geothermal energy" as used herein and in the context of this Act, shall be considered renewable and the provisions of this Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system.

(r) "Geothermal Energy Systems" refers to machines or other equipment that converts geothermal energy into useful power.

(s) "Geothermal Resources" refers to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam,

hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them.

(t) "Government Share" refers to the amount due the National Government and local government units from the exploitation, development, and utilization of naturally-occurring renewable energy resources such as geothermal, wind, solar, ocean and hydro excluding biomass.

(u) "Green Energy Option" refers to the mechanism to empower end-users to choose renewable energy in meeting their energy requirements.

(v) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136.

(w) "Hybrid Systems" refers to any power or energy generation facility which makes use of two (2) or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydro/fossil fuel systems, integrated solar/biomass systems, integrated wind/fossil fuel systems, with a minimum of ten (10) megawatts or ten percent (10%) of the annual energy output provided by the Renewable Energy (RE) component.

(x) "Hydroelectric Power Systems" or "Hydropower Systems" refers to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator.

(y) "Hydroelectric Power Development" or "Hydropower Development" refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others.

(z) "Hydroelectric Power Resources" or "Hydropower Resources" refers to water resources found technically feasible

for development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies.

(aa) "Local government share" refers to the amount due the local government units from the exploitation, development and utilization of naturally-occurring renewable energy resources.

(bb) "Micro-scale Project" refers to an RE project with capacity not exceeding one hundred kilowatts (100 kW).

(cc) "Missionary Electrification" refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels.

(dd) "National government share" refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring renewable energy resources.

(ee) "National Power Corporation (NPC)" refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136.

(ff) "National Transmission Corporation (TRANSCO)" refers to the corporation created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high voltage transmission facilities, including grid interconnection and ancillary services.

(gg) "Net-Metering" refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid.

(hh) "Non-power applications" refers to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport.

- (ii) "Ocean Energy Systems" refers to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy.
- (jj) "Off-Grid Systems" refers to electrical systems not connected to the wires and related facilities of the On-Grid Systems of the Philippines.
- (kk) "On-Grid System" refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines.
- (ll) "Philippine Electricity Market Corporation (PEMC)" refers to the Corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEMC Board.
- (mm) "Philippine National Oil Company (PNOC)" refers to the government agency created pursuant to Presidential Decree No. 334, as amended.
- (nn) "Power applications" refers to renewable energy systems or facilities that produce electricity.
- (oo) "Registered RE Developer" refers to a RE Developer duly registered with the DOE.
- (pp) "Renewable Energy (Systems) Developers" or "RE Developers" refers to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities.
- (qq) "Renewable Energy Market (REM)" refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made.
- (rr) "Renewable Energy Policy Framework (REPF)" refers to the long-term policy developed by the DOE which identifies among others, the goals and targets for the development and utilization of renewable energy in the country.

(ss) "Renewable Portfolio Standards (RPS)" refer to a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible RE resources.

(tt) "Renewable Energy Service (Operating) Contract (RE Contract)" refers to the service agreement between the Government, through the DOE, and RE Developer over a period in which the RE Developer has the exclusive right to a particular RE area for exploration and development. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to operation phase shall refer to the development stage.

(uu) "Renewable Energy Resources (RE Resources)" refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies.

(vv) "Renewable Energy Systems (RE Systems)" refers to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc.

(ww) "Rural Electrification" refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside.

(xx) "Solar Energy" refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy.

(yy) "Solar Energy Systems" refers to energy systems which convert solar energy into thermal or electrical energy.

(zz) "Small Power Utilities Group (SPUG)" refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function.

(aaa) "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users.

(bbb) "Transmission of Electricity" refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136.

(ccc) "Wind Energy" refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy.

(ddd) "Wind Energy Systems" refers to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy.

(eee) "Wholesale Electricity Spot Market (WESM)" refers to the wholesale electricity spot market created pursuant to Republic Act No. 9136.

## CHAPTER II ORGANIZATION

SEC. 5. *Lead Agency.* – The DOE shall be the lead agency mandated to implement the provisions of this Act.

## CHAPTER III ON-GRID RENEWABLE ENERGY DEVELOPMENT

SEC. 6. *Renewable Portfolio Standard (RPS).* – All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be

imposed on a per grid basis within one (1) year from the effectivity of this Act.

**SEC. 7. Feed-In Tariff System.** – To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to, the following:

(a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;

(b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;

(c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;

(d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

**SEC. 8. Renewable Energy Market (REM).** – To facilitate compliance with Section 6 of this Act, the DOE shall establish the REM and shall direct PEMC to implement changes to the WESM Rules in order to incorporate the rules specific to the operation of the REM under the WESM.

The PEMC shall, under the supervision of the DOE, establish a Renewable Energy Registrar within one (1) year from the effectivity of this Act and shall issue, keep and verify RE Certificates corresponding to energy generated from eligible RE facilities. Such certificates will be used for compliance with the RPS. For this purpose, a transaction fee, equal to half of what PEMC currently charges regular WESM players, may be imposed by PEMC.

**SEC. 9. *Green Energy Option.*** – The DOE shall establish a Green Energy Option program which provides end-users the option to choose RE resources as their sources of energy. In consultation with the NREB, the DOE shall promulgate the appropriate implementing rules and regulations which are necessary, incidental or convenient to achieve the objectives set forth herein.

Upon the determination of the DOE of its technical viability and consistent with the requirements of the green energy option program, end-users may directly contract from RE facilities their energy requirements distributed through their respective distribution utilities.

Consistent herewith, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green Energy Option. The end-user who will enroll under the energy option program should be informed by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.

**SEC. 10. *Net-metering for Renewable Energy.*** – Subject to technical considerations and without discrimination and upon request by distribution end-users, the distribution utilities shall enter into net-metering agreements with qualified end-users who will be installing the RE system.

The ERC, in consultation with the NREB and the electric power industry participants, shall establish net-metering interconnection standards and pricing methodology and other commercial arrangements necessary to ensure success of the net-metering for renewable energy program within one (1) year upon the effectivity of this Act.

The distribution utility shall be entitled to any Renewable Energy Certificate resulting from net-metering arrangement with the qualified end-user who is using an RE resource to provide energy and the distribution utility shall be able to use this RE certificate in compliance with its obligations under RPS.

The DOE, ERC, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to

provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Net-metering for Renewable Energy program, consistent with the Grid and Distribution Codes.

*SEC. 11. Transmission and Distribution System Development.* – TRANSCO or its successors-in-interest or its buyer/concessionaire and all DUs, shall include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans: *Provided*, That such facilities are approved by the DOE. The connection facilities of RE power plants, including the extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections.

#### CHAPTER IV OFF-GRID RENEWABLE ENERGY DEVELOPMENT

*SEC. 12. Off-Grid Areas.* – Within one (1) year from the effectivity of this Act, NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation upon recommendation of the NREB from available RE resources in the area concerned, as may be determined by the DOE.

As used in this Act, successors-in-interest refer to entities deemed technically and financially capable to serve/take over existing NPC-SPUG areas.

Eligible RE generation in off-grid and missionary areas shall be eligible for the provision of RE Certificates defined in Section 8 of this Act. In the event there are no viable RE resources in the off-grid and missionary areas, the relevant electricity supplier in the off-grid and missionary areas shall still be obligated under Section 6 of this Act.

#### CHAPTER V GOVERNMENT SHARE

*SEC. 13. Government Share.* – The government share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE resource

developers resulting from the sale of renewable energy produced and such other income incidental to and arising from the renewable energy generation, transmission, and sale of electric power except for indigenous geothermal energy, which shall be at one and a half percent (1.5%) of gross income.

To further promote the development of RE projects, the government hereby waives its share from the proceeds of micro-scale projects for communal purposes and non-commercial operations, which are not greater than one hundred kilowatts (100 kW).

## CHAPTER VI ENVIRONMENTAL COMPLIANCE

SEC. 14. *Compliance with Environmental Regulations.* – All RE explorations, development, utilization, and RE systems operations shall be conducted in accordance with existing environmental regulations as prescribed by the DENR and/or any other concerned government agency.

## CHAPTER VII GENERAL INCENTIVES

SEC. 15. *Incentives for Renewable Energy Projects and Activities.* – RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

(a) Income Tax Holiday (ITH) – For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the National Government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided, further*, That the entitlement period for additional

investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) Duty-free Importation of RE Machinery, Equipment and Materials – Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: *Provided, however,* That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further.* That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts is made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided,* That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

- (i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;
- (ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
- (iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and
- (iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties.

(c) Special Realty Tax Rates on Equipment and Machinery – Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant.

(d) Net Operating Loss Carry-Over (NOLCO) – The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided, however*, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO.

(e) Corporate Tax Rate – After seven (7) years of ITH, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337: *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation – If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided*, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

- i) Declining balance method; and
- ii) Sum-of-the years digit method.

(g) Zero Percent Value-Added Tax Rate – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification – A RE developer, established after the effectiveness of this Act, shall be entitled to a cash generation-based incentive per kilowatt-hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification.

(i) Tax Exemption of Carbon Credits – All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

(j) Tax Credit on Domestic Capital Equipment and Services – A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided*, That prior approval by the DOE was obtained by the local

manufacturer: *Provided, further, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.*

**SEC. 16. *Environmental Compliance Certificate (ECC).*** – Notwithstanding Section 17 (b)(3)(iii) of Republic Act No. 7160, it would be sufficient for the renewable energy developer to secure the Environmental Compliance Certificate (ECC) from the corresponding regional office of the DENR.

**SEC. 17. *Exemption from the Universal Charge.*** – Power and electricity generated through the RES for the generator's own consumption and/or for free distribution in the off-grid areas shall be exempted from the payment of the universal charge provided for under Section 34 of Republic Act No. 9136.

**SEC. 18. *Payment of Transmission Charges.*** – A registered renewable energy developer producing power and electricity from an intermittent RE resource may opt to pay the transmission and wheeling charges of TRANSCO or its successors-in-interest on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the grid.

**SEC. 19. *Hybrid and Cogeneration Systems.*** – The tax exemptions and/or incentives provided for in Section 15 of this Act shall be availed of by registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy: *Provided, however, That the tax exemptions and incentives shall apply only to the equipment, machinery and/or devices utilizing RE resources.*

**SEC. 20. *Intermittent RE Resources.*** – TRANSCO or its successors-in-interest, in consultation with stakeholders, shall determine the maximum penetration limit of the Intermittent RE-based power plants to the Grid, through technical and economic analysis. Qualified and registered RE generating units with intermittent RE resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch. All provisions under the WESM Rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE resources shall be deemed amended or modified. The PEMC and TRANSCO or its successors-in-interest shall implement technical mitigation

and improvements in the system in order to ensure safety and reliability of electricity transmission.

As used in this Act, RE generating unit with intermittent RE resources refers to a RE generating unit or group of units connected to a common connection point whose RE resource is location-specific, naturally difficult to precisely predict the availability of RE resource thereby making the energy generated variable, unpredictable and irregular and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydro or ocean energy.

**SEC. 21. *Incentives for RE Commercialization.*** – All manufacturers, fabricators and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with the DOST, the DOF and the DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.

Consistent with Article 7, item (20) of Executive Order No. 226, the registration with the BOI, as provided for in Section 15 and Section 21 of this Act, shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities based on the implementing rules and regulations that will be developed by the DOE. It is further mandated that the applications for registration will be positively acted upon by the BOI on the basis of the accreditation issued by the DOE.

The Renewable Energy Sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan, unless declared otherwise by law. As such, all entities duly accredited by the DOE under this Act shall be entitled to all the incentives provided herein.

(a) **Tax and Duty-free Importation of Components, Parts and Materials** – All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value-added tax (VAT): *Provided, however.* That the said components, parts and materials are: (i) not manufactured domestically in reasonable quantity and quality at competitive prices; (ii) directly and actually needed and shall be used exclusively in

the manufacture/fabrication of RE equipment; and (iii) covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities: *Provided, further,* That prior approval of the DOE was obtained before the importation of such components, parts and materials.

(b) Tax Credit on Domestic Capital Components, Parts and Materials – A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax (VAT) and custom duties that would have been paid on the components, parts and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier duly recognized and accredited by the DOE who purchases RE components, parts and materials from a domestic manufacturer: *Provided,* That such components, and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator and supplier for the manufacture, fabrication and sale of the RE equipment: *Provided, further,* That prior approval by the DOE was obtained by the local manufacturer.

(c) Income Tax Holiday and Exemption – For seven (7) years starting from the date of recognition/accreditation, an RE manufacturer, fabricator and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts and services.

(d) Zero-rated Value-Added Tax Transactions – All manufacturers, fabricators and suppliers of locally produced renewable energy equipment shall be subject to zero-rated value-added tax on its transactions with local suppliers of goods, properties and services.

SEC. 22. *Incentives for Farmers Engaged in the Plantation of Biomass Resources.* – For a period of ten (10) years after the effectivity of this Act, all individuals and entities engaged in the plantation of crops and trees used as biomass resources such as, but not limited to, jatropha, coconut, and sugarcane, as certified by the Department of Energy, shall be entitled to duty-free importation and be exempted from value-added tax (VAT) on all types of agricultural inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers,

trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulkhandling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment.

**SEC. 23. *Tax Rebate for Purchase of RE Components.***

– To encourage the adoption of RE technologies, the DOF, in consultation with the DOST, the DOE, and the DTI, shall provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. The DOF shall also prescribe the appropriate period for granting the tax rebates.

**SEC. 24. *Period of Grant of Fiscal Incentives.*** – The fiscal incentives granted under Section 15 of this Act shall apply to all RE capacities upon the effectivity of this Act. The NREB, in coordination with the DOE, shall submit a yearly report on the implementation of this Act to the Philippine Congress, through the Joint Congressional Power Commission, every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of its renewable energy resources in the context of its energy security and climate change imperatives. This shall serve as basis for the Joint Congressional Power Commission's review of the incentives as provided for in this Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

**SEC. 25. *Registration of RE Developers and Local Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment.*** – RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the DOE, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

**SEC. 26. *Certification from the Department of Energy (DOE).*** – All certifications required to qualify RE developers

to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.

The DOE, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: *Provided*, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.

## CHAPTER VIII

### GENERAL PROVISIONS

SEC. 27. *Creation of the National Renewable Energy Board (NREB).* – The NREB is hereby created. It shall be composed of a Chairman and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric cooperatives, electricity suppliers and nongovernmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The Chairman shall, within one (1) month from the effectivity of this Act, convene the NREB.

The NREB shall be assisted by a Technical Secretariat from the Renewable Energy Management Bureau of the DOE, created under Section 32 hereof, and shall directly report to the Office of the Secretary or the Undersecretary of the Department, as the case may be, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the Renewable Energy Management Bureau shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and to existing civil service rules and regulations.

The NREB shall have the following powers and functions:

- (a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;
- (b) Recommend specific actions to facilitate the implementation of the National Renewable Energy Program (NREP) to be executed by the DOE and other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;
- (c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;
- (d) Oversee and monitor the utilization of the Renewable Energy Trust Fund created pursuant to Section 28 of this Act and administered by the DOE; and
- (e) Perform such other functions, as may be necessary, to attain the objectives of this Act.

SEC. 28. *Renewable Energy Trust Fund (RETF).* — A Renewable Energy Trust Fund is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be exclusively used to:

- (a) Finance the research, development, demonstration, and promotion of the widespread and productive use of RE systems for power and non-power applications, as well as to provide funding for research and development institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;
- (b) Support the development and operation of new RE resources to improve their competitiveness in the market: *Provided*, That the grant thereof shall be done through a competitive and transparent manner;

- (c) Conduct nationwide resource and market assessment studies for the power and non-power applications of renewable energy systems;
- (d) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities and organizations which can extend the promotion and dissemination of RE benefits to the national and local levels; and
- (e) Fund such other activities necessary or incidental to the attainment of the objectives of this Act.

Use of the fund may be through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of this Act: *Provided*, That the use or allocation thereof shall, as far as practicable, be done through a competitive and transparent manner.

The RETF shall be funded from:

- (a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;
- (b) One and a half percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office;
- (c) One and a half percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation;
- (d) One and a half percent (1.5%) of the net annual dividends remitted to the National Treasury of the Philippine National Oil Company and its subsidiaries;
- (e) Contributions, grants and donations: *Provided*, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of the National Internal Revenue Code. Towards this end, the Bureau of Internal Revenue (BIR) shall assist the DOE in formulating the rules and regulations to implement this provision;

- (f) One and a half percent (1.5%) of the proceeds of the Government share collected from the development and use of indigenous non-renewable energy resources;
- (g) Any revenue generated from the utilization of the RETF; and
- (h) Proceeds from the fines and penalties imposed under this Act.

**SEC. 29. *Financial Assistance Program.*** – Government financial institutions such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Phil-Exim Bank and other government financial institutions shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization and commercialization of RE projects as duly recommended and endorsed by the DOE.

**SEC. 30. *Adoption of Waste-To-Energy Technologies.*** – The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems. The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this Act, waste-to-energy technologies shall refer to systems which convert biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

**SEC. 31. *Incentives for RE Host Communities/LGUs.*** – Eighty percent (80%) of the share from royalty and/or government share of RE host communities/LGUs from RE projects and activities shall be used directly to subsidize the electricity consumption of end-users in the RE host communities/LGUs whose monthly consumption do not exceed one hundred kilowatt hours (100 kWh). The subsidy may be in the form of rebates, refunds and/or any other form as may be determined by the DOE, the DOF and the ERC, in coordination with the NREB.

The DOE, the DOF and the ERC, in coordination with the NREB and in consultation with the distribution utilities, shall promulgate the mechanisms to implement this provision within six (6) months from the effectivity of this Act.

**SEC. 32. *Creation of the Renewable Energy Management Bureau.*** – For the purpose of implementing the provisions of this Act, a Renewable Energy Management Bureau (REMB) under the DOE is hereby established, and the existing Renewable Energy Management Division of the Energy Utilization Management Bureau of the DOE, whose plantilla shall form the nucleus of REMB, is hereby dissolved. The organizational structure and staffing complement of the REMB shall be determined by the Secretary of the DOE, in consultation with the DBM, in accordance with existing civil service rules and regulations. The budgetary requirements necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the funding for the REMB shall be included in the annual General Appropriations Act.

The REMB shall have the following powers and functions:

- (a) Implement policies, plans and programs related to the accelerated development, transformation, utilization and commercialization of renewable energy resources and technologies;
- (b) Develop and maintain a centralized, comprehensive and unified data and information base on renewable energy resources to ensure the efficient evaluation, analysis, and dissemination of data and information on renewable energy resources, development, utilization, demand and technology application;
- (c) Promote the commercialization/application of renewable energy resources including new and emerging technologies for efficient and economical transformation, conversion, processing, marketing and distribution to end users;
- (d) Conduct technical research, socioeconomic and environmental impact studies of renewable energy projects for the development of sustainable renewable energy systems;
- (e) Supervise and monitor activities of government and private companies and entities on renewable energy resources

development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;

(f) Provide information, consultation and technical training and advisory services to developers, practitioners and entities involved in renewable energy technology and develop renewable energy technology development strategies; and

(g) Perform other functions that may be necessary for the effective implementation of this Act and the accelerated development and utilization of the renewable energy resources in the country.

## CHAPTER IX FINAL PROVISIONS

### SEC. 33. *Implementing Rules and Regulations (IRR).*

– Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

SEC. 34. *Congressional Oversight.* – Upon the effectivity of this Act, the Joint Congressional Power Commission created under Section 62 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" shall exercise oversight powers over the implementation of this Act.

SEC. 35. *Prohibited Acts.* – The following acts shall be prohibited:

(a) Noncompliance or violation of the RPS rules;

(b) Willful refusal to undertake net metering arrangements with qualified distribution grid users;

(c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under this Act;

(d) Failure and willful refusal to issue the single certificate referred to in Section 26 of this Act; and

(e) Noncompliance with the established guidelines that the DOE will adopt for the implementation of this Act.

SEC. 36. *Penalty Clause.* – Any person who willfully commits any of the prohibited acts enumerated under this Act, shall be imposed with the penalties provided herein. Any person, who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another, shall be liable in the same manner as the principal.

In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The commission of any prohibited acts provided for under Section 35, upon conviction thereof, shall suffer the penalty of imprisonment of one (1) year to five (5) years, or a fine ranging from a minimum of One hundred thousand pesos (₱100,000.00) to One hundred million pesos (₱100,000,000.00), or twice the amount of damages caused or costs avoided for noncompliance, whichever is higher, or both, upon the discretion of the court.

The DOE is further empowered to impose administrative fines and penalties for any violation of the provisions of this Act, its IRR and other issuances relative to this Act.

This is without prejudice to the penalties provided for under existing environmental regulations prescribed by the DENR and/or any other concerned government agency.

SEC. 37. *Appropriations.* – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

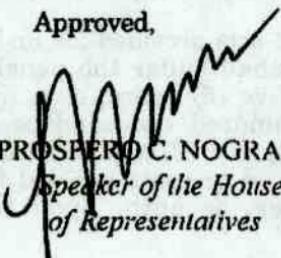
SEC. 38. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain valid and subsisting.

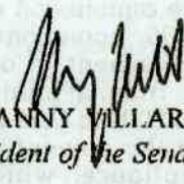
SEC. 39. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Consistent with the foregoing paragraph and Section 13 of this Act, Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10(1) of Republic Act No. 7156, otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%) are hereby repealed, modified or amended accordingly.

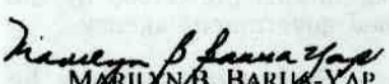
**SEC. 40. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

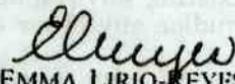
Approved,

  
PROSPERO C. NOGRALES  
*Speaker of the House  
of Representatives*

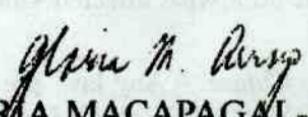
  
MANNY VILLAR  
*President of the Senate*

This Act which is a consolidation of Senate Bill No. 2046 and House Bill No. 4193 was finally passed by the Senate and the House of Representatives on October 8, 2008.

  
MARILYN B. BARUA-YAP  
*Secretary General  
House of Representatives*

  
EMMA LIRIO-KEYES  
*Secretary of the Senate*

Approved: DEC 16 2008

  
GLORIA MACAPAGAL-ARROYO  
*President of the Philippines*

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**RULES AND REGULATIONS IMPLEMENTING  
REPUBLIC ACT NO. 9513**

Department of Energy  
Circular No. 2009-05-0008

# СУДИТЕ СВОИМ ГЛАСОМ СИЯНИЕ СЛЕДОВАНИЯ ПОДДЕРЖАТЬ

СОВЕТСКОЕ ПОДДЕРЖАТЬ  
СОВЕТСКОЕ ПОДДЕРЖАТЬ

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Republic of the Philippines  
**DEPARTMENT OF ENERGY**

DEPARTMENT CIRCULAR NO. DC2009-05-0008

**RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513**

Pursuant to Section 33 of Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008," the Department of Energy, in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies, and all Renewable Energy (RE) stakeholders, hereby issues, adopts and promulgates the following implementing rules and regulations.

**PART I. GENERAL PROVISIONS**

**RULE 1. TITLE, DECLARATION OF POLICIES AND DEFINITION OF TERMS**

**SECTION 1. Title and Scope**

This Department Circular shall be known as the "Implementing Rules and Regulations (IRR) of Republic Act No. 9513," otherwise known as the "Renewable Energy Act of 2008," and hereinafter referred to as the "Act" in this IRR.

The scope of this IRR is to provide rules, regulations, and guidelines for the:

- Exploration, development, utilization and commercialization of renewable energy resources such as biomass, solar, wind, hydropower, geothermal and ocean energy sources, including application of hybrid systems and other emerging renewable energy technologies in the Philippines for the generation, transmission, distribution, sale and use of electricity, and fuel generated from renewable energy resources;
- Establishment of the framework for the accelerated sustainable development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization;
- Clarification of specific provisions of the Act and the responsibilities and functions of various government agencies, institutions, government-owned and controlled corporations and local government units, the private sector and other stakeholders, and their relationships with the National Renewable Energy Board (NREB); and
- Direction and support for existing and new renewable energy developers and manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.

**SEC. 2. Declaration of Policies**

It is hereby declared the policy of the State to:

- Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems, to achieve energy self-reliance,

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DEPARTMENT OF ENERGY  
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through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

- (b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;
- (c) Encourage the sustainable development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the promotion of health and safety, and the protection of the environment;
- (d) Promote the full development and use of renewable energy as a tool to address the cross-cutting issues of gender, poverty, and economic development; and
- (e) Establish the necessary infrastructure and mechanisms to carry out the mandates specified in the Act and other existing laws.

### **SEC. 3. Definition of Terms**

As used in the Act and this IRR, the following terms shall be defined as follows:

- (a) "**Ancillary Services**" refers to support services which are necessary to support the transmission capacity and transmission of energy from resources to loads towards maintaining power quality, reliability, and security of the grid through frequency regulating and contingency reserves, reactive power support, black start capability, and other services as may be determined by the Energy Regulatory Commission (ERC);
- (b) "**Biomass Energy Systems**" refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to the Act;
- (c) "**Biomass Resources**" refers to non-fossilized, biodegradable organic materials originating from naturally-occurring or cultured plants or parts thereof, animals and micro-organisms, including agricultural products, by-products and residues such as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, wood chips/residues, forest residues, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can be used in biocconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials;
- (d) "**Board of Investments**" (*BOI*) refers to an attached agency of the Department of Trade and Industry (DTI) created under Republic Act No. 5186, as amended;
- (e) "**Co-Generation Systems**" refers to facilities which produce electrical and/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;



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*[Signature]*

- (f) "**Department of Energy**" (**DOE**) refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in the Act;
- (g) "**Department of Environment and Natural Resources**" (**DENR**) refers to the government agency created pursuant to Executive Order No. 192;
- (h) "**Department of Finance**" (**DOF**) refers to the government agency created pursuant to Executive Order No. 127, as amended;
- (i) "**Department of Science and Technology**" (**DOST**) refers to the government agency created pursuant to Executive Order No. 128;
- (j) "**Department of Trade and Industry**" (**DTI**) refers to the government agency created pursuant to Executive Order No. 133;
- (k) "**Distributed Generation**" refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed 100 kilowatts in capacity;
- (l) "**Distribution of Electricity**" refers to the conveyance of electricity by a distribution utility through its distribution system pursuant to the provisions of Republic Act No. 9136;
- (m) "**Distribution Utility**" (**DU**) refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136;
- (n) "**Electric Power Industry Reform Act (EPIRA) of 2001**" or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation (NPC);
- (o) "**Energy Regulatory Commission**" (**ERC**) refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136;
- (p) "**Generation Company**" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;
- (q) "**Generation Facility**" refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;
- (r) "**Geothermal Energy**" as used herein and in the context of the Act, shall be considered renewable and the provisions of the Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;
- (s) "**Geothermal Energy Systems**" refers to machines or other equipment that converts Geothermal Energy into useful power;
- (t) "**Geothermal Resources**" refers to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them;

- (u) "**Government Share**" refers to the amount due the national government and local government units (LGUs) from the exploitation, development, and utilization of naturally-occurring RE resources such as geothermal, wind, solar, ocean, and hydropower, excluding biomass;
- (v) "**Green Energy Option**" refers to the mechanism to empower end-users to choose renewable energy in meeting their energy requirements;
- (w) "**Grid**" refers to the high voltage backbone system of interconnected transmission lines, sub-stations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136;
- (x) "**Host LGU**" refers to the local government unit where the energy resource and/or energy generating facility is located;
- (y) "**Hybrid Systems**" refers to any power or energy generation facility which makes use of two or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydropower/fossil fuel systems, integrated solar/biomass systems, integrated wind/fossil fuel systems, with a minimum of ten megawatts (10 MW) or ten percent (10%) of the annual energy output provided by the RE component;
- (z) "**Hydroelectric Power Development**" or "**Hydropower Development**" refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others;
- (aa) "**Hydroelectric Power Resources**" or "**Hydropower Resources**" refers to water resources found technically feasible for the development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;
- (bb) "**Hydroelectric Power Systems**" or "**Hydropower Systems**" refers to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator;
- (cc) "**Local Government**" refers to the political subdivisions established by or in accordance with the Philippine Constitution pursuant to Executive Order No. 292 or Republic Act No. 7160, which include the province, city, municipality and barangay;
- (dd) "**Local Government Share**" refers to the amount due the local government units (LGUs) from the exploitation, development and utilization of naturally-occurring renewable energy resources;
- (ee) "**Micro-Scale Project**" refers to an RE project with capacity not exceeding one hundred kilowatts (100kW);
- (ff) "**Missionary Electrification**" refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels;
- (gg) "**National Government**" refers to the entire machinery of the central government, as distinguished from the different forms of local governments pursuant to Executive Order No. 292 or the Administrative Code of 1987;

(hh) ***National Government Share*** refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring RE resources;

(ii) ***National Power Corporation*** (***NPC***) refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136;

(jj) ***National Transmission Corporation*** (***TRANSCO***) refers to the corporation created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high-voltage transmission facilities, including grid interconnection and ancillary services;

(kk) ***Net-Metering*** refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid;

(ll) ***Non-Power Applications*** refers to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for other applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;

(mm) ***Ocean Energy Systems*** refers to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy;

(nn) ***Off-Grid Systems*** refers to electrical systems not connected to the wires and related facilities of the on-grid systems of the Philippines;

(oo) ***On-Grid System*** refers to the electrical system composed of interconnected transmission lines, distribution lines, sub-stations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines;

(pp) ***Philippine Electricity Market Corporation*** (***PEMC***) refers to the corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEMC Board;

(qq) ***Philippine National Oil Company*** (***PNOC***) refers to the government agency created pursuant to Presidential Decree No. 334, as amended;

(rr) ***Power Applications*** refers to renewable energy systems or facilities that produce electricity;

(ss) ***Registered RE Developer*** refers to an RE developer duly registered with the DOE;

(tt) ***Renewable Energy (RE) Certificate*** refers to a certificate issued by the RE Registrar to electric power industry participants showing the energy sourced, produced, and sold or used. RE certificates may be traded in the RE Market in complying with the RPS;

(uu) ***Renewable Energy (Systems) Developers*** or ***RE Developers*** refers to individual/s or juridical entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine laws and engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities. It shall include existing entities engaged in the exploration,

development and/or utilization of RE resources, or the generation of electricity from RE resources, or both;

(vv) **"Renewable Energy Market" (REM)** refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made;

(ww) **"Renewable Energy Policy Framework" (REPF)** refers to the long-term policy developed by the DOE which identifies, among others, the goals and targets for the development and utilization of renewable energy in the country;

(xx) **"Renewable Energy (RE) Registrar"** refers to an entity that issues, keeps and verifies RE certificates corresponding to energy generated from eligible RE facilities and sold to or used by end-users;

(yy) **"Renewable Energy Service/Operating Contract (RE Contract)"** refers to the service agreement between the Government, through the President or the DOE, and an RE Developer over an appropriate period as determined by the DOE in which the RE Developer has the exclusive right to explore and develop a particular RE area. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to the operation phase shall refer to the development stage;

(zz) **"Renewable Energy Resources" (RE Resources)** refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;

(aaa) **"Renewable Energy Systems" (RE Systems)** refers to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc;

(bbb) **"Renewable Portfolio Standards" (RPS)** refers to a market-based policy that requires electric power industry participants, including suppliers, to source an agreed portion of their energy supply from eligible RE Resources;

(ccc) **"Rural Electrification"** refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;

(ddd) **"Solar Energy"** refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy;

(eee) **"Solar Energy Systems"** refers to energy systems which convert solar energy into thermal or electrical energy;

(fff) **"Small Power Utilities Group" (SPUG)** refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function;

(ggg) **"Supplier"** refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

- (hh) "**Transmission of Electricity**" refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136;
- (ii) "**Wind Energy**" refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy;
- (jj) "**Wind Energy Systems**" refers to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy; and
- (kk) "**Wholesale Electricity Spot Market**" (**WESM**) refers to the wholesale electricity spot market established by the DOE pursuant to Republic Act No. 9136.

## **PART II. RENEWABLE ENERGY INDUSTRY DEVELOPMENT AND OPERATIONS**

### **RULE 2. RENEWABLE ENERGY POLICY MECHANISMS**

#### **SEC. 4. Renewable Portfolio Standards**

The Renewable Portfolio Standards (RPS) is a policy which places an obligation on electric power industry participants such as generators, distribution utilities, or suppliers to source or produce a specified fraction of their electricity from eligible RE Resources, as may be determined by NREB.

- (a) **Purpose:** The purpose of the RPS is to contribute to the growth of the renewable energy industry by diversifying energy supply and to help address environmental concerns of the country by reducing greenhouse gas emissions.
- (b) **Mandate:** RPS shall be imposed on the electric power industry participants, serving on-grid areas, on a per grid basis, as may be determined by the NREB.
- (c) **Formulation of RPS Rules:** The NREB shall, in consultation with appropriate government agencies and in accordance with the National Renewable Energy Program (NREP), set the minimum percentage of generation from eligible RE Resources based on the sustainability of the RE Resources, the available capacity of the relevant grids, the available RE Resources within the specific grid, and such other relevant parameters. The NREB shall, within one (1) year from the effectivity of the Act, determine to which sector the RPS shall be imposed on a per grid basis, in accordance with the NREP.

Upon the recommendation of the NREB, the DOE shall, within six (6) months from the effectivity of this IRR, formulate and promulgate the RPS Rules which shall include, but not be limited to, the following:

- (1) Types of RE Resources, and identification and certification of generating facilities using said resources that shall be required to comply with the RPS obligations;
- (2) Yearly minimum RPS requirements upon the establishment of the RPS Rules;
- (3) Annual minimum incremental percentage of electricity sold by each RPS-mandated electricity industry participant which is required to be sourced

from eligible RE Resources and which shall, in no case, be less than one percent (1%) of its annual energy demand over the next ten (10) years;

(4) Technical feasibility and stability of the transmission and/or distribution grid systems; and

(5) Means of compliance by RPS-mandated electricity industry participant of the minimum percentage set by the government to meet the RPS requirements including direct generation from eligible RE Resources, contracting the energy sourced from eligible RE Resources, or trading in the REM.

#### **SEC. 5. Feed-in Tariff (FiT) System**

The Feed-in Tariff system is a scheme that involves the obligation on the part of electric power industry participants to source electricity from RE generation at a guaranteed fixed price applicable for a given period of time, which shall in no case be less than twelve (12) years, to be determined by the ERC.

(a) ***Purpose:*** This system shall be adopted to accelerate the development of emerging RE Resources through a fixed tariff mechanism.

(b) ***Mandate:*** A FiT system shall be mandated for wind, solar, ocean, run-of-river hydropower, and biomass energy resources.

(c) ***Guidelines Governing the FiT System:***

- (1) Priority connections to the grid for electricity generated from emerging RE Resources such as wind, solar, ocean, run-of-river, hydropower, and biomass power plants within the territory of the Philippines;
- (2) The priority purchase, transmission of, and payment for such electricity by the grid system operators;
- (3) Determination of the fixed tariff to be paid for electricity produced from each type of emerging RE Resources and the mandated number of years for the application of such tariff, which shall in no case be less than twelve (12) years;
- (4) Application of the FiT to the emerging RE Resources to be used in compliance with the RPS. Only electricity generated from wind, solar, ocean, run-of-river hydropower, and biomass power plants covered under the RPS, shall enjoy the FiT; and
- (5) Other rules and mechanisms that are deemed appropriate and necessary by the ERC, in consultation with the NREB, for the full implementation of the FiT system.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB, formulate and promulgate the FiT system rules.

#### **SEC. 6. Green Energy Option Program**

The Green Energy Option program is a mechanism to be established by the DOE which shall provide end-users the option to choose RE Resources as their source of energy.

Within six (6) months from the effectivity of this IRR, the DOE shall, in consultation with the NREB, promulgate the appropriate implementing rules and regulations which

are necessary, incidental, or convenient to achieve the objectives of the Green Energy Option program.

The ERC shall, within six (6) months from the effectivity of this IRR, issue the necessary regulatory framework to effect and achieve the objectives of the Green Energy Option program.

The TRANSCO, its concessionaire, or its successors-in-interest, distribution utilities (DUs), PEMC, and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green Energy Option program.

Any end-user who shall enroll under the Green Energy Option program shall be informed, by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.

#### **SEC. 7. Net-Metering for Renewable Energy**

Net-Metering is a consumer-based renewable energy incentive scheme wherein electric power generated by an end-user from an eligible on-site RE generating facility and delivered to the local distribution grid may be used to offset electric energy provided by the DU to the end-user during the applicable period.

- (a) **Purpose:** The Net-Metering program shall be implemented to encourage end-users to participate in renewable electricity generation.
- (b) **Mandate:** Upon request by distribution end-users, the DUs shall, without discrimination, enter into Net-Metering agreements with qualified end-users who will be installing an RE System, subject to technical and economic considerations, such as the DU's metering technical standards for the RE System.

As used in this IRR, "***Qualified End-users***" refers to entities that generate electric power from an eligible on-site RE generating facility, such as, but not limited to, house or office building with photovoltaic system that can be connected to the grid, for the purpose of entering into a Net-Metering agreement.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB and the electric power industry participants, establish net-metering interconnection standards, pricing methodology, and other commercial arrangements necessary to ensure the success of the Net-Metering for the RE program.

The DU shall be entitled to any RE Certificate resulting from Net-Metering arrangements with the qualified end-user who is using an RE Resource to provide energy. Such RE Certificate shall be credited in compliance with the obligations of the DUs under the RPS.

The DOE, ERC, TRANSCO, its concessionaire or its successor-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the necessary mechanisms for the physical connection, consistent with the Grid and Distribution Codes, and commercial arrangements, necessary to ensure the success of the Net-Metering for the RE program.

## **SEC. 8. Transmission and Distribution System Development**

The TRANSCO, its concessionaire or its successor-in-interest, and all DUs, shall:

- (a) Include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans, subject to the approval by the DOE; and
- (b) Effect connection of RE-based power facilities with the transmission or distribution system upon receipt of a formal notice of the approval by the DOE and the start of the commercial operations of such RE-based power facilities.

The connection facilities of RE power plants, including any extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections, pursuant to the ERC Rules and Guidelines on Open Access Transmission Services.

The ERC shall, in consultation with the NREB, TRANSCO, its concessionaire or its successors-in-interest, provide the mechanism for the recovery of the cost of these connection facilities.

## **SEC. 9. Adoption of Waste-to-Energy Technologies**

The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems.

The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this IRR, "*Waste-to-Energy Technologies*" shall refer to systems which convert biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

## **RULE 3. RENEWABLE ENERGY MARKET**

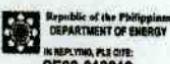
### **SEC. 10. Creation of the Renewable Energy Market**

To expedite compliance with the establishment of the RPS, the DOE shall establish the Renewable Energy Market (REM). The REM shall be a sub-market of the WESM where the trading of RE Certificates may be made.

The DOE shall, within six (6) months from the effectivity of this IRR, establish the framework that will govern the operation of the REM. The PEMC shall, within one (1) year from the effectivity of the Act, implement changes to incorporate the rules specific to the operation of the REM under the WESM.

### **SEC. 11. Establishment of the Renewable Energy Registrar**

Under the supervision of the DOE, the PEMC shall, within one (1) year from the effectivity of the Act, establish and operate the Renewable Energy Registrar and shall issue, keep, and verify RE Certificates corresponding to energy generated from the eligible RE facilities.



  
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Such RE Certificates shall be credited in compliance with any obligation under the RPS. For this purpose, the PEMC may impose a transaction fee equal to half of what the PEMC currently charges regular WESM players.

#### **RULE 4. OFF-GRID DEVELOPMENT**

##### **SEC. 12. Off-Grid Renewable Energy Development**

Within one (1) year from the effectivity of the Act, the NPC-SPUG or its successors-in-interest, DUs concerned, and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation from available RE Resources in the area concerned as may be determined by the DOE, upon recommendation of the NREB.

Eligible RE generation in off-grid and missionary areas shall be entitled to the issuance of RE Certificates pursuant to Chapter III, Section 8 of the Act and Rule 3, Section 11, of this IRR. In the event that there is no viable RE Resource in the off-grid and missionary areas, the relevant supplier in off-grid and missionary areas shall still be obligated to comply with the RPS requirements provided under Chapter III, Section 6 of the Act and Rule 2, Section 4, of this IRR.

### **PART III. INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES**

#### **RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT**

##### **SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities**

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

###### **A. Income Tax Holiday (ITH)**

(1) **Period of Availment** – The duly registered RE Developer shall be fully exempt from income taxes levied by the National Government for the period as follows:

(a) Existing RE Projects – seven (7) years from the start of commercial operations;

All RE Developers that acquire, operate and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall not be entitled to ITH, except for any additional investment.

(b) New investment in RE Resources – seven (7) years from the start of commercial operations resulting from new investments; and

(c) Additional investment in the RE Project – not more than three (3) times the period of the initial availment by the existing or new RE project or covering new or additional investments.



The maximum period within which an RE Developer may be entitled to an ITH shall be twenty-one (21) years, inclusive of the initial 7-year ITH for its new and additional investments in a specific RE facility.

**(2) *Entitlement for New and Additional Investments subject to prior approval by the DOE***

(a) New Investment – RE Developers undertaking discovery and development of new RE Resource distinct from their registered operations may qualify as new projects, subject to the setting up of separate books of accounts. In such cases, a fresh package of ITH from the start of commercial operations shall apply.

(b) Additional Investment – The ITH for additional investments in an existing RE project shall be applied only to the income attributable to the additional investment.

Additional investment may cover investments for improvements, modernization, or rehabilitation duly registered with the DOE, which may or may not result in increased capacity, subject to the conditions to be determined by the DOE, such as, but not limited to, the following:

- (i) Identification of the phases/stages of production scheduled for modernization/rehabilitation; and
- (ii) Improvements such as reduced production/operational costs, increased production/operational efficiency, and better product quality of the RE facilities.

**B. *Exemption from Duties on RE Machinery, Equipment, and Materials***

Within the first ten (10) years from the issuance of a Certificate of Registration to an RE Developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall be exempt from tariff duties.

(1) ***Conditions for Duty-Free Importation*** – An RE Developer may import machinery and equipment, materials and parts thereof exempt from the payment of any and all tariff duties due thereon subject to the following conditions:

- (a) The machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for the transformation of and delivery of energy to the point of use;
- (b) The importation of materials and spare parts shall be restricted only to component materials and parts for the specific machinery and/or equipment authorized to be imported;
- (c) The kind of capital machinery and equipment to be imported must be in accordance with the approved work and financial program of the RE facilities; and



(d) Such importation shall be covered by shipping documents in the name of the duly registered RE Developer/operator to whom the shipment will be directly delivered by customs authorities.

(2) *Sale or Disposition of Capital Equipment* - Any sale, transfer, assignment, donation, or other modes of disposition of originally imported capital equipment/machinery including materials and spare parts, brought into the RE facilities of the RE Developer which availed of duty-free importation within ten (10) years from date of importation shall require prior endorsement of the DOE. Such endorsement shall be granted only if any of the following conditions is present:

- (a) If made to another RE Developer enjoying tax and duty exemption on imported capital equipment;
- (b) If made to a non-RE Developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
- (c) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and
- (d) For reasons of proven technical obsolescence as may be determined by the DOE.

When the aforementioned sale, transfer, or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer, or disposition shall require prior endorsement by the DOE and shall no longer be subject to the payment of taxes and duties.

Within six (6) months from the issuance of this IRR, the DOF/Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) shall, in consultation with the DOE, formulate the necessary mechanisms/guidelines to implement this provision.

#### *C. Special Realty Tax Rates on Equipment and Machinery*

Realty and other taxes on civil works, equipment, machinery, and other improvements by a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in the case of an integrated RE resource development and Generation Facility as provided under Republic Act No. 9136, the real property tax shall be imposed only on the power plant.

As used in this IRR, "*Original Cost*" shall refer to (1) the tangible cost of construction of the power plant component, or of any improvement thereon, regardless of any subsequent transfer of ownership of such power plant; or (2) the assessed value prevailing at the time the Act took into effect or at the time of the completion of the power plant project after the effectivity of the Act, as the case may be, and in any case assessed at a maximum level of eighty percent (80%), whichever is lower.

"*Net Book Value*" shall refer to the amount determined by applying normal depreciation on the original cost based on the estimated useful life.



#### **D. Net Operating Loss Carry-Over (NOLCO)**

The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss, subject to the following conditions:

- (a) The NOLCO had not been previously offset as a deduction from gross income; and
- (b) The loss should be a result from the operation and not from the availment of incentives provided for in the Act.

#### **E. Corporate Tax Rate**

After availment of the ITH, all Registered RE Developers shall pay a corporate tax of ten percent (10%) on their net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337: *Provided*, That the RE Developers shall pass on the savings to the end-users in the form of lower power rates.

All RE Developers that acquire, operate, and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall pay a corporate tax rate of 10% on their net taxable income, upon registration with the DOE.

Towards this end, the ERC shall, in coordination with the DOE, determine the appropriate mechanism to implement the power rate reduction.

- (a) **DOE Technical Study** - Pursuant to Section 15(e) of the Act, the DOE shall conduct a technical study on the appropriate mechanisms to determine the savings actually realized directly on account of this incentive.
- (b) **Scope** - The mechanisms shall be applied on RE development projects and bilateral supply agreements in commercial operation as of the effectivity of the Act.
- (c) **Guidelines** - In developing the mechanisms to implement the power rate reduction under the preceding paragraphs, the DOE shall take into account the following:
  - (i) preservation of the purpose of Section 15(e) of the Act;
  - (ii) non-erosion of the competitive nature of the generation sector of the electric power industry under Section 6 of the EPIRA;
  - (iii) due consideration of the income tax regimes applicable to different RE Developers under existing or applicable laws, rules, and government undertakings or obligations under existing agreements; and
  - (iv) application of the various forms by which the savings may be implemented including, but not limited to, value-added services that reduce the DU's cost of service translating to lower retail rates and

discounts that are required by regulations of the ERC to be passed through in the retail rate to end-users.

(d) *Determination of Savings* - The DOE shall, in coordination with the NREB, determine as to whether or not savings are actually realized with respect to each RE Developer. In such case, the extent thereof shall be determined in accordance with the pass-on mechanism as may be appropriate based on the results of the DOE Technical Study. In cases where the RE Developer charges generation rates that are lower than that of a non-RE facility, savings are deemed to have been passed on but only to the extent of the relevant supply contract.

The DOE and the RE Developer may also provide for the appropriate mechanism in determining the savings in the RE Service/Operating Contract. The DOE and the NREB shall, where necessary, coordinate with the ERC for the purpose of implementing the applicable mechanism.

#### **F. Accelerated Depreciation**

If an RE project fails to receive an ITH before full operation, the RE Developer may apply for accelerated depreciation in its tax books and be taxed on the basis of the same.

If an RE Developer applies for accelerated depreciation, the project or its expansions shall no longer be eligible to avail of the ITH.

Plant, machinery and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE Resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the DOF and the provisions of the NIRC of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

- (a) Declining balance method; and
- (b) Sum-of-the years digit method.

#### **G. Zero Percent Value-Added Tax Rate**

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

- (a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels;
- (b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and
- (c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.



The DOE, BIR and DOF shall, within six (6) months from issuance of this IRR, formulate the necessary mechanisms/guidelines to implement this provision.

#### ***H. Tax Exemption of Carbon Credits***

All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

#### ***I. Tax Credit on Domestic Capital Equipment and Services Related to the Installation of Equipment and Machinery***

A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax (VAT) and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to a registered RE Developer who purchases machinery, equipment, materials, and parts from a domestic manufacturer, fabricator or supplier subject to the following conditions:

- (a) That the said equipment, machinery, and spare parts are reasonably needed and shall be used exclusively by the Registered RE Developer in its registered activity;
- (b) That the purchase of such equipment, machinery, and spare parts is made from an accredited or recognized domestic source, in which case, prior approval by the DOE should be obtained by the local manufacturer, fabricator, or supplier; and
- (c) That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE Service/Operating Contract.

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with the DOE, promulgate a revenue regulation governing the granting of tax credit on domestic capital equipment.

Any sale, transfer, assignment, donation, or other mode of disposition of machinery, equipment, materials, and parts purchased from domestic source, if made within ten (10) years from the date of acquisition, shall require prior DOE approval.

#### **SEC. 14. Hybrid and Co-generation Systems**

The tax exemptions and/or incentives provided for in Section 13 and item D, Section 17 of this IRR shall be availed of by a registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy. However, the tax exemptions and incentives for hybrid and cogeneration systems shall apply only to the equipment, machinery, and/or devices utilizing RE Resources.

#### **SEC. 15. Incentives for RE Commercialization**

All manufacturers, fabricators, and suppliers of locally-produced RE equipment and components shall be entitled to the privileges set forth below:



#### ***A. Tax and Duty-free Importation of Components, Parts, and Materials***

All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value-added tax (VAT): *Provided*, That the said components, parts, and materials are:

- (1) Not manufactured domestically in reasonable quantity and quality at competitive prices;
- (2) Directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and
- (3) Covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities.

Prior approval of the DOE shall be required before the importation of such components, parts and materials.

#### ***B. Tax Credit on Domestic Capital Components, Parts, and Materials***

A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax (VAT) and customs duties that would have been paid on the components, parts, and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier who purchases RE components, parts, and materials from a domestic manufacturer: *Provided*, That such components and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator, and supplier for the manufacture, fabrication and sale of the RE equipment. *Provided*, further, that prior approval by the DOE was obtained by the local manufacturer.

#### ***C. Income Tax Holiday and Exemption***

For seven (7) years starting from the date of recognition/accreditation provided under Section 18 of this IRR, an RE manufacturer, fabricator, and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts, and services.

#### ***D. Zero-Rated Value-Added Tax Transactions***

All manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be subject to zero-rated value-added tax on their transactions with local suppliers of goods, properties, and services.

### **SEC. 16. Incentives for Farmers Engaged in the Plantation of Biomass Resources**

All individuals and entities engaged in the plantation of crops and trees used as Biomass Resources shall be entitled to duty-free importation and exemption from payment of value-added tax (VAT) on all types of agricultural inputs, equipment, and machinery within ten (10) years from the effectivity of the Act, subject to the certification by the DOE and the following conditions:

- (a) That the crops and trees such as, but not limited to, jatropha, coconut, and sugarcane shall be actually utilized for the production of Biomass Resources; and



(b) That the agricultural inputs, equipment and machinery such as, but not limited to, fertilizers, insecticides, pesticides, tractors, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk handling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment shall be used actually and primarily for the production of said Biomass Resources.

## **SEC. 17. Other Incentives and Privileges**

### ***A. Tax Rebate for Purchase of RE Components***

To encourage the adoption of RE technologies, the DOF shall, in consultation with DOST, DOE, and DTI, provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. For this purpose, the DOF shall, within one (1) year from the effectivity of the Act, also prescribe the procedure, mechanism, and appropriate period for granting the tax rebates.

### ***B. Financial Assistance Program***

Government financial institutions (GFIs) such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Philippine Exim Bank and others shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization, and commercialization of RE projects that are duly recommended and endorsed by the DOE.

The concerned GFIs shall, within six (6) months from the effectivity of this IRR, formulate programs to implement the provision on the grant of preferential financial packages for RE projects.

### ***C. Exemption from the Universal Charge***

As used in this IRR, "*Universal Charge*" refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of Republic Act No. 9136.

All consumers shall be exempted from paying the Universal Charge under the following circumstances:

- (1) If the power or electricity generated through the RE System is consumed by the generators themselves; and/or
- (2) If the power or electricity through the RE System is distributed free of charge in the off-grid areas.

### ***D. Cash Incentive of Renewable Energy Developers for Missionary Electrification***

An RE Developer registered pursuant to Section 15 of the Act and Section 18 of this IRR, shall be entitled to a cash generation-based incentive per kilowatt-hour rate generated, equivalent to fifty percent (50%) of the universal charge for the power needed to service missionary areas where it operates the same, to be chargeable against the



universal charge for Missionary Electrification. This provision shall apply to RE capacities for Missionary Electrification undertaken upon effectivity of the Act.

Within six (6) months from the issuance of this IRR, the ERC shall, in coordination with the DOE, develop a mechanism to implement the provision granting cash incentive to RE Developers for Missionary Electrification.

#### ***E. Payment of Transmission Charges***

A registered RE Developer producing power and electricity from an intermittent RE Resource may opt to pay the transmission and wheeling charges of TRANSCO, its concessionaire or its successor-in-interests on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the Grid.

#### ***F. Priority and Must Dispatch for Intermittent RE Resource***

Qualified and registered RE generating units with intermittent RE Resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch.

TRANSCO or its successor-in-interest shall, in consultation with stakeholders, determine, through technical and economic analysis, the maximum penetration limit of the intermittent RE -based power plants to the Grid.

The PEMC and TRANSCO or its successor-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

**"RE generating units with intermittent RE Resources"** refers to an RE generating unit or group of units connected to a common connection point whose RE Resource is location-specific, naturally difficult to precisely predict the availability of the RE Resource thereby making the energy generated variable, unpredictable and irregular, and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydropower, or ocean energy.

All provisions under the WESM rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE Resources shall be deemed amended or modified.

### **SEC. 18. Conditions for Availment of Incentives and Other Privileges**

#### ***A. Registration/Accreditation with the DOE***

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

- (1) ***DOE Certificate of Registration*** – issued to an RE Developer holding a valid RE Service/Operating Contract.

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has



executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) **DOE Certificate of Accreditation** – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

#### ***B. Registration with the Board of Investments (BOI)***

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

#### ***C. Certificate of Endorsement by the DOE***

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided*, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

For this purpose, the DOE shall, within six (6) months from the effectivity of this IRR, issue guidelines on the procedures and requirements for the availment of incentives based on specific criteria, such as, but not limited to:

(1) **Compliance with Obligations** - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall observe and abide by the provisions of the Act, this IRR, the applicable provisions of existing Philippine laws, and take adequate measures to ensure that its obligations thereunder as well as those of its officers are faithfully discharged;



(2) **Compliance with Directives** - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with the directives and circulars which the DOE may issue from time to time in pursuance of its powers under the Act;

(3) **Compliance with Pre-Registration/Registration Conditions** - The RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with all the pre-registration and registration conditions as required by the DOE;

(4) **Compliance with Reportorial Requirements** - An RE Developer shall maintain distinct and separate books of accounts for its operations inside the RE facilities and shall submit technical, financial and other operational reports/documents to DOE on or before their respective due dates; and

(5) **Remittance of Government Shares and Payment of Applicable Financial Obligations** - An RE Developer shall observe timely remittance of Government Share, and payment of applicable fees and other financial obligations to the DOE.

RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR.

#### **D. Revenue Regulations**

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with DOE, DOF, BOC, BOI and other concerned government agencies, promulgate revenue regulations governing the grant of fiscal incentives.

### **PART IV. REGULATORY FRAMEWORK FOR THE RENEWABLE ENERGY INDUSTRY AND GOVERNMENT SHARE**

#### **RULE 6. REGULATORY FRAMEWORK FOR THE RENEWABLE ENERGY INDUSTRY**

##### **SEC. 19. Renewable Energy Service/Operating Contract**

###### **A. State Ownership of All Forces of Potential Energy**

All forces of potential energy and other natural resources are owned by the State and shall not be alienated. These include potential energy sources such as kinetic energy from water, marine current and wind; thermal energy from solar, ocean, geothermal and biomass.

###### **B. Parties to a Service/Operating Contract**

The exploration, development, production, and utilization of natural resources shall be under the full control and supervision of the State.

The State may directly undertake such activities, or it may enter into co-production, joint venture or co-production sharing agreements with Filipino citizens or corporations or associations at least sixty percent (60%) of whose capital is owned by Filipinos. Foreign RE Developers may also be allowed to undertake RE development through an RE



Service/Operating Contract with the government, subject to Article XII, Section 2 of the Philippine Constitution.

**C. Guidelines on Award of RE Service/Operating Contract**

In compliance with this Constitutional mandate, the DOE shall, within one (1) month from the issuance of this IRR, formulate and promulgate the regulatory framework containing the guidelines governing a transparent and competitive system of awarding RE Service/Operating Contracts from pre-development to development/commercial stage, among others.

RE sectors which are developing or utilizing non-naturally occurring resources such as, but not limited to, biomass, biogas, methane capture, and other waste-to-energy technologies, shall be covered by an RE Operating Contract which shall take into consideration the peculiar conditions and realities attendant to such sector; *Provided*, That the biomass sector shall be covered by an RE Operating Contract wherein the biomass developer commits to develop, construct, install, commission, and operate an RE generating facility subject to the terms and conditions as specified therein.

**D. Compliance with Existing Laws**

The regulatory framework for the award of an RE Service/Operating Contract will take into consideration existing related laws on the exploration, development and utilization of RE Resources such as:

- (1) RA No. 7160, otherwise known as the "Local Government Code", on the necessity of prior and periodic consultations with the local government units before any RE exploration activity is conducted within their respective jurisdictions. Existing projects shall be considered compliant with this requirement;
- (2) RA No. 8371, otherwise known as the "Indigenous Peoples Rights Act"; and
- (3) Existing environmental laws and regulations as prescribed by the DENR and/or any other concerned government agency, including compliance with the Environmental Impact Assessment (EIA) System.

An Environmental Compliance Certificate (ECC) from the appropriate regional office of the DENR would be sufficient to comply with the Act and this IRR.

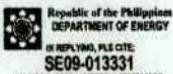
**RULE 7. GOVERNMENT SHARE**

**SEC. 20. Government Share**

**A. Government Share in General**

The Government Share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE Developers except for indigenous geothermal energy, which shall be at one and a half percent (1.5%) of gross income of the preceding fiscal year.

For purposes of determining the government share, the gross income of RE Developers shall include the proceeds resulting from the sale of RE produced and such other income incidental to and arising from RE generation, transmission, and sale of electric power.



As used in this IRR, "**Gross Income**" derived from business shall be equivalent to gross sales less sales returns, discounts and allowances, and cost of goods sold, consistent with Section 27, Paragraph A(7) of the NIRC of 1997, as amended by Republic Act No. 9337.

"**Cost of Goods Sold**" shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use, consistent with Section 27, Paragraph A(7) of the NIRC of 1997, as amended by Republic Act No. 9337.

Except for government-owned and controlled corporations, the Government Share shall be distributed as follows:

- (1) National Government – 60%
- (2) Local Government – 40%

**B. Share from Geothermal Energy Resources**

- (1) For an integrated geothermal operation, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of electricity generated from geothermal energy. The Cost of Goods Sold shall be the direct cost of the generation of electricity.
- (2) For steamfield development and production only, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of the geothermal steam. The Cost of Goods Sold shall be the direct cost of the geothermal steam production.
- (3) For geothermal power plant operation only, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of electricity generated from geothermal energy. The Cost of Goods Sold shall be the direct cost of electricity generated from geothermal energy and the direct cost of the geothermal steam.

**C. Local Government Share**

In accordance with Section 292 of Republic Act No. 7160, the allocation and distribution of the local government share shall be as follows:

- (1) Where the natural resources are located in the province:
  - (i) Province - Twenty percent (20%);
  - (ii) Component city/municipality - Forty-five percent (45%); and
  - (iii) Barangay - Thirty-five percent (35%)
- (2) Where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more Barangays, their respective shares shall be computed on the basis of:
  - (i) Population - Seventy percent (70%); and
  - (ii) Land area - Thirty percent (30%)
- (3) Where the natural resources are located in a highly urbanized or independent component city:

- (i) City - Sixty-five percent (65%); and
- (ii) Barangay - Thirty-five percent (35%)

(4) Where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (2) of this Section.

#### **D. Remittance of the Share of Local Government Units**

In accordance with Sections 286 and 293 of Republic Act No. 7160, as amended, the share of local government units from the utilization and development of national wealth shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

#### **E. Exceptions on Government Share**

No government share shall be collected from the following:

- (1) Proceeds from the development of Biomass Resources; and
- (2) Proceeds of micro-scale projects for communal purposes and non-commercial operations, such as community-based RE projects, which are not greater than one hundred kilowatts (100kW).

### **SEC. 21. RE Host Communities/LGUs**

#### **A. Determination of RE Host Communities/LGUs**

The LGUs hosting the energy resource and/or energy generating facility shall have an equitable share in the proceeds derived from the development and utilization of energy resource and sale of electric power. For the purposes of this IRR, Host LGU shall refer to the following:

- (1) With respect to integrated energy generating facilities, the host LGU is where the energy-generating facilities and energy resources are located. The LGU shall be entitled to a share based on the sale of electric power;
- (2) With respect to energy resources, the host LGU is where the renewable energy resources are located as delineated by geophysical and exploration surveys. The LGU shall be entitled to a share based on the sale of renewable energy produced by the RE Developer; and
- (3) With respect to non-integrated generating facilities, the host LGU is where the energy generating facility is located. The LGU shall be entitled to a share based on the sale of electric power of the generating facility.

#### **B. Incentives to RE Host Communities/LGUs**

Based on Sections 289 to 294 of Republic Act No. 7160, the benefits/incentives provided herein, shall be allocated to the Host LGUs defined in the preceding paragraph as follows:



- (1) Eighty percent (80%) of the local government share from RE projects and activities shall be used directly to subsidize the electricity consumption of end-users in the RE host communities/LGUs whose monthly consumption does not exceed one hundred kilowatt-hours (100kWh); *Provided*, That excess funds shall, after serving the end-users referred to in the preceding paragraph, be used to subsidize the electricity consumption of consumers of the same class in the host city, municipality or the province, as the case may be;
- (2) The subsidy may be in the form of rebates, refunds, and/or any other form as may be determined by the DOE, DOF, and ERC, in coordination with the NREB. Within six (6) months from the effectivity of the Act, the DOE, DOF, and ERC shall, in coordination with the NREB and in consultation with the DUs, promulgate the mechanisms to implement this provision; and
- (3) Twenty percent (20%) of the local government share shall be utilized to finance local government and livelihood projects which shall be appropriated by their respective Sanggunian, pursuant to Section 294 of Republic Act No. 7160.

## **PART V. ORGANIZATION AND RENEWABLE ENERGY TRUST FUND**

### **RULE 8. THE ROLE OF THE DEPARTMENT OF ENERGY**

#### **SEC. 22. Lead Agency**

The DOE shall be the lead agency mandated to implement the provisions of the Act and this IRR. In pursuance thereof and in addition to its functions provided for under existing laws, the DOE shall:

- (a) Promulgate the RPS Rules;
- (b) Establish the REM and direct the PEMC to implement changes in order to incorporate the rules specific to the operation of the REM under the WESM;
- (c) Supervise the establishment of the RE Registrar by the PEMC;
- (d) Promulgate the appropriate implementing rules and regulations necessary to achieve the objectives of the Green Energy Option program;
- (e) Determine the minimum percentage of generation which may be sourced from available RE Resources of the NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas;
- (f) Issue certification to RE Developers, local manufacturers, fabricators, and suppliers of locally-produced RE equipment to serve as basis for their entitlement to incentives, as provided for in the Act;
- (g) Formulate and implement the NREP together with relevant government agencies;
- (h) Administer the Renewable Energy Trust Fund (RETF) as a special account in any of the government financial institutions identified under Section 29 of the Act;
- (i) Recommend and endorse RE projects applying for financial assistance with government financial institutions pursuant to Section 29 of the Act;
- (j) Encourage the adoption of waste-to-energy technologies pursuant to Section 30 of the Act;

- (k) Determine the mechanisms in the grant of subsidy to electric consumers of Host LGUs, together with DOF, ERC, and NREB; and
- (l) Perform such other functions as may be necessary, to attain the objectives of the Act.

## RULE 9. NATIONAL RENEWABLE ENERGY BOARD

### SEC. 23. Creation of the NREB

Pursuant to Section 27 of the Act, the National Renewable Energy Board (NREB) is created and shall be composed of a Chairman, and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC, who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric cooperatives, electricity suppliers, and non-governmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The members of the Board and their alternates must be of proven integrity and probity, with a working knowledge and understanding of the RE industry, and occupying the position of at least Director and Manager for government agencies and private entities, respectively.

The NREB shall act as a collegial body primarily tasked with recommending policies to the DOE and monitoring the implementation of the Act. As such, its private sector members shall not be required to divest. However, to avoid conflict of interest, the NREB shall adopt its own Code of Ethics that shall be observed by all its members.

### SEC. 24. Meetings of the NREB

Regular meetings of the NREB shall be held at least once every quarter on a date and in a place fixed by the Board. Special meetings may also be called by the Chairman or by a majority vote of the Board, as necessary.

Representatives of other government agencies and private entities such as, but not limited to, the Department of Science and Technology (DOST), Department of Agriculture (DA), National Water Resources Board (NWRB), National Commission for Indigenous Peoples (NCIP), National Electrification Administration (NEA), National Research Council of the Philippines (NCRP), and the academe may be invited by the NREB as resource persons.

### SEC. 25. Remuneration

The NREB shall determine the appropriate compensation/remuneration of its members in accordance with existing laws, rules and regulations, and shall make the necessary requests and representations with the Department of Budget and Management (DBM) for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

### SEC. 26. Technical Secretariat

The NREB shall be assisted by a Technical Secretariat from the REMB. The Technical Secretariat shall report directly to the Office of the Secretary or the Undersecretary of the



Department, as the case may be, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the REMB shall be determined by the Board, subject to existing civil service rules and regulations and approval by the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

#### **SEC. 27. Powers and Functions**

The NREB shall have the following powers and functions:

- (a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;
- (b) Recommend specific actions to facilitate the implementation of the NREP to be executed by the DOE and/or other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;
- (c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;
- (d) Oversee and monitor the utilization of the Renewable Energy Trust Fund (RETF) established pursuant to Section 28 of the Act and administered by the DOE;
- (e) Cause the establishment of a one-stop shop facilitation scheme to accelerate implementation of RE projects; and
- (f) Perform such other functions, as may be necessary, to attain the objectives of the Act.

### **RULE 10. RENEWABLE ENERGY MANAGEMENT BUREAU**

#### **SEC. 28. Creation of the REMB**

To effectively implement the provisions of the Act, a Renewable Energy Management Bureau (REMB) shall be established under the DOE pursuant to Section 32 of the Act.

To facilitate the application for registration/accreditation of RE Developers, REMB Desks shall be created in the field offices of the DOE in Luzon, Visayas, and Mindanao, pursuant to Section 2 (a) and (b) of the Act.

The existing plantilla of the Renewable Energy Management Division (REMD) of the Energy Utilization Management Bureau (EUMB) of the DOE shall form the nucleus of REMB to perform the duties, functions, and responsibilities of the said bureau. For this purpose, the existing REMD is hereby dissolved.

#### **SEC. 29. Organizational Structure**

Within six (6) months from effectivity of this IRR, the DOE through the Office of the Secretary shall determine the REMB organizational structure and staffing pattern/staffing complement, in consultation with the DBM, and subject to existing civil service rules and regulations.



## **SEC. 30. Budget**

The funds necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the budget for the REMB shall be included in the annual General Appropriations Act (GAA).

## **SEC. 31. Powers and Functions of the REMB**

The REMB shall have the following powers and functions:

- (a) Develop, formulate and implement policies, plans and programs such as the NREP, to accelerate the development, transformation, utilization, and commercialization of RE Resources and technologies;
- (b) Develop and maintain a comprehensive, centralized and unified data and information base on RE Resources to ensure the efficient evaluation, analysis, and dissemination of data and information on RE Resources, development, utilization, demand, and technology application;
- (c) Promote the commercialization/application of RE Resources including new and emerging technologies for the efficient and economical transformation, conversion, processing, marketing and distribution to end-users;
- (d) Conduct technical research, socio-economic, and environmental impact studies of RE projects for the development of sustainable RE Systems;
- (e) Continue to strengthen the Affiliated Renewable Energy Centers (ARECs) nationwide;
- (f) Create a unified database of RE projects for monitoring and planning purposes;
- (g) Supervise and monitor activities of government and private companies and entities on RE Resources development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;
- (h) Provide information, consultation, technical training, and advisory services to RE Developers, practitioners, and entities involved in RE technology, and formulate RE technology development strategies including, but not limited to, standards and guidelines;
- (i) Develop and implement an information, education, and communication (IEC) program to heighten awareness of and appreciation by all stakeholders of the RE industry;
- (j) Evaluate, process, approve and issue RE Service/Operating Contracts, permits, certifications, and/or accreditations as provided for in the Act and this IRR;
- (k) Monitor and evaluate the implementation of the NREP to determine the need to expand the same; and
- (l) Perform other functions that may be necessary for the effective implementation of the Act and the accelerated development and utilization of the RE Resources in the country.



## RULE 11. RENEWABLE ENERGY TRUST FUND

### SEC. 32. Exclusive Fund Administration

Pursuant to Section 28 of the Act, the RETF is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be used exclusively to:

- (a) Finance the research, development, demonstration, and promotion of the widespread and productive use of RE Systems for Power and Non-Power Applications;
- (b) Provide funding to qualified research and development institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;
- (c) Support the development and operation of new RE Resources to improve their competitiveness in the market: *Provided*, That the grant thereof shall be done through a competitive and transparent manner;
- (d) Conduct nationwide resource and market assessment studies for the Power and Non-Power Applications of RE Systems;
- (e) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities, and organizations which can help widen the promotion and reach of RE benefits at the national and local levels; and
- (f) Fund such other activities necessary or incidental to the attainment of the objectives of the Act.

### SEC. 33. Fund Utilization

The funds may be used through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of the Act: *Provided*, That the use or allocation thereof shall be, as far as practicable, done through a competitive and transparent manner.

### SEC. 34. Sources of Funds

The RETF shall be funded from:

- (a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;
- (b) One and a half percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office (PCSO);
- (c) One and a half percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation (PAGCOR);
- (d) One and a half percent (1.5%) of the net annual dividends remitted to the National Treasury by the Philippine National Oil Company (PNOC) and its subsidiaries;
- (e) Contributions, grants and donations: *Provided*, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of



the NIRC. To ensure this goal, the BIR shall assist the DOE in formulating the rules and regulations to implement this provision;

- (f) One and a half percent (1.5%) of the proceeds of the Government Share collected from the development and use of indigenous non-RE Resources;
- (g) Any revenue generated from the utilization of the RETF; and
- (h) Proceeds from fines and penalties imposed under the Act.

For this purpose, the DOE, PCSO, PAGCOR, DENR, and DBM shall, within six (6) months from the approval of this IRR, formulate the necessary mechanism for the transmittal of the Fund to the DOE.

Furthermore, the DOE shall, within six (6) months from the approval of this IRR, formulate the guidelines to ensure the competitive and transparent utilization of the fund.

## **PART VI. PROHIBITED ACTS, PENAL, AND ADMINISTRATIVE PROVISIONS**

### **RULE 12. PROHIBITED ACTS AND SANCTIONS**

#### **SEC. 35. Prohibited Acts**

Pursuant to Section 35 of the Act, any person or entity found in violation of any of the following shall be subject to the appropriate criminal, civil, and/or administrative sanctions as provided in this IRR and other existing applicable laws, rules and regulations:

- (a) Non-compliance with or violation of the RPS rules;
- (b) Willful refusal to undertake Net-Metering arrangements with qualified distribution grid users;
- (c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under the Act;
- (d) Failure and willful refusal to issue the certificate referred to in Section 26 of the Act; and
- (e) Non-compliance with the established guidelines that the DOE adopted for the implementation of the Act.

#### **SEC. 36. Administrative Liability**

Without prejudice to incurring criminal liability, any person who willfully commits any of the prohibited acts and violates other issuances relative to the implementation of the Act shall be subject to the following administrative fines and penalties:

- (a) The DOE may impose a penalty ranging from Reprimand to Revocation of License with corresponding fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) depending on the gravity for the following offenses:
  - (1) Non-compliance or violation of the RPS rules;



- (2) Willful refusal to undertake Net-Metering arrangements with qualified distribution grid users; and
- (3) Non-compliance with the established guidelines that the DOE adopted for the implementation of the Act.

(b) The DOE may revoke the license, permit, certification, endorsement or accreditation, terminate RE Service/Operating Contract and/or impose a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) on any person or entity found to have committed the falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives, pursuant to Section 35 (c) of the Act.

This is without prejudice to the penalties provided for under existing environmental regulations prescribed by the DENR and/or any other concerned government agency.

Any employee of the DOE who shall fail or willfully refuse to issue the certificate pursuant to Section 26 of the Act shall be given a warning for the first offense, and meted the penalty of reprimand for the second offense, and suspension for the third offense.

#### **SEC. 37. Administrative Procedures**

The DOE may initiate, *motu proprio* or upon filing of any complaint, an administrative proceeding against any person or entity who commits any of the prohibited acts under Section 35 of the Act, Section 35 of the IRR, or other related issuances. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

The administrative proceedings will be conducted to determine culpability of offenders and the applicable penalties in accordance with existing "Rules and Procedures Before the DOE."

Administrative actions initiated pursuant to this section shall be separate and independent from any criminal actions that may arise for violations of the Act.

#### **SEC. 38. Criminal Liability**

In accordance with Section 36 of the Act, any person who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The perpetrators of any of the prohibited acts provided for under Section 35 of the Act, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to One Hundred Million Pesos (P100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both upon the discretion of the court.



## PART VII. FINAL PROVISIONS

### RULE 13. TRANSITORY AND OTHER PROVISIONS

#### SEC. 39. Transitory Provisions

Benefits or incentives extended to RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment under existing laws not amended or withdrawn under this Act shall remain in full force and effect. No provision of the Act shall be taken as to diminish any right vested by virtue of existing laws, contracts, or agreements. However, in order to qualify for the availment of the incentives provided under Chapter VII of the Act and this IRR, the RE Developer, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be required to secure a certificate of registration or accreditation with the DOE.

The fiscal incentives granted under Section 15 of the Act shall apply to all RE capacities upon the effectivity of the Act.

Pending the issuance of other necessary guidelines, the grant of provisional certificates of registration by the DOE shall be valid and effective.

#### SEC. 40. Reportorial Requirements

The DOE shall, in coordination with the NREB, submit a yearly report on the implementation of the Act to the Philippine Congress, through the Joint Congressional Power Commission (JCPC), every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of renewable energy resources in the context of energy security and climate change imperatives.

This shall serve as basis for the JCPC's review of the incentives as provided for in the Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

#### SEC. 41. Congressional Oversight

Upon the effectivity of the Act, the JCPC, created under Section 62 of Republic Act No. 9136, shall exercise oversight powers over the implementation of the Act.

#### SEC. 42. Appropriations

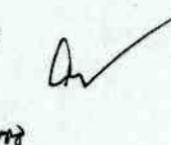
Funds necessary to finance the activities of concerned government agencies, as provided in the Act and this IRR, shall be included in the annual General Appropriations Act.

#### SEC. 43. Separability Clause

If any provision of this IRR is declared unconstitutional, the remainder of the Act or the provision not otherwise affected, shall remain valid and subsisting.

#### SEC. 44. Repealing Clause

Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of the Act and this IRR is hereby repealed, modified, or amended accordingly.

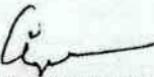


Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156, otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%), are hereby repealed, modified or amended accordingly.

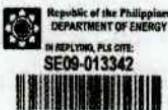
**SEC. 45. Effectivity**

This IRR shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Signed this 25th of May 2009 at the Department of Energy, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.



**ANGELO T. REYES**  
Secretary



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and the other, which is the most abundant, is the *Acacia farnesiana* (Jacq.) Willd., which is a small tree, 10-15 m. high, with a trunk 10-15 cm. in diameter, and a crown 10-15 m. in diameter. The leaves are compound, 1-2 m. long, with 10-15 pairs of leaflets, each 10-15 cm. long and 2-3 cm. wide. The flowers are yellow, 1-2 cm. long, and are produced in clusters along the branches.

Height 10-15 m.

Flowers yellow, 1-2 cm. long, produced in clusters along the branches. The leaves are compound, 1-2 m. long, with 10-15 pairs of leaflets, each 10-15 cm. long and 2-3 cm. wide. The flowers are yellow, 1-2 cm. long, and are produced in clusters along the branches.

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**GUIDELINES FOR THE ACCREDITATION  
OF MANUFACTURERS, FABRICATORS  
AND SUPPLIERS OF LOCALLY-PRODUCED  
RENEWABLE ENERGY DEVELOPMENT  
AND COMPONENTS**

Department of Energy  
Circular No. 2009-01-0010

# ГИДРОГЕОЛОГИЧЕСКИЕ СВОЙСТВА ПОДВОДНЫХ ВОД ВОЗДУШНО-ПРОДУКЦИОННО- СИНОМПОНИЧЕСКИХ ЗАВОДОВ

Сборник научных трудов  
Института гидрологии и гидрохимии  
Академии наук Беларуси  
и  
Института гидрологии и гидрохимии  
Белорусского государственного университета



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

JUL 12 2009

DEPARTMENT CIRCULAR NO. DC2009-07-001G *yes*

**GUIDELINES FOR THE ACCREDITATION OF MANUFACTURERS, FABRICATORS AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT AND COMPONENTS**

**WHEREAS**, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008" (Act) provides that it is the policy of the State to increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid system by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal incentives;

**WHEREAS**, the Implementing Rules and Regulations (IRR) of the Act mandates the Department of Energy (DOE) to provide the guidelines for the accreditation of manufacturers, fabricators and suppliers of locally-produced RE equipment and components for purposes of availment of fiscal incentives;

**NOW, THEREFORE**, in consideration of the foregoing premises, the DOE hereby issues the following guidelines:

**SECTION 1. Title.** – This Circular shall be known as the "Guidelines for the Accreditation of Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment and Components."

**SEC. 2. Scope.** – This Circular shall govern the registration of renewable energy (RE) manufacturers, fabricators and suppliers of locally-produced RE equipment and components and the issuance of Certificate of Accreditation for the availment of incentives under the Act.

**SEC. 3. Incentives for Manufacturers, Fabricators and Suppliers.** – Without prejudice to any other requirements as may be imposed by other agencies tasked with the administration of incentives under the Act, all existing and new manufacturers, fabricators and suppliers of locally-produced RE equipment, parts and components shall be required to obtain an accreditation with the DOE through Renewable Energy Management Bureau (REMB) in order to enjoy any of the incentives as provided for under Section 21 of the Act.

**SEC. 4. Who May Apply.** – Any person, natural or juridical, registered and/or authorized to operate in the Philippines under existing Philippine laws and engaged in the manufacture, fabrication and supply of locally-produced RE equipment and components may apply for accreditation with the REMB.

**SEC. 5. Application Requirements.** – All applications for DOE Certificate of Accreditation shall be made in writing and must be verified. The applicant must submit the following documents:

- a. Letter of Application addressed to REMB Director;
- b. Company Profile or Business Background – must show proof of good standing, i.e., demonstrate full compliance with the pertinent rules and regulations governing the applicant's business;
- c. A copy of Articles of Incorporation from the Securities and Exchange Commission (SEC) or a Certificate of Registration from Department of Trade and Industry (DTI) for single proprietorship;
- d. Nature and Scope of RE activities (RE manufacturing, fabricating, and/or supplying of locally-produced RE machineries, equipment, components and parts);
- e. Appropriate Business Permit in the name of the Company or proprietor – that it must be actively engaged in the business involving similar activities applied for accreditation, including certified copy of Bureau of Internal Revenue (BIR) Registration;
- f. Proof of technical, financial and physical or logistical capabilities to handle RE equipment, machinery, components and parts appropriate and commensurate to the scope of activity applied for accreditation;
- g. Track record, if applicable; and
- h. Such other documents as may be required by the REMB.

**SEC. 6. Processing and Approval of Application.** – The application for accreditation shall be granted by the DOE upon evaluation that the applicant has complied with all the requirements specified above. The processing period for any application for accreditation shall be within thirty (30) days from the date of submission of complete requirements to the REMB. No application for accreditation shall be accepted without due payment of application and processing fees.

In case of incomplete application requirements, the REMB shall, within fifteen (15) days from receipt of application, notify the applicant, in writing, to correct the deficiency. If the applicant fails to correct the deficiency within fifteen (15) days from receipt of the notice, the application shall be deemed to have been abandoned.

**SEC. 7. Obligations of Accredited RE Manufacturers, Fabricators and Suppliers.**

– The DOE-accredited manufacturers, fabricators and suppliers of locally-produced RE equipment, parts and components shall comply with the terms and conditions set forth in the Certificate of Accreditation, in addition to the following:

- a. Comply with pertinent government rules and regulations including, but not limited to, payment of taxes, environmental protection, safety, as a requisite for availment of and continuous enjoyment of incentives under the Act;
- b. Submit reports on the importation, local purchases, sales, and inventory, among others, in relation to accredited RE activities (manufacturing, fabrication, and supply of locally-produced RE machineries, equipment, components and parts);
- c. Adhere to standards, or in its absence, to industry-accepted norms and practices in the manufacture, fabrication or supply of RE machineries, equipment and components;
- d. Allow DOE personnel, at all reasonable time, full access to its facilities, books of accounts and other pertinent records relative to its business operation; and
- e. Shall not assign, transfer, dispose or otherwise convey its interest acquired under the DOE accreditation.

**SEC. 8. Period of Validity.** – The DOE Certificate of Accreditation for RE manufacturers, fabricators and suppliers of locally-produced RE machineries, equipment, components and parts, shall be valid for a period of three (3) years from date of its issuance unless earlier revoked or cancelled by the DOE through REMB on valid grounds. The Certificate of Accreditation shall be renewable every three (3) years, subject to compliance with the requirements.

**SEC. 9. Revocation or Cancellation of Certificate of Accreditation.** – The DOE may, *motu proprio* or upon filing of any complaint, revoke or cancel any Certificate of Accreditation following the provisions of Department Circular No. 2002-07-004 or the "Rules of Practice and Procedure of the Department

of Energy" due to, among others, failure of any of the accredited manufacturer, fabricator and/or supplier to comply with its obligations as provided in Section 6 hereof and the terms and conditions under which the accreditation was issued.

**SEC. 10. Separability Clause.** - If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

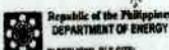
**SEC. 11. Repealing Clause.** - The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

**SEC. 12. Effectivity.** - This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued this 12<sup>th</sup> day of July 2009 in Fort Bonifacio, Taguig City, Metro Manila.



ANGELO T. REYES  
Secretary



IN REPLY MAIL, PLEASE CITE:  
SE09-014392



**GUIDELINES GOVERNING A TRANSPARENT  
AND COMPETITIVE SYSTEM OF AWARDING  
RENEWABLE ENERGY SERVICE/OPERATING  
CONTRACTS AND PROVIDING  
FOR THE REGISTRATION PROCESS  
OF RENEWABLE ENERGY DEVELOPERS**

Department of Energy  
Circular No. 2009-07-0011





Republic of the Philippines  
**DEPARTMENT OF ENERGY**

JUL 12 2009

**DEPARTMENT CIRCULAR NO. DC2009-07-0011**

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**GUIDELINES GOVERNING A TRANSPARENT AND COMPETITIVE SYSTEM  
OF AWARDING RENEWABLE ENERGY SERVICE/OPERATING CONTRACTS  
AND PROVIDING FOR THE REGISTRATION PROCESS OF  
RENEWABLE ENERGY DEVELOPERS**

**WHEREAS**, pursuant to Article XII, Section 2, of the 1987 Philippine Constitution, all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

**WHEREAS**, Republic Act (R.A.) No. 9513, otherwise known as the "Renewable Energy Act of 2008," provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

**WHEREAS**, the Implementing Rules and Regulations (IRR) of R.A. No. 9513 mandates the Department of Energy (DOE) to issue a regulatory framework containing the guidelines governing a transparent and competitive system of awarding Renewable Energy Service/Operating Contracts from pre-development to development/commercial stage, among others;

**WHEREAS**, biofuels, which are defined as fuels made from biomass, are considered renewable energy resource under the scope of biomass energy;

**WHEREAS**, Joint Administrative Order (JAO) No. 2008-1, Series of 2008, otherwise known as the "Guidelines Governing the Biofuel Feedstocks Production, and Biofuels and Biofuel Blends Production, Distribution and Sale," was issued for the accreditation of biofuel producers, among others, under R.A. No. 9367 otherwise known as the "Biofuels Act of 2006;"

**WHEREAS**, R.A. No. 7638, as amended, otherwise known as the "Department of Energy Act of 1992," mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

**NOW, THEREFORE**, in consideration of the foregoing premises, the DOE hereby issues the following guidelines:

## CHAPTER I. GENERAL PROVISIONS

**SECTION 1. Title.** - This Circular shall be known as the "Guidelines Governing a Transparent and Competitive System of Awarding Renewable Energy Service/Operating Contracts and Providing for the Registration Process of Renewable Energy Developers."

**SEC. 2. Scope.** - This Circular shall provide the guidelines on the award of Renewable Energy Service/Operating Contracts (RE Contracts) covering both the pre-development and development stages either for power or non-power applications, including the transition of the existing service contracts and agreements on the exploration, development or utilization of Renewable Energy (RE) resources with the DOE/Government to RE Contracts, subject to Rule 13, Section 39 of the IRR of the Act, and the issuance of DOE Certificate of Registration for RE Developers.

**SEC. 3. Definition of Terms.** - As used in this Circular, the following terms shall be understood to mean, as follows:

- (a) "**Act**" shall refer to R.A. No. 9513, otherwise known as the "Renewable Energy Act of 2008;"
- (b) "**Blocking System**" shall, for purposes of this Circular, refer to the subdivision of the Philippine territory by the DOE, into meridional blocks of half (1/2) minute of latitude and half (1/2) minute of longitude with Geographic Projection and Datum of the Philippine Reference System (PRS) of 1992. One (1) meridional block shall have an area of eighty one (81) hectares. Each block shall be designated a block number which shall be used exclusively in identifying the coverage of a contract area;
- (c) "**Commercial Operation**" shall refer to the phase of RE development when the RE Developer has completed its commissioning and test operations and is ready to sell or apply its produced energy, as duly confirmed by the DOE;
- (d) "**Declaration of Commerciality**" shall refer to a written declaration by the RE Developer, duly confirmed by the DOE Secretary, stating that the project is commercially feasible;
- (e) "**Financial Closing**" shall refer to the stage when the RE Developer has established, based on the DOE's criteria and procedures, its financial capability to implement its RE project;
- (f) "**Frontier Areas**" shall refer to areas with RE resource potentials but without sufficient available technical data as determined by the DOE and are not ready for immediate development and utilization;
- (g) "**RE Applicant**" shall refer to any entity, whether individual or juridical, local or foreign, including joint venture or consortium of local, foreign, or local and foreign firms, subject to the limitations provided in Section 6 hereof, which applies for the assessment, exploration, extraction,

harnessing, development, utilization or commercialization of RE resources;

(h) "**RE Application**" shall refer to the legal, technical, financial and other pertinent documents submitted by the RE Applicant in accordance with the requirements for direct negotiation of RE Contracts under Section 10 of this Circular;

(i) "**RE Developer**" shall refer to individual/s or juridical entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine laws and engaged in the exploration, development or utilization of RE resources and actual operation of RE systems/facilities. It shall include existing entities engaged in the exploration, development and/or utilization of RE resources, or the generation of electricity from RE resources, or both;

(j) "**RE Proposal**" shall refer to the legal, technical, financial and other pertinent documents submitted by the RE applicant in accordance with Section 9 on the open and competitive selection process of this Circular;

(k) "**Work Program**" shall refer to plans, programs, and activities, including the corresponding budgetary requirements, for the performance of obligations under the RE Contract, including, but not limited to, plans for exploration, development, production or utilization; and

(l) "**Working Capital**" shall refer to the RE Applicant's net liquid assets (quick assets less current liabilities) consisting primarily of cash, temporary investments, short term current receivables and deposits.

## **CHAPTER II. RE SERVICE/OPERATING CONTRACTS**

**SEC. 4. Nature of RE Contract.** - An RE Contract is a service agreement between the Government, through the President or the DOE, and an RE Developer over an appropriate period as determined by the DOE in which the RE Developer shall have the exclusive right to explore, develop or utilize a particular RE area: *Provided*, That an agreement between the Government and the RE Developer for the exploration, development or utilization of biomass resources shall be covered by an RE Operating Contract only, subject to the provisions of Section 25 of this Circular: *Provided, further*, That JAO No. 2008-1, Series of 2008 under R.A. No. 9367 shall govern the registration and accreditation of biofuel producers, in lieu of an RE Contract.

a. **Stages of RE Contract** - The RE Contract shall be divided into two (2) stages, namely:

- Pre-Development Stage** - involves the preliminary assessment and feasibility study up to financial closing of the RE project; and

ii. **Development/Commercial Stage** - involves the development, production or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase of the RE facilities.

b. **Conversion of RE Contract:**

i. **From Pre-Development Stage to Development/Commercial Stage** - Upon Declaration of Commerciality by an RE Developer and after due confirmation by the DOE, the RE Developer shall apply for the conversion of the RE Contract, prior to its expiration, from Pre-Development Stage to Development/Commercial Stage. The Declaration of Commerciality shall be based on the feasibility studies and/or exploration activities conducted by the RE Developer.

The RE Developer of an RE Contract shall secure permits, clearances or certificates such as, but not limited to, Environmental Compliance Certificate (ECC), Certificate of Non-Coverage (CNC), Water Rights Permit, Free and Prior Informed Consent (FPIC), Certificate of Non-Overlap, Local Government Unit (LGU) endorsement and all other regulatory requirements from other government agencies which are applicable to the RE activities/operations.

ii. **From Existing Service Contract/Agreement on RE Resources to RE Contracts under the Act and this Circular** - For an existing RE project, the contract holder may elect to convert its Service Contract/Agreement under applicable laws by applying for an RE Contract under the Act and this Circular. The approval of such application shall be carried out on the basis of its prior rights over the contract area.

Any individual or juridical entity with a valid and existing service or development contracts and agreements with the DOE/Government for the exploration, development or utilization of RE resource shall be deemed provisionally registered as an RE Developer under the Act, which registration shall subsist until the issuance of DOE Certificate of Registration provided for under Section 18 of the IRR. For this purpose, the DOE shall issue the corresponding provisional certificate of registration, pursuant to Section 39 of the IRR, upon receipt of the RE Developer's letter of intent for conversion to RE Contract.

**SEC. 5. RE Contract Area.** - The RE Contract area shall be defined through a Blocking System: *Provided*, That the Blocking System shall apply only to RE Contracts on ocean, solar, wind and geothermal resources.

***Part 1. Application Requirements***

**SEC. 6. Application Requirements.** - All applicants for the issuance of an RE Contract shall comply with the following requirements:

a. **Who may apply** – Any person, natural or juridical, local or foreign, may, subject to the limits herein set, apply for RE contracts.

- i. For RE Contract both during Pre-Development and Development/Commercial Stages covering all RE resources and including hybrid systems, the RE Applicant must be a Filipino or, if a corporation, must be a Filipino corporation at least sixty percent (60%) of its capitalization must be owned by Filipinos and duly registered with the Securities and Exchange Commission (SEC), except in situations as provided for in sub-paragraphs ii and iii of this Section.
- ii. In the case of the exploration, development or utilization of geothermal resources, the applicant may either be a Filipino, natural or juridical, or a foreign corporation.
- iii. Consistent with Article XII, Section 2, of the 1987 Philippine Constitution and applicable existing laws, any foreign-owned corporation duly authorized to operate in the Philippines may apply for an RE Contract in the nature of a financial or technical assistance agreement for large-scale exploration, development or utilization of geothermal resources.
- iv. In case the RE applicant is a joint venture or consortium, the partners of the joint venture or the members of the consortium shall organize themselves as a corporation registered under the Corporation Code of the Philippines.

To signify its intention to enter into RE contractual arrangements with the DOE, the RE Applicant shall submit a letter of intent, together with the duly accomplished RE Contract Application Form (**Annex "A"**).

b. **Legal Requirements** – For an individual or single proprietorship, the RE Applicant shall submit a National Statistics Office (NSO)-certified true copy of birth certificate, business permit and other applicable documents. For juridical entity, the RE Applicant shall submit an original copy of certification from its Board of Directors or officers authorizing its representative to negotiate and enter into an RE Contract with the DOE, duly certified Articles of Incorporation or other equivalent legal document creating the same and latest General Information Sheet or equivalent legal documents showing the names of its officials, ownership, control and affiliates. In the case of foreign corporations, the documents to be submitted shall be duly authenticated by the Philippine Consulate having consular jurisdiction over the entity.

c. **Technical Requirements** – The RE Applicant must possess the necessary technical capability to undertake the obligations under the RE Contract in terms of the following:

- i. **Track Record or Experience** – By himself, the corporation itself, through the member-firms, in case of a joint venture/consortium, or through employment of service providers, the RE Applicant shall include in its technical submission proof of its on-going or completed

contracts/agreements similar to or congruent with the nature of project/work being proposed to be covered by an RE Contract involving a specific RE resource. The individual firms may individually specialize on any or several stages of the RE Contract. A joint venture/consortium applicant shall be evaluated based on the individual or collective experience of the member-firms of the joint venture/consortium.

ii. **Work Program** - This shall be evaluated based on its viability, minimum expenditure commitments, detailed program of activities inclusive of environmental protection/conservation and social acceptability plans, among others.

iii. **Key Personnel Experience** - The key personnel of the RE Applicant must have sufficient and relevant work experience in connection with the project being applied for. For this purpose, the Curriculum Vitae of the management and technical personnel must be submitted.

iv. **List of Existing Company-owned Equipment (if any) for RE Operations and Any Lease Agreement of RE Equipment** - This shall be evaluated based on the technical and environmental soundness, sufficiency, and appropriateness of company-owned and leased equipment that will be used for the project.

d. **Financial Requirements** - The RE Applicant must have adequate capability to provide the financial requirements to sustain the proposed Work Program for the exploration activities or conduct of feasibility studies during the Pre-Development Stage, and detailed engineering/geological/ industrial design for the development and operation of facilities during Development/Commercial Stage, as the case may be. This financial capability shall be measured in terms of:

i. Audited Financial Statements for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted audited Financial Statement;

ii. Bank certification to substantiate the cash balance in the audited Financial Statement or updated Financial Statement;

iii. Projected cash flow statement for two (2) years;

iv. List of company-owned equipment/facilities available for the proposed RE projects;

v. If the RE applicant, on account of its infancy, is unable to produce the requirements in sub-paragraphs (i) to (iii) above, it shall submit an audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the

Philippine Consulate Office that has consular jurisdiction over the said parent company; and

vi. Proof of the ability of the RE Applicant to provide the required minimum amount of Working Capital which shall be equivalent to 100% of the cost of its work commitment for the first year of the proposed Work Program.

The legal, technical and financial requirements shall be as enumerated in the Checklist of Requirements (**Annex "B"**).

**SEC. 7. Payment of Application and Processing Fees.** – The RE Applicant shall pay the prescribed application and processing fees for each RE Proposal or RE Application. No RE proposal/application shall be accepted without due payment of application and processing fees. *Provided*, That the payment shall be made only upon submission of complete documentary requirements and receipt of order of payment from REMB.

#### ***Part 2. Procedure for Awarding of RE Contracts***

**SEC. 8. Modes of Awarding RE Contract.** – RE Contracts shall be awarded through an open and competitive process of selection or by direct negotiation.

**SEC. 9. Open and Competitive Selection Process.** – Unless as otherwise provided in Section 10 below, the DOE shall observe the following process:

a. *Invitation for RE Project Proposals* – All areas for open and competitive selection shall be posted by the DOE in its website. In the event that new areas have been identified, the DOE shall update its website and may include them in the areas to be published in preparation for the conduct of open and competitive selection of awarding RE Contracts. The publication of areas shall be made as often as practicable depending on the number of identified areas and type of RE resources, among others. Thereafter, invitations for open and competitive selection shall be published once every week for three (3) consecutive weeks in at least two (2) newspapers of general circulation. The DOE shall, likewise, post said invitation and the attachments in its website.

The invitation shall include information such as, but not limited to:

- i. Map of the area being declared open for RE project proposals;
- ii. Instructions to RE Applicants on the requirements for RE Contract proposal;
- iii. Schedules, including the deadline to submit, the date of opening, and period of evaluation of RE project proposals; and
- iv. Criteria for evaluation and the corresponding percentage/weight.

b. *Creation of a Review Committee* - A Review Committee shall be created to evaluate the RE Proposals and Applications of RE Applicants and provide recommendations to the DOE Secretary for the award of RE Contracts.

The said Committee shall be composed of the following: the Assistant Secretary in charge of the REMB as Chairperson, the representative from the Office of the Renewable Energy Management Bureau (REMB) Director as the Vice-Chairperson, and one (1) representative each from the concerned division of the REMB, Compliance Division of the Financial Services, and Contracts Division of the Legal Services, as members. The Review Committee shall be assisted by a Secretariat from the REMB.

In the event that a foreign corporation shall be the winning or qualified RE Applicant, the RE Contract shall be awarded in accordance with the provisions under Sections 11 and 23 hereof.

c. *Criteria for Evaluation* - The Review Committee shall set the rules for the evaluation of RE Proposals and Applications which shall be based mainly on legal, technical and financial criteria, taking into account the type of RE resource, RE Contract Stage being offered, and the size and location of the RE area, among others.

Evaluation of the RE Proposal on technical and financial criteria shall proceed only after the Review Committee has found that all the legal requirements are complied with.

d. *Period of Evaluation* - Only complete submissions will be evaluated by the Review Committee. The review of the RE Proposal shall be conducted within a reasonable period, as indicated in the Instruction to RE Applicants, from the date of opening of the RE proposal. The RE Applicant shall be notified by the DOE of the results of its evaluation.

**SEC. 10. Direct Negotiation.** - Direct negotiation shall be allowed only in the following instances subject to confirmation by the REMB:

a. *In case of Frontier Areas* - The negotiation shall be subject to the following conditions:

- i. In instances where there is only one applicant for an RE area and the submission is deemed to be incomplete, the said RE applicant shall be given thirty (30) days within which to complete its submission.
- ii. In the event that there are two (2) or more interested applicants over the same RE area, the REMB shall prioritize and endorse to the Review Committee for evaluation the application of the RE Applicant whose submission was first received by the REMB. If the submission is deemed insufficient, the same shall be given thirty (30) days within which to complete its submission.

- iii. Should the RE Applicant fail to complete its submission within the prescribed period as stated above, it shall be automatically disqualified and, in the case of two or more applications, it shall lose its right as first proponent and the immediately succeeding application shall be considered.
- iv. The RE Application over a specific Frontier Area shall, in the interest of transparency, be posted in the DOE website within five (5) working days from receipt of payment of application/processing fees until the award of the RE Contract.
- v. Upon submission of the complete documentary requirements, the DOE and the RE Applicant shall negotiate the terms and conditions of the RE Contract within a maximum period of one hundred twenty (120) days.

b. When, during the conduct of open and competitive selection process, any of the following circumstances exist:

- i. No RE Proposal was received by the REMB;
- ii. No one among the applicants was able to meet the legal requirements, as determined by the Review Committee; or
- iii. When one or more applicants met the legal requirements but after the evaluation of technical and financial proposals, no applicant was able to comply, as certified by the Review Committee.

the DOE may apply the mode of direct negotiation following the provisions under paragraph (a) above on Frontier Area.

### ***Part 3. Award of RE Contracts and Registration Procedure for RE Developers***

**SEC. 11. Award of RE Contract.** – The Review Committee shall, within one (1) week after the final evaluation of the RE project proposal and, in the case of RE Application, the negotiation of the terms and conditions of the RE Contract, recommend to the DOE Secretary the approval of the RE Contract. The DOE shall notify the winning or qualified RE Applicant of the award and the schedule of signing of the RE Contract.

*Provided, That the RE Contract in the nature of a financial or technical assistance agreement shall be approved and executed by the President of the Philippines, upon the recommendation by the DOE Secretary.*

**SEC. 12. Effectivity of the RE Contract.** – The RE Contract shall take effect on the effectivity date as stipulated in the signed RE Contract.

**SEC. 13. Posting of Performance Bond.** – Within sixty (60) days after the effectivity date of the contract and at the start of every contract year thereafter, the RE Developer shall post a bond or any other guarantee of sufficient amount,

but not less than the minimum expenditures commitment for the corresponding year.

**SEC. 14. Registration as an RE Developer.** – The DOE shall issue the Certificate of Registration to the RE Developer immediately upon the effectivity of the RE Contract whether during Pre-Development or Development/Commercial Stage.

Holders of valid and existing contracts or agreements on renewable energy resources awarded prior to the effectivity of the Act shall be issued a DOE Certificate of Registration as RE Developers only upon conversion of these contracts or agreements to RE Contracts pursuant to Section 4 (b) hereof.

### **CHAPTER III. SALIENT PROVISIONS OF THE RE CONTRACT**

#### ***Part 1: Standard Provisions***

**SEC. 15. Term of RE Contract.** – The RE Contract per RE resource type shall have a term of not exceeding twenty-five (25) years and renewable for not more than twenty-five (25) years: *Provided*, That the total period of the RE Contract from the Pre-Development to the Development/Commercial Stages shall not exceed fifty (50) years.

During Pre-Development Stage, the RE Contract shall have a term of two (2) years and may be extended for one (1) year subject to terms and conditions under the RE Contract: *Provided, however*, That in the case of a Geothermal RE Contract, the term may be extended for two (2) years and further extendible for one (1) year upon compliance by the RE Developer of the conditions stipulated in the RE Contract.

**SEC. 16. Obligations of the RE Developer.** – The RE Contract shall stipulate all the obligations of the RE Developer which shall include, among others, the following:

- a. Comply with all its work and financial commitment in carrying out its RE operations and provide all necessary services, technology, and financing in connection therewith;
- b. Observe applicable laws relating to labor, health, safety, environment, ecology and indigenous peoples rights, among others;
- c. Pay the government share and taxes, as may be applicable;
- d. Give priority in employment to qualified personnel in the area where the RE project is located and give preference to Filipinos in all types of employment for which they are qualified;
- e. Give preference to local companies/ agencies in entering into subcontracts on RE activities or services which the RE Developer may not carry out, upon

approval by the DOE, provided that these companies/agencies are competitive and the services required are locally available;

- f. Post a performance bond, if applicable, within the prescribed period;
- g. Maintain complete and accurate technical data and reports, and accounting records of all the costs and expenditures for the RE operations;
- h. Submit technical and financial reports in accordance with the format as prescribed by the DOE and in a timely manner;
- i. Be responsible in the proper handling of data, samples, information, reports and other documents; and
- j. Allow DOE personnel, at all reasonable times, full access to RE Contract area and to accounts, books, and other records relating to RE operations.

**SEC. 17. Rights of the RE Developer.** - Immediately upon effectivity of the RE Contract, the RE Developer shall be issued a DOE Certificate of Registration which shall qualify it to avail of the incentives and privileges under the Act.

**SEC. 18. Benefits to Host Communities.** - The RE Contract shall specifically include provisions on the benefits to host communities or local government units (LGUs) which comprise the allocation of such host Communities or LGUs from the Government Share in the exploration, development and utilization of the RE resources pursuant to Sections 20 and 21 of the IRR of the Act, among others. This may be stipulated as part of RE Developer's obligation to include in its Information, Education and Communication (IEC) Campaign information on benefits to host communities and LGUs where the RE project is located.

**SEC. 19. Disputes and Arbitration.** - In case of dispute between the DOE and the RE Developer relating to the RE Contract or the interpretation and performance of any of the clauses of the RE Contract, both parties shall seek to resolve such dispute or difference amicably or failing such amicable settlement, through referral to an expert, for technical disputes only.

All disputes which cannot be settled amicably within sixty (60) days, after the receipt by one party of a notice from the other party, of the existence of the dispute, shall be settled exclusively and finally by arbitration, upon written demand of either party.

**SEC. 20. Suspension and Termination of the RE Contract.** - The DOE shall have the power to suspend and terminate the RE Contract, after due notice to the RE Developer. The grounds for suspension and termination shall include, but not be limited to, the following:

- a. *Grounds for the Suspension/Termination of an RE Contract for the Pre-Development Stage:*
  - i. Non-compliance with the approved Work Program and any of the obligations;

- ii. Non-compliance with RE technical design standards adopted by the DOE;
- iii. Non-observance of environmental regulations imposed by the Department of Environment and Natural Resources (DENR) during the conduct of feasibility study;
- iv. Tampering or plagiarizing of technical design and feasibility study reports;
- v. Non-posting of performance bond or any other guarantee within the period provided for in the RE Contract; and
- vi. Non-payment of the financial obligations agreed upon under the contract.

b. *Grounds for Suspension/Termination of an RE Contract for the Development/Commercial Stage:*

- i. Non-compliance with the terms and conditions of the RE Contract;
- ii. Violation of the RPS rules, as may be applicable;
- iii. Non-compliance with the approved Work Program and any of the obligations;
- iv. Non-compliance with RE technical design standards adopted by the DOE;
- v. Non-observance of environmental regulations imposed by the DENR during construction and operation;
- vi. Tampering or plagiarizing of technical design, feasibility study, generation and operation reports;
- vii. Non-remittance of government share;
- viii. Non-payment of the financial obligations agreed upon under the contract; and
- ix. Non-posting of performance bond or any other guarantee within the period provided for in the contract.

The termination shall not be effective if the failure of the RE Developer giving ground to the termination has been cured on or before the effective date of termination specified in the notice.

*Provided, however, That RE Contract in the nature of a financial or technical assistance agreement shall be suspended or terminated by the President, upon recommendation by the DOE Secretary.*

**SEC. 21. Confidentiality.** - All documents, information, data and reports generated by the RE Developer during its RE operations under the RE Contract

shall be kept confidential, and shall not be disclosed to any third party or to any affiliate not directly involved in the implementation of the RE Contract. Moreover, neither the DOE nor the RE Developer shall transfer, present, sell or publish confidential information in any manner without the consent of the other party: *Provided, however,* That the DOE shall have the right to use and make public data and information generated by the RE Developer with respect to the contract area after the expiration of the RE Contract.

**SEC. 22. Assignability/Transfer.** - All assignments of RE Contract shall be subject to prequalification and prior written approval of the DOE.

- a. The RE Developer may assign part or all of its rights and/or obligations under the RE Contract to its affiliate or any third party with prior notice to and approval by the DOE and in accordance with the following provisions:
  - i. The RE Developer shall submit to the DOE copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and
  - ii. The RE Developer shall guarantee in writing to the DOE the performance of the assigned obligations.
- b. The RE Developer may authorize its subsidiaries, branches or regional corporations to implement the RE Contract, but the RE Developer shall remain responsible for the performance of this RE Contract.

*Provided, however,* That in the case of an RE Contract in the nature of a financial or technical assistance agreement, it shall be assigned or transferred, in whole or in part, to a qualified person subject to the prior approval by the President: *Provided, further,* That the President shall notify Congress of every financial or technical assistance agreement assigned within thirty (30) days from the approval thereof.

### ***Part 2. Special Provisions***

#### **A. Geothermal Energy**

**SEC. 23. RE Contract in the Nature of an FTA.** - The RE Contract that shall govern the large-scale exploration, development or utilization of geothermal energy resources by foreign-owned entities shall be in the nature of a Financial or Technical Assistance Agreement (FTA).

Geothermal RE projects shall be classified as large-scale based on capitalization and other similar criteria as may be determined by the DOE.

The mode of awarding RE Contract to a foreign company shall be in accordance with the procedures set forth under Sections 9 and 10 hereof.

In the event that a foreign corporation qualifies for an RE project, the following requirements and/or terms and conditions shall be present in the RE proposal/application, for evaluation, and in the award and implementation of the RE Contract, in addition to the requirements provided under Section 6 hereof:

- a. A firm commitment in the form of a sworn statement, of an amount corresponding to the expenditure obligation that will be invested in the contract area as part of the RE Proposal/Application documents: *Provided*, That such amount shall be subject to changes as may be necessary to cover the cost of inflation and foreign exchange fluctuations;
- b. Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the RE Developer shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its geothermal operations for and in the contract area;
- c. A stipulation in the RE Contract that the foreign RE Developers are obliged to give preference to Filipinos in all types of employment for which they are qualified and that technology shall be transferred to the same;
- d. If the RE Application/Proposal is found to be sufficient and meritorious in form and substance after evaluation, the DOE shall give the foreign RE Applicant the prior right to the area covered by such proposal. Thereafter, the DOE shall recommend its approval to the President.
- e. The President shall notify Congress of the RE Contract in the nature of financial or technical assistance agreements within thirty (30) days from approval and execution thereof; and
- f. Such other terms and conditions consistent with the Constitution, applicable laws and with the Act as the President, upon recommendation by the DOE Secretary, may deem to be in the best interest of the State and the welfare of the Filipino people.

The RE Developer shall manifest, in writing, to the President through the DOE Secretary, its intention to withdraw from the RE Contract, if in its judgment the project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause or the situation. The Secretary shall, after due evaluation, recommend to the President the acceptance of the withdrawal: *Provided*, That the RE Developer has complied with or satisfied all its financial, technical and legal obligations. *Provided, further*, That upon withdrawal, the performance bond paid for under the RE Contract shall be forfeited in favor of the Government.

#### **B. Hydropower Energy**

**SEC. 24. Impounding and Pumped-Storage.** – Applicants for the registration as Hydropower RE Developer, utilizing impounding and pumped-storage, shall be required to show proof of compliance with the internationally accepted norms and standards on hydropower development such as those of the World Commission on Dams, the International Energy Agency, among others.

The Hydropower RE Contract area shall not be defined using the Blocking System.

### **C. Biomass Sector**

**SEC. 25. Biomass Operating Contract.** - The RE Developers of biomass, biogas and methane-capture from organic wastes need not enter into a Pre-Development Service Contract due to the peculiar conditions and realities attendant to developing or utilizing such non-naturally occurring resources: *Provided, however, That except in instances where the power to be generated is for own use, the Biomass RE Developers shall be required to obtain an Operating Contract to cover the project's Development/Commercial Stage wherein the developer shall commit to develop, construct, install, commission and operate an RE generating facility subject to the following:*

- a. All Biomass RE Contracts shall be exempt from the payment of government share.
- b. In the event that there is excess capacity to be sold to any end-user, such biomass systems shall be covered by an RE Operating Contract with the DOE.
- c. The Biomass RE Operating Contract shall not include exclusivity of areas for feedstock sources and thus not covered by the Blocking System.

## **CHAPTER IV. RE PROJECTS FOR OWN-USE AND MICRO-SCALE RE PROJECTS FOR NON-COMMERCIAL OPERATIONS**

**SEC. 26. RE Projects for Own-use.** - RE Developers generating power for own-use shall register with the DOE to avail of any incentives under the Act. The DOE Certificate of Registration shall be issued upon complete submission of requirements which shall include, but not be limited to, the following:

- a. Letter of Intent;
- b. Project Description; and
- c. Proof of ownership of the RE facilities

**SEC. 27. RE Operating Contract for Micro-Scale Projects for Non-Commercial Operations.** - The issuance of RE Contracts for Non-Commercial Micro-Scale RE Project shall be governed by a simplified process of application and evaluation using the Checklist System. All interested applicants shall submit requirements to the REMB which shall include, among others, the following:

- a. Letter of Intent;
- b. Project Description;
- c. Work Plan;
- d. LGU endorsement/certification and any of the documents listed in the legal requirements provided in Section 6 (b) hereof, as may be applicable; and
- e. Other proof of sustained operations of the project as may be defined by the DOE.

**SEC. 28. Procedure and Requirements for Application.** – The DOE shall follow a set of simplified procedure and requirements prescribed in Section 6 for granting RE Contracts covering both RE Projects for Own-Use and Micro-Scale RE Projects for Non-Commercial Operations.

**SEC. 29. Registration as an RE Developer.** – RE Developers of RE Contracts for Non-Commercial Micro-Scale Projects shall register with the DOE to avail of any incentives and privileges under the Act. All such RE Developers shall be exempt from payment of the Government Share.

## **CHAPTER V. FINAL PROVISIONS**

**SEC. 30. Separability Clause.** – If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

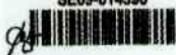
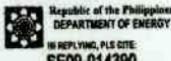
**SEC. 31. Repealing Clause.** – The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

**SEC. 32. Effectivity.** – This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued this 12<sup>th</sup> day of July 2009 in Fort Bonifacio, Taguig City, Metro Manila.

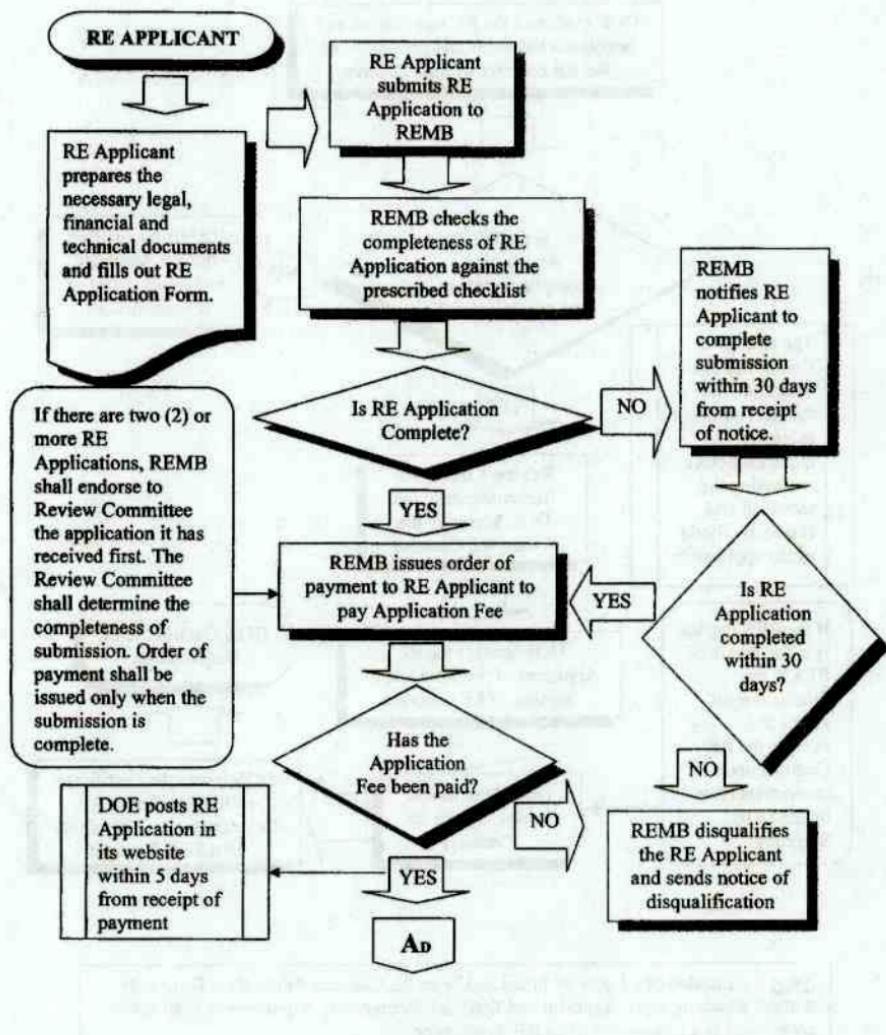


ANGELO T. REYES  
Secretary



## **REGISTRATION PROCESS OF RENEWABLE ENERGY DEVELOPER (R.A. No.9513)**

### **DIRECT NEGOTIATION**



Ad

DOE evaluates the RE Application and negotiates the terms and conditions of the RE contract within 120 days

Is the RE Application compliant with all the requirements?

NO

REMB disqualifies the RE Applicant and sends notice of disqualification

The Review Committee shall determine first if the RE Applicant is legally qualified before evaluating the technical and financial criteria of the application.

YES

Review Committee Recommends to the DOE Secretary the Award RE Contract

If the RE Contract is in the nature of FTA, the President shall award and execute the RE Contract upon recommendation by the DOE Secretary

DOE advises the RE Applicant of the Schedule of Signing of RE Contract

DOE Certificate of Registration

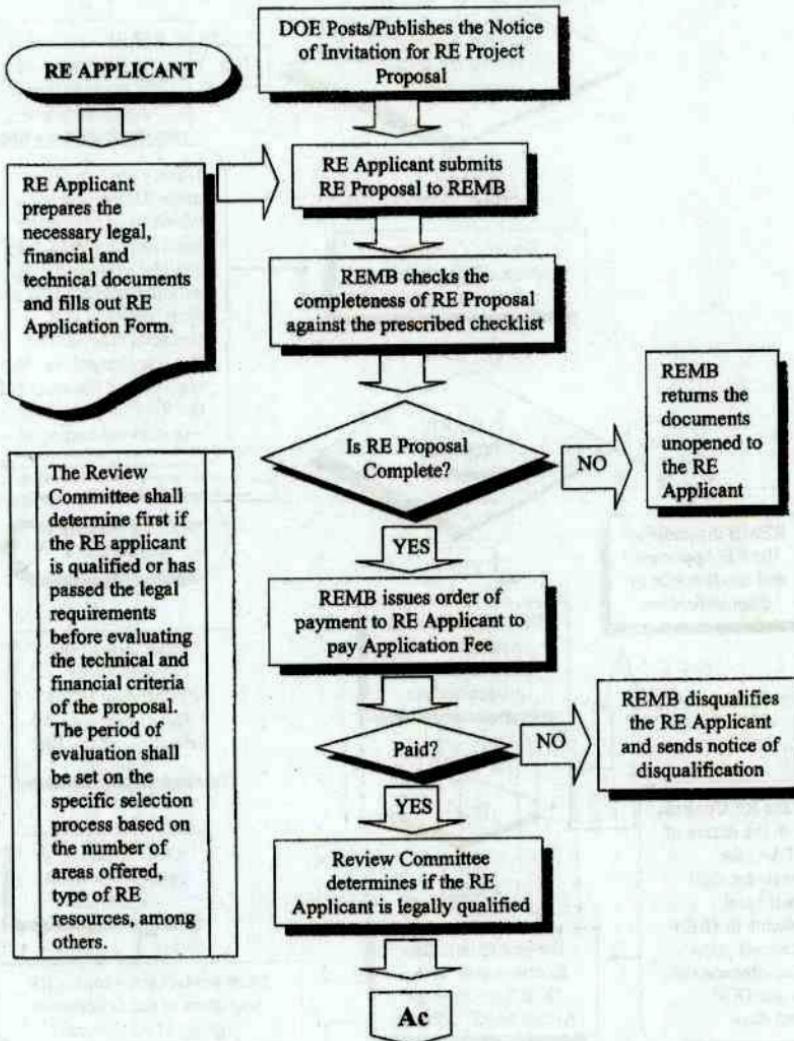
DOE Awards and Parties sign the RE Contract

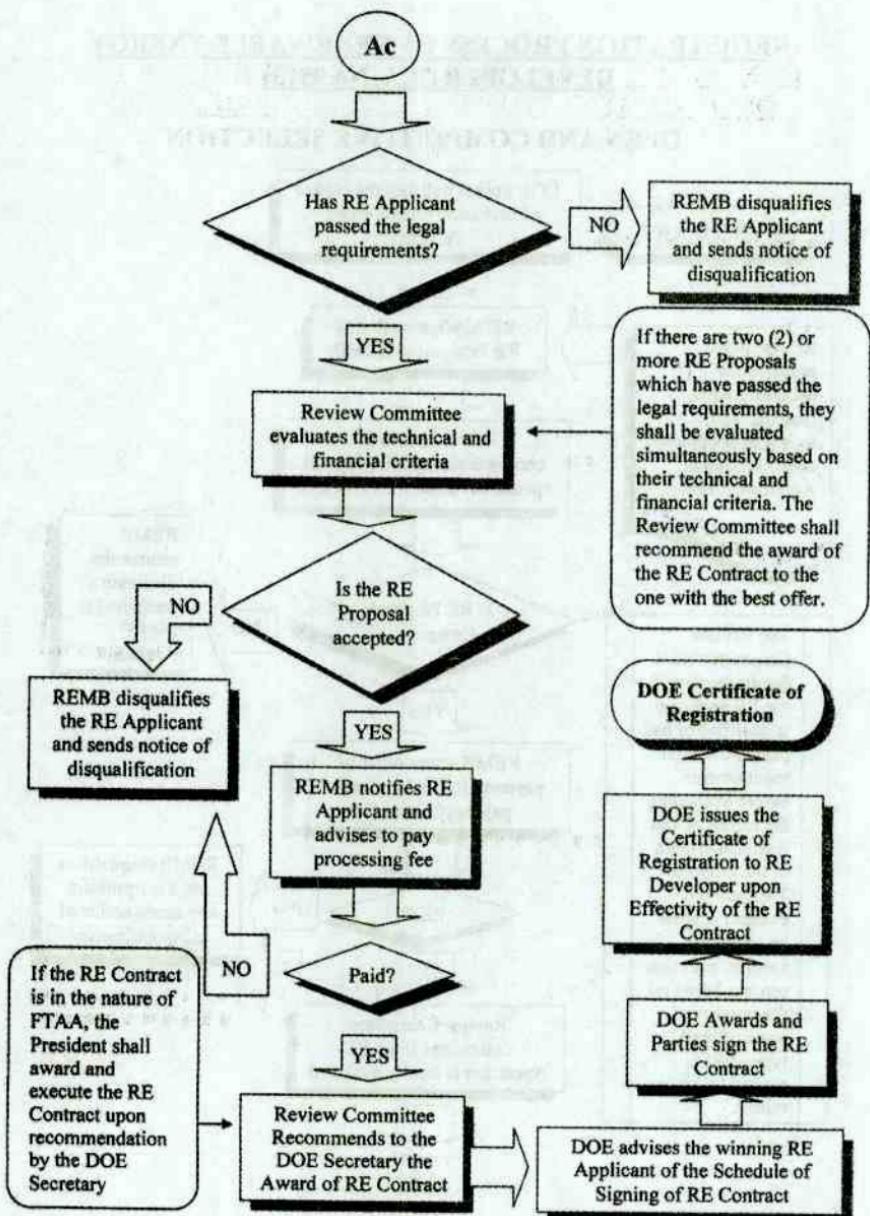
DOE issues the Certificate of Registration to RE Developer upon Effectivity of the RE Contract

**Note:** Submission of a Letter of Intent and/or an RE Contract Application Form only without attaching legal, technical and financial documentary requirements shall not be considered as a submission of an RE Application.

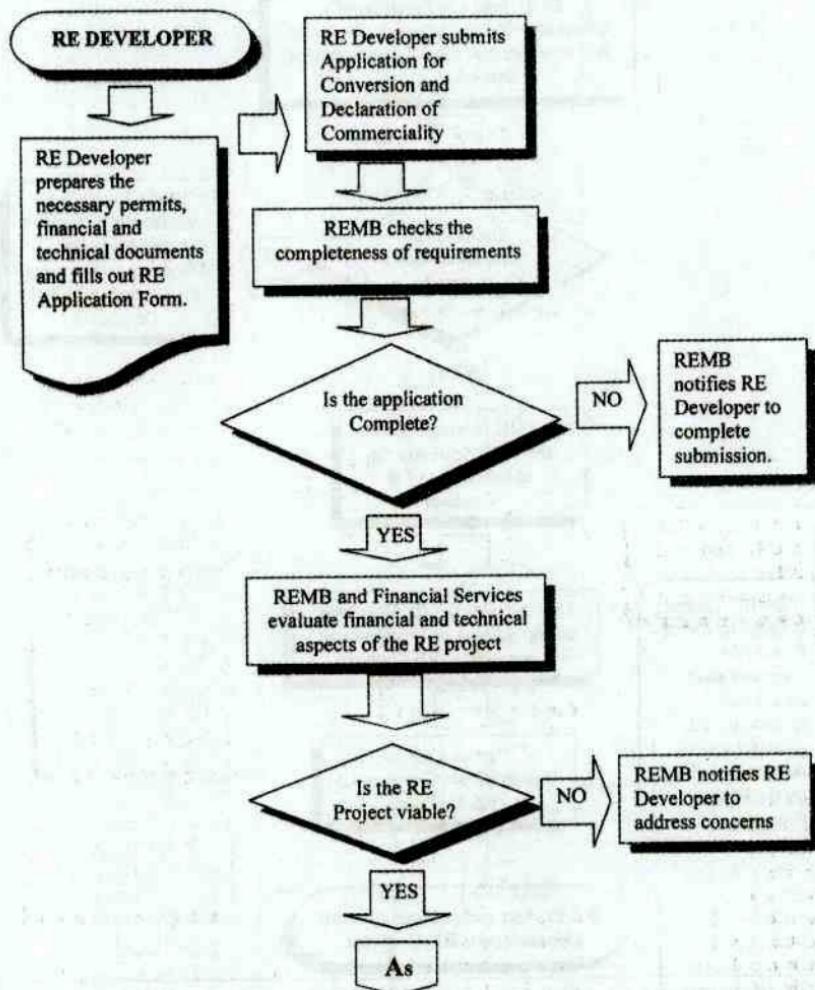
## **REGISTRATION PROCESS OF RENEWABLE ENERGY DEVELOPER (R.A. No.9513)**

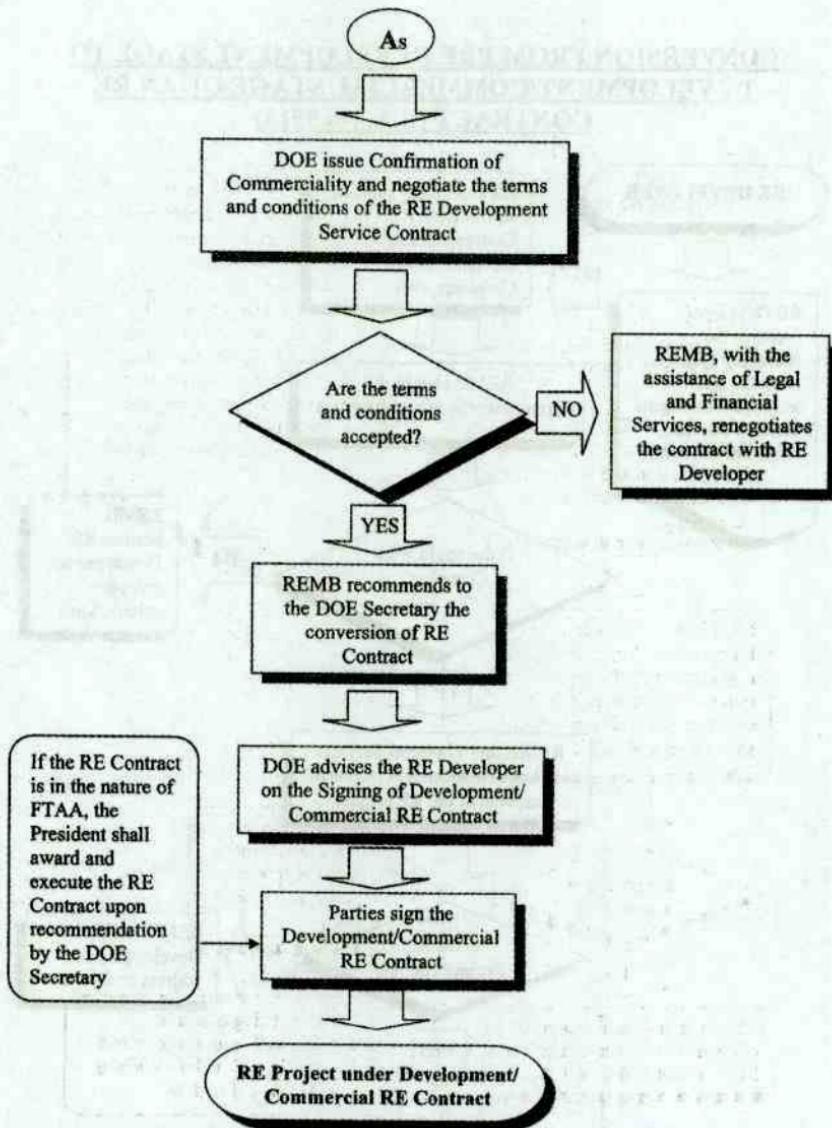
### **OPEN AND COMPETITIVE SELECTION**





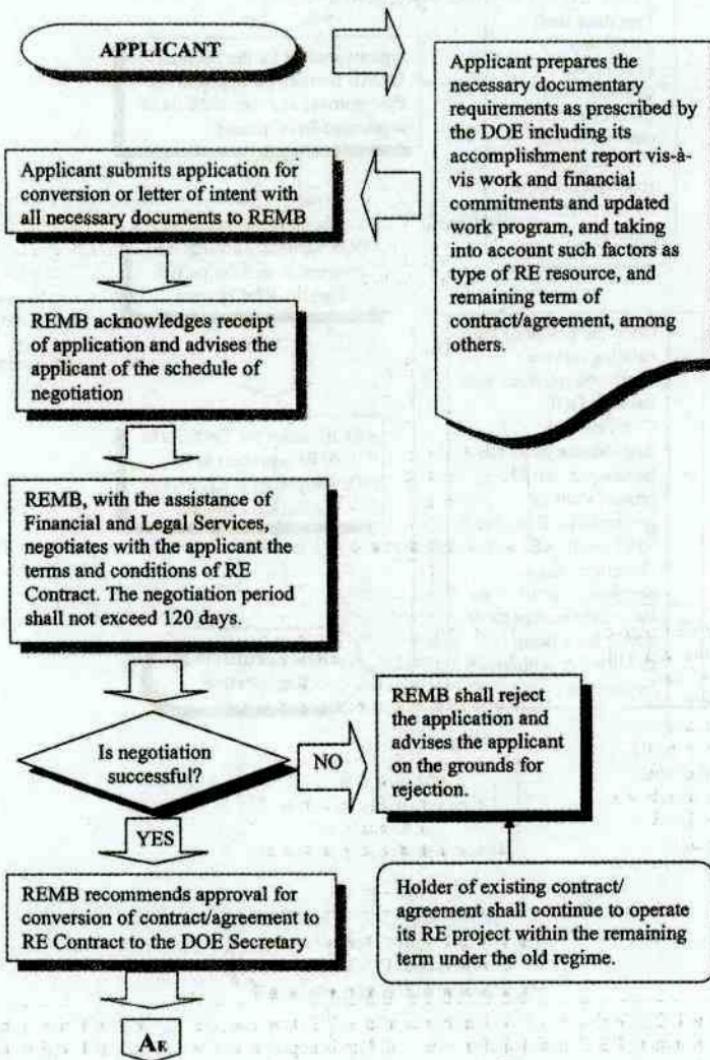
**CONVERSION FROM PRE-DEVELOPMENT STAGE TO  
DEVELOPMENT/COMMERCIAL STAGE OF AN RE  
CONTRACT (R.A. No.9513)**

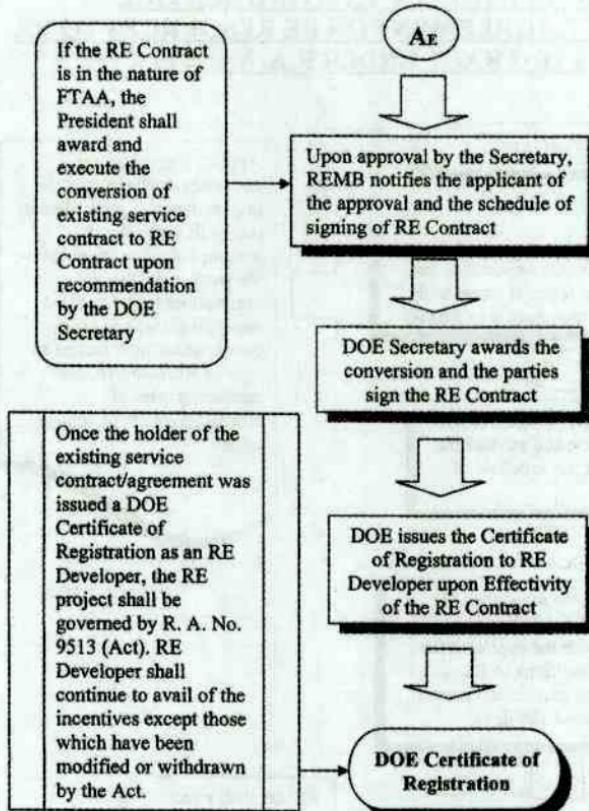




**Note:** The DOE Certificate of Registration issued to RE Developer during the effectivity of the Pre-Development RE Contract shall remain valid upon approval of conversion. Said certificate shall continue to serve as a proof of entitlement of incentives under R.A. No. 9513 unless otherwise automatically revoked or cancelled due to termination of the RE Contract.

**CONVERSION OF EXISTING SERVICE  
CONTRACT/AGREEMENT ON RE RESOURCES TO RE  
CONTRACT UNDER R.A. No. 9513**





ANNEX "A"

Application No. \_\_\_\_\_  
O.R. No. \_\_\_\_\_  
Date \_\_\_\_\_  
Amount \_\_\_\_\_

**RE SERVICE/OPERATING CONTRACT APPLICATION FORM**  
(Republic Act No. 9513)

**I. GENERAL INFORMATION**

A. Name of Applicant: \_\_\_\_\_  
B. Authorized Representative: \_\_\_\_\_  
C. Business  
    Address/Tel./Fax \_\_\_\_\_  
    Nos./Email Address: \_\_\_\_\_  
D. RE Sector of interest: \_\_\_\_\_  
E. Area or Block/s No. and  
    Location applied for: \_\_\_\_\_  
F. Approximate area covered  
    (in has or sq. m): \_\_\_\_\_  
G. Brief description of  
    primary and secondary  
    purpose as authorized by  
    its Articles of Incorporation  
    (for juridical person only): \_\_\_\_\_

**II. COMPANY/BUSINESS BACKGROUND**

**A. Controlling Stockholders (for corporation only)**

(List names of majority stockholders and the percentage of their  
holdings)

a) \_\_\_\_\_ - \_\_\_\_\_ %  
b) \_\_\_\_\_ - \_\_\_\_\_ %  
c) \_\_\_\_\_ - \_\_\_\_\_ %  
d) \_\_\_\_\_ - \_\_\_\_\_ %  
e) \_\_\_\_\_ - \_\_\_\_\_ %

**B. Company Directors and Officers**

(List of Board Members and Company Officers)

NAME / POSITION

a) \_\_\_\_\_

- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_

**C. Parent/Subsidiary/Affiliates**

(List Names, Addresses and Nature of Business)

- a) \_\_\_\_\_
- b) \_\_\_\_\_

**D. No. of Years in Operation:**

**E. Description/History of the Company/Business:**

1. Organizational structure
2. Ownership structure
3. Field of specialization

**III. TECHNICAL AND FINANCIAL CAPABILITIES**

**A. Key Personnel in the Organization**

1. Corporate officers/hierarchy/expertise
2. Staff members/experience

**B. List of On-going or Completed RE or Energy-Related**

Contracts/Agreements

1. Brief description
2. Type of energy resource
3. Location
4. Contract term/implementation period
5. Client

**C. Latest Financial Statements**

1. Income Statement
2. Balance Sheet

**IV. CERTIFICATION:**

It is certified that the foregoing information are true and correct. It is understood that any omission or misinterpretations of the required information shall be sufficient cause for the rejection of this application.

---

Date

Duly Authorized Representative

---

Name of Applicant

**CHECKLIST OF REQUIREMENTS**  
(Renewable Energy Service/Operating Contract under R.A. No. 9513)

**I. RE Contract Application/Proposal**

**A. Legal Requirements**

1. Individual or Single Proprietorship:
  - a. Birth Certificate - duly authenticated by National Statistics Office (NSO);
  - b. Business Permit - certified true copy; and
  - c. Department of Trade and Industry (DTI) Registration (if applicable).
2. Corporation/Joint Venture/Consortium
  - a. Securities and Exchange Commission (SEC) Registration - SEC-certified;
  - b. By-Laws and Articles of Incorporation - SEC-certified;
  - c. Certification authorizing its representative to negotiate and enter into RE Contract with the DOE;
  - d. Business Permit;
  - e. Controlling Stockholders and Percentage of their Holdings;
  - f. Organizational Chart of the Company;
  - g. Parent/Subsidiary/Affiliates (if applicable); and
  - h. Company Profile.

**B. Technical Requirements**

1. Track Record or Experience;
2. Work Program with financial commitment per activities;
3. Curriculum Vitae of Management and Technical Personnel;
4. List of Technical Consultants with corresponding Contract between the Developer and Consultants showing their respective qualifications; and
5. List of existing company-owned and leased equipment appropriate for the RE project with corresponding description.

### **C. Financial Requirements**

1. Audited Financial Statement for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted Audited Financial Statement;
2. Bank certification to substantiate the cash balance (exact amount in words and numbers);
3. Projected cash flow statement for (2) years; and
4. For newly-organized or subsidiary corporation with insufficient funds to finance the proposed work program, it shall submit an Audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the Audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the Philippine Consulate Office that has consular jurisdiction over the said parent company.

### **D. Other Requirements**

1. Letter of Intent/Application;
2. Duly accomplished RE Contract Application Form;
3. Map showing the applied area (RE area of application: in case of ocean, solar, wind, and geothermal, must conform with the DOE Blocking System);
4. Application/Processing fees; and
5. Draft Pre-Development or Development/Commercial Service Contracts.

## **II. Requirements for Conversion from Pre-Development Stage to Development/Commercial Stage**

1. Letter of Declaration of Commerciality declaring the RE project is commercially feasible and viable; and
2. Feasibility study and/or detailed engineering design of the RE project with the following corresponding documents:
  - a. Resolution of Support from host communities and host municipality/ies;
  - b. Proof of Public Consultation;
  - c. Any form of legal documents showing the consent of the landowner if the project falls under a private land;

- d. Department of Environment and Natural Resources (DENR)  
Permits:
  - i. Environmental Impact Study
  - ii. Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC)
  - iii. Forest Land Use Agreement (FLAg)/Special Land Use Agreement (SLUP) for area applied in public domain
- e. National Commission on Indigenous Peoples (NCIP): Free and Prior Informed Consent (FPIC)/Certificate of Pre-Condition or Certificate of Non-Overlap;
- f. National Transmission Corporation (TRANSCO):
  - i. Grid System Impact Study
  - ii. Interconnection Agreement, if applicable
- g. Energy (Electricity) Sales Agreement;
- h. Other clearances from other concerned agencies (*i.e.*, Maritime Industry Authority (MARINA), Bureau of Fisheries and Aquatic Resources (BFAR), Philippine Navy, Philippine Coast Guard, etc.);
- i. Proof of Financial Closing;
- j. Final area for development (geographical coordinates/PRS92);
- k. Payment of corresponding Application/Processing Fee; and
- l. Draft Development/Commercial RE Contract.

### III. Requirements for Conversion from Existing Contracts to RE Contracts

- 1. Letter of Intent from the Developer requesting for the conversion of the existing Contract/Agreement to RE Contract;
- 2. Accomplishment report vis-à-vis work and financial program;
- 3. Updated Work Program; and
- 4. Such other documents that may be required by the DOE.



Republic of the Philippines  
ENERGY REGULATORY COMMISSION  
San Miguel Avenue, Pasig City



RESOLUTION NO. <sup>16</sup>           , SERIES OF 2010

**RESOLUTION ADOPTING THE FEED-IN TARIFF RULES**

**WHEREAS**, Section 7 of Republic Act (R.A.) No. 9513, An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, and Section 5 of its Implementing Rules and Regulations (IRR) mandate the Energy Regulatory Commission (ERC), in consultation with the National Renewable Energy Board (NREB), to formulate and promulgate Feed-in Tariff (FIT) system rules;

**WHEREAS**, in pursuance of this mandate, and as part of the formulation of said Rules, on 18 January 2010, the ERC released its initial draft of the proposed FIT Rules and invited all interested parties to comment thereon;

**WHEREAS**, responding to such invitation of the ERC, several stakeholders submitted their comments, among them: (1) Cagayan Electric Power and Light Company, Inc. (CEPALCO); (2) Department of Energy-World Bank (DOE-WB) Consultant – Marcial Ocampo; (3) Distribution Management Committee (DMC); (4) Energy Logics Philippines, Inc. (ELPI); (5) Gerald Pagobo, MSEE, UP Diliman; (6) Manila Electric Company (MERALCO); (7) National Grid Corporation of the Philippines (NGCP); (8) National Power Corporation (NPC); (9) National Renewable Energy Board (NREB); (10) Next Power Consortium, Inc.; (11) Philippine Electricity Market Corporation (PEMC); (12) Private Electric Power Operators Association (PEPOA); (13) Quezon Power (Philippines), Limited Co.; (14) Trans-Asia Renewable Energy Corporation (TAREC); and (15) Wind Energy Developers Association of the Philippines (WEDAP);

**WHEREAS**, after considering the comments submitted by the above-named stakeholders, on 10 March 2010, the ERC posted on its website its draft of the FIT Rules and directed all interested parties to submit their comments on or before 31 March 2010;

**WHEREAS**, the following parties submitted their comments on the draft FIT Rules: (1) Aboitiz Power; (2) Cagayan Electric Power and Light Co., Inc. (CEPALCO); (3) Energy Development Corporation (EDC); (4) Manila Electric Company (MERALCO); (5) National Grid Corporation of the Philippines (NGCP); (6) Northwind Power Development Corporation (Northwind); (7) National Renewable

Energy Board (NREB); (8) Philippine Electricity Market Corporation (PEMC); (9) Trans-Asia Renewable Energy Corporation; (10) Wind Energy Developers Association of the Philippines (WEDAP); and (11) Mr. David Tan of Altergy;

**WHEREAS**, on 14 April 2010, the ERC conducted a public consultation at its office in Pasig City to discuss the issues or comments submitted with respect to the draft FIT Rules;

**WHEREAS**, the 14 April 2010 public consultation provided the venue for the ERC to discuss to the stakeholders the FIT system framework incorporated in the draft Rules, to clarify the various provisions thereof, and to receive additional comments and suggested revisions to the draft Rules;

**WHEREAS**, on 17 May 2010, the ERC released an updated draft of the FIT Rules, to incorporate additional revisions, which were intended to address the concerns discussed in the submitted comments, as well as during the public consultation, to clarify or supplement some of the provisions in the previous draft of the proposed Rules, to incorporate the ERC's position on the issues raised by the interested stakeholders, and to fine-tune the draft Rules, so as to keep it more attuned towards the achievement of the policy objectives stated in R.A. No. 9513;

**WHEREAS**, the ERC subjected the aforesaid updated draft of the FIT Rules to a final round of consultation by giving all interested stakeholders another opportunity to submit any additional comments and inputs they may have thereon;

**WHEREAS**, the ERC received additional comments and inputs from several parties, among them: (1) Aboitiz Power; (2) Cagayan Electric Power & Light Co., Inc. (CEPALCO); (3) Distribution Management Committee (DMC); (4) Department of Energy (DOE); (5) Energy Development Corporation (EDC); (6) Enfinity Asia Pacific Limited; (7) First Gen Renewables, Inc. (FGRI); (8) Land Bank of the Philippines (LBP); (9) Manila Electric Company (MERALCO); (10) Montalban Methane Power Corporation; (11) National Grid Corporation of the Philippines (NGCP); (12) Northwind Power Development Corporation; (13) National Renewable Energy Board (NREB); (14) PASS Hydro; (15) Philippine Electricity Market Corporation (PEMC); (16) Trans-Asia Renewable Energy Corporation; and (17) Wind Energy Developers Association of the Philippines (WEDAP);

**WHEREAS**, the comments, suggestions, and requests for clarification submitted by these stakeholders impelled the ERC to introduce further revisions to the draft FIT Rules;

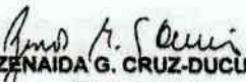
Four handwritten signatures are present at the bottom of the document. From left to right: 1) A signature that appears to be 'AA'. 2) A signature that appears to be 'BF'. 3) A signature that appears to be 'John'. 4) A signature that appears to be 'F. M. M.'.

WHEREAS, after careful consideration, guided by the policy objectives in R.A. No. 9513, the ERC deems it appropriate to already finalize and promulgate the draft FIT Rules, as further revised.

NOW THEREFORE, the ERC, after thorough and due deliberation, hereby RESOLVES, as it is hereby RESOLVED, to APPROVE and ADOPT, the "FEED-IN TARIFF RULES", hereto attached as Annex "A" and made an integral part hereof.

This Resolution shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the country.

Pasig City, 12 July 2010.

  
ZENAIDA G. CRUZ-DUCUT  
Chairperson

  
RAEF A. TAN  
Commissioner

  
ALEJANDRO Z. BARIN  
Commissioner

  
MARIA TERESA A.R. BUSTANEDA  
Commissioner

  
JOSE C. REYES  
Commissioner

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## FEED-IN TARIFF (FIT) RULES

### 1. General Provisions

#### 1.1. Background

Pursuant to Section 7 of Republic Act (R.A.) No. 9513, An Act Promoting the Development, Utilization and Commercialization of the Renewable Energy Resources and for Other Purposes, and Section 5 of its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Feed-In Tariff (FIT) Rules.

#### 1.2. Objectives/Purpose

These Rules establish the FIT system and shall regulate the method of establishing and approving the FIT and the Feed-In-Tariff Allowance (FIT-All).

#### 1.3. Definitions

As used in these Rules, the following terms shall have the following respective meanings:

**Biomass Energy Systems** refer to energy systems which use biomass energy resources as defined under Section 4(b) of R.A. No. 9513 to produce heat, steam, mechanical power or electricity through either thermo-chemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with the prescribed environmental standards pursuant to R.A. No. 9513.

**Certificate of Compliance or COC** refers to a certificate given to an Entity by the ERC to engage in the operation of a power plant facility used to generate electricity pursuant to Section 6 of R.A. No. 9136 and Sections 4 and 5 of the Implementing Rules and Regulations of R.A. No. 9136.

**Consumer** refers to any person or entity requiring the supply and delivery of electricity from the distribution or transmission network for its own use.

**Commercial Operation** refers to the state at which the Eligible RE Plant generated the first kilowatt-hour of energy after commissioning or testing, or two (2) months from the start of such commissioning or testing, whichever comes earlier.

**Commercial Operation Date** refers to the date when the Eligible RE Plant starts Commercial Operations.

**Commissioning and Testing** refers to the series of activities, tests and procedures undertaken in order to start Commercial Operations of a generation facility.

**Degression Rate** refers to the rate to be applied to the FITs to reduce it over time, to take into account the maturing of renewable energy technology and the resulting cost reduction.

**Department of Energy or DOE** refers to the government agency created pursuant to R.A. No. 7638 and whose expanded functions are provided in R.A. No. 9513.

**Distribution System** refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-user.

**Distribution Utility or DU** refers to any electric cooperative, private corporation, government-owned utility or existing local government unit that has an exclusive franchise to operate a distribution system in accordance with R.A. No. 9136.

**Distribution Wheeling Charge** refers to the cost or charge regulated by the ERC for the use of distribution system and/or the availment of related services.

**Eligible RE Plants** refer to the power facilities with Certificates of Compliance issued to them that utilize emerging RE resources identified in Section 7 of R.A. No. 9513 or to such parts of such existing facilities that have been substantially modified or expanded as described in Section 3, which enter into commercial operation after effectivity of the FITs. They include those facilities intended for their owners' use, which are connected to the transmission or distribution networks and are able to deliver to such networks their generation or parts thereof.

**Embedded RE Plants** refers to RE Plants that are connected to a distribution system and have no direct connection to the grid.

**Energy Regulatory Commission or ERC** refers to the independent quasi-judicial regulatory body created under Section 38 of R.A. No. 9136.

**ERC Rules of Practice and Procedures or ERC RPP** refers to the Rules promulgated by the ERC on June 22, 2006 governing proceedings before it.

**Existing Facilities** refer to those RE Plants, which are already commercially operating before the establishment of the FITs and do not qualify under any of the provisos in Section 1.4.

**Feed-in Tariff or FIT** refers to a renewable energy policy that offers guaranteed payments on a fixed rate per kilowatt-hour for emerging renewable energy sources, excluding any generation for own use, or to the rate itself as established pursuant to these Rules.

**Feed-in Tariff Allowance or FIT-All** refers to the charge established pursuant to Section 2.5 of these Rules.

**FIT-All Fund** refers to the fund established pursuant to Section 2.5 of these Rules comprising proceeds of the collection of the FIT-All by the NGCP and implementation of the generation cost recovery mechanism under Section 2.8.

**Generation Baseline Capacity** refers to the installed capacity of existing RE Plant based on the last reportorial submission to the ERC as required under the

terms of the COC for such existing RE Plant prior to repowering, modernization and/or expansion.

**Generation for Own-Use** refers to electricity generated by a power plant and utilized for auxiliary services essential to its continued operations and/or its own consumption.

**Hydroelectric Power Resources** refer to water resources found technically feasible for development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other bodies of water.

**Implementing Rules and Regulations or IRR** means the Implementing Rules and Regulations of R.A. No. 9513.

**Installation Target** refers to the megawatt capacity per RE Technology and the number of years that it shall be achieved as set by NREB.

**National Grid Corporation of the Philippines or NGCP** refers to the entity that took over the transmission business of the National Transmission Corporation (TRANSCO) by virtue of R.A. No. 9511.

**National Renewable Energy Board or NREB** refers to the body created pursuant to R.A. No. 9513 to perform various functions to achieve the goals of R.A. No. 9513.

**Ocean Energy Resource** refers to energy derived from ocean or tidal current, ocean thermal gradient or wave energy that can be converted into electrical or mechanical energy, as defined in R.A. No. 9513.

**Off-Grid System** refers to an electrical system not connected to the wires and related facilities of the On-Grid System of the Philippines.

**On-Grid System** refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power to the grid.

**Renewable Energy or RE** refers to renewable energy resources as defined under Section 4 (uu) of R.A. No. 9153.

**Renewable Energy Payment Agreement (REPA)** refers to the agreement between NGCP and an Eligible RE Plant setting out the obligations of both parties, particularly, the obligation of the NGCP to pay the applicable FIT to such Eligible RE Plant. The form and substance of the pro-forma REPA shall be formulated by NREB in consultation with NGCP and other interested parties and approved by the ERC.

**RE Technologies** refer to wind, solar, ocean, run of river hydropower, and biomass technology used by an Eligible RE Plant for the generation of electricity.

**Retail Electricity Supplier or RES** refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to End-Users in the Contestable Market.

**Rules** refer to these Feed-In Tariff Rules.

**Run-of-river Hydropower** refers to the generation of electricity utilizing the kinetic energy of falling or running water, where the facilities match water inflows

to the reservoirs as closely as is reasonably possible so that fluctuations in water outflows are not substantially more extreme or more frequent than would otherwise occur naturally.

**Solar Energy Resource** refers to energy derived from solar radiation that can be converted into useful thermal or electrical energy, as defined in R.A. No. 9513.

**Transmission of Electricity** refers to the conveyance of electricity through the high voltage backbone system.

**Transmission Wheeling Charge** refers to the rate associated with the cost incurred in the transmission of electricity from the generators to the distribution utilities' system or directly to consumers.

**Wholesale Electricity Spot Market (WESM)** refers to the Wholesale Electricity Spot Market created in accordance with R.A. No. 9136.

**Wind Energy Resource** refers to energy derived from wind that is converted into useful electrical or mechanical energy, as defined in R.A. No. 9513.

#### 1.4. Scope

Subject to paragraph 3 hereof, the FITs to be established and approved pursuant to these Rules shall be specific for each emerging renewable energy technology and to be applied only to generation facilities which enter into commercial operation after effectivity of the FITs or to such parts of such existing facilities which have been substantially modified or expanded as described in Section 3. All Eligible RE Plants shall be entitled to the appropriate FITs as established and such FITs shall be paid by all On-Grid electricity consumers according to the FIT system established in these Rules.

All such RE Plants shall be deemed eligible upon issuance of a COC authorizing them to operate as FIT-eligible RE Plants, subject to the terms and conditions attached to it, among them, compliance with the Philippine Grid Code (PGC) and other pertinent laws, rules and regulations of the ERC. The ERC shall issue the appropriate rules or amendments to its COC Rules, PGC, and other existing rules, if necessary, to reflect any additional eligibility, technical, or other special requirements that shall be imposed on RE Plants for them to qualify as Eligible RE Plants.

RE Plants that have been in commercial operation before the FITs are established by the ERC pursuant to these Rules are not qualified for such FITs: *Provided, however, that RE plants, which have started commercial operations after the effectivity of the R.A. No. 9513 and are not bound under any contract to supply the energy they generate to any DU or consumer, may avail of FITs from the time they are certified by ERC as eligible through an amendment of the COC issued to them and for a period of twenty (20) years less the number of years they have been in operation: Provided, further, that RE Plants, which have been in operation prior to the effectivity of R.A. No. 9513, may be granted lower FITs specific to them upon application and hearing, and after a showing that:*

- (a) Such FITs are indispensable for their continued operations;
- (b) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End-User; and

(c) They have fulfilled such other requirements of the ERC.

## **2. Regulatory Framework for the Establishment of FITs**

### **2.1. Coverage**

Pursuant to Section 7 of R.A. No. 9513, under Chapter III entitled "On Grid Renewable Energy Development," the FIT System as established in these Rules shall apply only to On-Grid areas.

For the Off-Grid areas, the ERC may consider through a separate issuance the implementation of an RE incentive mechanism, consistent with Section 12 and 15(h) of R.A. No. 9513.

### **2.2. Per technology and size**

Technology-specific FITs shall be approved by the ERC based on such FITs to be recommended by the NREB. Such technology-specific FITs may further be differentiated based on the size of the Eligible RE Plant, as may be recommended by the NREB.

### **2.3. Fixed**

The FIT to be established shall be a fixed tariff, instead of a premium, and shall be set and approved in accordance with the methodologies and procedures outlined in these Rules. When already appropriate, the ERC shall issue the rules for the adoption of premium-based FITs.

### **2.4. Time-of-Use (TOU) FITs**

FITs for peak hours and off-peak hours may be established for renewable energy technologies that can follow the dynamics of demand such as biomass energy systems and hydropower, as may be recommended by the NREB.

### **2.5. Feed-in Tariff Allowance (FIT-All)**

Electricity consumers who are supplied with electricity through the distribution or transmission network shall share in the cost of the FITs in part through a uniform charge (in PhP/kWh) to be referred to as the FIT-All and applied to all billed kWh.

The FIT-All shall be established and set by the ERC on an annual basis upon petition by the NGCP, which is tasked with the settlement of the FITs of the Eligible RE Plants. However, if after any quarter of operation of the FIT-All scheme, NGCP has determined that the Working Capital Allowance as originally set has been depleted by more than fifty (50) percent due to higher FIT-eligible deliveries than the projections used in the setting of the FIT-All, NGCP shall be allowed to immediately file for the adjustment of the FIT-All to replenish the Working Capital Allowance.

The FIT-All shall take into account the following: the forecasted annual required revenue of the Eligible RE Plants; the previous year's over or under recoveries; NGCP's administration costs; the forecasted annual electricity sales; and such other relevant factors to ensure that no stakeholder is allocated with additional risks in the implementation of the FITs.

The forecasted annual required revenue of the Eligible RE Plants shall be determined considering the following: for deliveries to the transmission network, the forecasted annual generation of the Eligible RE Plants and the applicable FITs for the year. For deliveries to distribution network, the forecasted annual generation of these embedded Eligible RE Plants, the applicable FITs for the year, and the annual average generation charge of all the distribution utilities where the Eligible RE Plants are embedded, consistent with Section 2.8, shall be considered. The projected WESM generation revenues shall also be considered, if applicable, based on subsequent issuances of the ERC as mentioned in Section 2.9.

NGCP shall ensure that the FIT-All fund is sufficient to pay all RE producers regularly. As such, it shall include a sufficient allowance for the working capital requirements in case some customers default or delay in their obligations to collect and remit the FIT-All proceeds. Additionally, in order to minimize this risk, the ERC shall impose the appropriate penalties to the erring parties to discourage either delay or default in payment of the FIT-All proceeds, which include the imposition of a twenty (20) percent penalty surcharge, plus monthly interests on the unpaid amounts based on 91-day Treasury bill plus 300 basis points until fully paid, and allowing NGCP to disconnect any such erring party from the Grid should the delay or default in payment persist over more than two (2) billing periods.

## 2.6. FIT-All as a Separate Uniform Charge

The FIT-All shall be included in the transmission billing statement as a separate line item to be imposed and collected by the NGCP from the consumers who are directly connected to its system and in the distribution billing statement as a separate line item to be imposed and collected by the DUs from the consumers connected to their respective systems. Upon the start of open access and retail competition, the FIT-All shall be included among the charges to be imposed and collected, also as a separate item, by the Retail Electricity Suppliers from their respective customers.

Proceeds from the imposition and collection by the DUs and RES of the FIT-All shall be remitted to NGCP based on the more detailed guidelines to be established by the NREB and approved by the ERC for the collection and disbursement of the FIT-All fund.

For this purpose, NGCP shall consolidate the information on the generation of all Eligible RE Plants for all the On-Grid areas, including those that are embedded in the distribution system.

## 2.7. Priority Connection, Purchase, and Transmission

All Eligible RE Plants shall enjoy priority connection to the transmission or distribution system, as the case may be, subject to their compliance with the pertinent standards and ERC rules governing such connection. Whenever generation from their plants is available, Eligible RE Plants shall be given priority to inject into the network they are connected and shall be paid the corresponding FITs based on their actual metered deliveries, by all On-Grid electricity consumers through the NGCP, consistent with Sections 1.4, 2.5, 2.6, and 2.9. For this reason, NGCP and the DUs, in the case of

embedded Eligible RE Plants, shall proportionately allocate among all their customers and consumers connected to them the renewable energy covered by the FIT system flowing into their systems.

#### **2.8. Distribution Utilities with Embedded Eligible RE Plants or their own Eligible RE Plants**

The embedded Eligible RE Plants or DU-owned Eligible RE Plants shall deliver the energy they generate to the DU where they are connected for such energy be allocated among the DU's customers or to the transmission system through the DU's system, subject to the payment by the Eligible RE Plants of the applicable DU wheeling charges.

In case the delivery is made to the DUs, prior to retail competition and open access, such DUs shall include in their respective monthly generation charge to their consumers the generation cost portion of the actual energy deliveries of the embedded Eligible RE Plants or DU-owned Eligible RE Plants. This shall be computed using the actual deliveries of these RE Plants and the average generation charge of the particular DU from all its other generation sources. If all the requirements of the DU shall come from embedded Eligible RE Plants, the generation charge to be imposed on the DU's consumers shall be that as determined by the ERC.

The proceeds of this generation cost recovery mechanism, in addition to the proceeds of the imposition of the FIT-All, shall likewise be remitted by the DU to the NGCP, based on the guidelines referred to in Section 2.6, for them to form part of the FIT-All fund.

#### **2.9. Settlement**

The process of settlement includes the determination of the monthly payments to each Eligible RE Plant based on actual metering and the applicable FITs. NGCP shall be responsible for the disbursement of the FIT-All fund for the purpose of settlement and payment of the FITs for the Eligible RE Plants. The funds pertaining to the FIT-All and all interests accruing thereon shall be kept in a separate trust account with any government financial institution for the benefit of the Eligible RE Plants.

For this purpose, NGCP shall consolidate the information on energy deliveries in kWhs of all Eligible RE Plants and the RE generation for the entire On-Grid areas and shall make this information available to relevant stakeholders.

In consultation with all relevant stakeholders, the ERC may consider the issuance of additional guidelines governing the dispatch and settlement process, to integrate the same, if necessary, in the WESM operations.

#### **2.10. Adjustments to the FITs**

The ERC shall adjust the FITs annually for the entire period of its applicability to allow pass-through of local inflation and foreign exchange (FOREX) rate variations. For this purpose, the ERC shall employ a simple benchmarking indexation formula to apply to all technologies based on the applicable percentage sharing between local and foreign capital as will be determined by ERC in the setting of the FITs, as follows:

$$\text{Adjustment} = \left\{ z \times \frac{RPCPI_n}{RPCPI_o} \right\} + \left\{ y \times \frac{FEA_n}{FEA_o} \right\}$$

*[Handwritten signature over the equation]*

Where:

$z$  = percentage share of local capital

$y$  = percentage share of foreign capital

$RPCPI_n$  = the arithmetic average of the monthly values of the Republic of the Philippines Consumer Price Index for the 12 calendar months immediately preceding the 6 calendar months immediately preceding the Adjustment Date as published by the National Statistic Coordination Board of the Philippines in <http://www.nscb.gov.ph>

$RPCPI_0$  = the arithmetic average of the monthly values of the Republic of the Philippines Consumer Price Index, base period calendar year 2009, which is 160.

$FEA_n$  = the arithmetic average of the month-end reference rates between the Philippine peso and the US Dollar for 12 calendar months immediately preceding the 6 calendar months immediately preceding the Adjustment Date as published by the Treasury Department of the Bangko Sentral ng Pilipinas.

$FEA_0$  = the arithmetic average of the month-end reference rates between the Philippine Peso and the US Dollar for the calendar year 2009 which is 47.8125

Adjustment Date = January 1 of year  $n$ .

The ERC shall publish the adjusted FITs annually on or before the fifteenth (15<sup>th</sup>) day of January of each year and use them in the calculation of the FIT-All for the current year.

## 2.11. Degression

To encourage the RE producers to invest at the initial stage and hasten deployment of RE, the FITs to be established by ERC shall be subject to a degression rate which it shall determine based on NREB's recommendation. The Eligible RE Plants shall be entitled to such degressed FITs corresponding to the year when they started commercial operation. The ERC may approve a different degression rate for different technologies.

## 3. Applicability of FITs

FITs shall be established for each generation plant, using:

- a. Wind energy resources;
- b. Solar energy resources;
- c. Ocean energy resources;

- d. Run-of-river Hydroelectric power resources;
- e. Biomass energy resources; and
- f. RE components of the technologies listed above of Hybrid Systems, as defined under Section 4-(w) of R.A. No. 9513.

Additional or incremental capacities above an established generation baseline of existing facilities utilizing the technologies listed above that undergo re-powering, modernization and/or expansion shall also be eligible for the FITs.

FITs shall be paid for such electricity from power plants using technologies mentioned above, which is exported to the distribution or transmission network, as metered at the high voltage side of the step-up transformer at the Eligible RE Plant side.

In case of generation from DU-owned Eligible RE Plants or Eligible RE Plants primarily intended for Own-Use, FITs shall only be paid for such amount of electricity actually exported to the distribution or transmission network and not utilized for their own use.

#### **4. Duration of FITs**

Eligible RE Plants shall be entitled to the applicable FITs to them for a period of twenty (20) years. After this period, should these plants continue to operate, their tariffs shall already be based on prevailing market prices or whatever prices they should agree with an off-taker.

After the implementation of the initial FITs, the ERC shall determine the appropriate duration of the succeeding FITs to be established, which may already at the minimum of twelve (12) years as stated in R.A. No. 9513, subject to extension depending on the full load number of hours that the plant should run during the first 12 years.

#### **5. Determination of FITs**

The FITs that NREB shall calculate and submit to the ERC for approval shall be in accordance with the methodology that the ERC shall adopt. For the initial FITs, the NREB may base its calculations on a reference cost study for each technology based on a real candidate project or a hypothetical one depending on the available information. The project to be chosen shall be representative of the average conditions of the renewable energy plant operating in compliance or at par with applicable international technical standards and practices for such technologies, and the pricing study shall consider also all non-price incentives in R.A. No. 9513.

The NREB shall propose the FITs taking into account the expected MW capacity for each technology that it shall set as installation targets and the number of years when this target shall be achieved.

The FITs shall cover the costs of the plant, including the costs of other services that the plant may provide, as well as the costs of connecting the plant to the transmission or distribution network, calculated over the expected lives of the plant, and provide for market-based weighted average cost of capital (WACC) in determining return on invested capital.

## 6. Administration of FITs

Being in-charge of the FIT settlement, NGCP shall be authorized to perform the following for all RE generation:

- a. Collect information for all RE injections in any distribution or transmission network across the Philippines, including those of the Eligible RE Plants that are embedded in the distribution networks;
- b. Audit the metering;
- c. Based on the applicable FIT and the actual injections, calculate the payments for each Eligible RE Plant;
- d. Collect and make payments; and
- e. Based on applicable FITs and FIT duration, enter into an RE Payment Agreement (REPA) with Eligible RE plants. The ERC shall issue a pro-forma REPA after due proceedings. Any REPA executed between NGCP and an Eligible RE Plant, which conforms to the pro-forma REPA shall be deemed approved.

In case of dispute between or among the electricity sector participants, the ERC shall decide.

All Eligible RE Plants are required to submit information for all RE injections to the NGCP.

## 7. Review of FITs

The NREB shall monitor and review regularly the development of RE generation and the impact of FITs and report to ERC within three (3) years and every two (2) years thereafter.

The ERC may review and re-adjust the FITs, in the following cases:

- a. When the installation target per technology as defined by NREB is achieved;
- b. When the installation target per technology is not achieved within the period targeted;
- c. When there are significant changes to the costs or when more accurate cost data become available that will already allow NREB to calculate the FITs based on such methodology that shall later on be adopted by the ERC; and
- d. Other analogous circumstances that justify review and re- adjustment of the FITs.

In such cases, the NREB shall inform the ERC of the necessity of reviewing the FITs. The ERC suo moto shall initiate the proceedings for Rule-making for the review and

re-adjustment of the FITs, in accordance with the procedure outlined in these Rules and in the ERC RPP.

The new FITs that may be set by the ERC following this review shall apply only to new RE projects. Eligible RE plants in commercial operation as of the time of approval of the new FITs shall be entitled to their prevailing FITs.

#### **8. Procedure for the Setting of the FITs**

Upon the effectiveness of these Rules, the ERC shall issue a Notice of Rule-making for the establishment and fixing of the FITs in accordance with these Rules. The filing shall conform to the procedures in the ERC Rules of Practice and Procedure (ERC RPP) on Rule-making. In the said Notice, the ERC shall direct NREB within the period stated therein to submit its recommended FITs. In its submission, NREB shall provide discussion on the installation targets per technology, which it shall ensure are consistent with the Renewable Portfolio Standards (RPS) and whatever RPS Rules that will be established by the DOE and the details and results of its reference cost study for each technology.

If necessary, the ERC shall choose and appoint experts to assist it in the evaluation of the NREB's recommended FITs, with the cost of such engagement to be borne by NREB.

#### **9. Final Provisions**

##### **9.1. Exception Clause**

Where good cause appears, the ERC may allow an exemption from any provision of these Rules, if such is found to be in the public interest and is not contrary to law or any other related rules and regulations.

##### **9.3. Separability Clause**

If any provision or part of a provision of these Rules is declared invalid or unconstitutional by a court of competent jurisdiction, those provisions which are not affected thereby shall continue to be in full force and effect.

##### **9.4. Repealing**

All prior rules and guidelines, or portions thereof, issued by the ERC that are inconsistent with these Rules are hereby repealed or modified accordingly.

##### **9.5. Effectivity**

These Rules shall take effect within fifteen (15) days following its complete publication in a newspaper of general circulation.

Pasig City, July 12, 2010

*Zenaida G. Cruz-Ducut*  
ZENAIDA G. CRUZ-DUCUT

Chairperson

*Rauf A. Tan*  
RAUF A. TAN  
Commissioner

*Alejandro Z. Barin*  
ALEJANDRO Z. BARIN  
Commissioner

*Maria Terese A.R. Castañeda*  
MARIA TERESA A.R. CASTAÑEDA  
Commissioner

*Jose C. Reyes*  
JOSE C. REYES  
Commissioner

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S. No. 2226  
H. No. 4629

Republic of the Philippines  
Congress of the Philippines  
Metro Manila

Thirteenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fourth day of July, two thousand six.

— ■ —

[ REPUBLIC ACT NO. 9367 ]

AN ACT TO DIRECT THE USE OF BIOFUELS,  
ESTABLISHING FOR THIS PURPOSE THE  
BIOFUEL PROGRAM, APPROPRIATING FUNDS  
THEREFOR, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of  
the Philippines in Congress assembled:*

SECTION 1. *Short Title.* — This Act shall be known as the "Biofuels Act of 2006".

SEC. 2. *Declaration of Policy.* — It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and natural ecosystems consistent with the

country's sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

- a) develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;
- b) mitigate toxic and greenhouse gas (GHG) emissions;
- c) increase rural employment and income; and
- d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

SEC. 3. *Definition of Terms.* – As used in this Act, the following terms shall be taken to mean as follows:

- a) *AFTA* – shall refer to the ASEAN Free Trade Agreement initiated by the Association of Southeast Asian Nations;
- b) *Alternative Fuel Vehicles/Engines* – shall refer to vehicles/engines that use alternative fuels such as biodiesel, bioethanol, natural gas, electricity, hydrogen and automotive LPG, instead of gasoline and diesel;
- c) *Bioethanol* – shall refer to ethanol ( $C_2H_5OH$ ) produced from feedstock and other biomass;
- d) *Biodiesel* – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines, with quality specifications in accordance with the Philippine National Standards (PNS);

- e) *Bioethanol Fuel* – shall refer to hydrous or anhydrous bioethanol suitably denatured for use as motor fuel, with quality specifications in accordance with the PNS;
- f) *Biofuel* – shall refer to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation, with quality specifications in accordance with the PNS;
- g) *Biomass* – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and the biodegradable component of solid waste;
- h) *DA* – shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;
- i) *Diesel* – shall refer to refined petroleum distillate, which may contain small amounts of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristics, suitable for compression ignition engine and other suitable types of engines with quality specifications in accordance with the PNS;
- j) *DENR* – shall refer to the Department of Environment and Natural Resources created under Executive Order No. 192, as amended;
- k) *DOE* – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;
- l) *DOLE* – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;

- m) *DOF* – shall refer to the Department of Finance created under Administrative Order Nos. 127 and 127-A;
- n) *DOST* – shall refer to the Department of Science and Technology created under Republic Act No. 2067;
- o) *DOTC* – shall refer to the Department of Transportation and Communications created under Executive Order No. 125-A, as amended;
- p) *DIT* – shall refer to the Department of Trade and Industry created under Executive Order No. 133;
- q) *Feedstock* – shall refer to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;
- r) *Gasoline* – shall refer to volatile mixture of liquid hydrocarbon, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines with quality specifications in accordance with the PNS;
- s) *Motor fuel* – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles;
- t) *MTBE* – shall refer to Methyl Tertiary Butyl Ether;
- u) *NBB* or *Board* – shall refer to the National Biofuel Board created under Section 8 of this Act;
- v) *Oil Company* – shall refer to any entity that distributes and sells petroleum fuel products;
- w) *Oxygenate* – shall refer to substances, which, when added to gasoline, increase the amount of oxygen in that gasoline blend;

- x) *PNS* – shall refer to the Philippine National Standards; consistent with Section 26 of R.A. No. 8749, otherwise known as the "Philippine Clean Air Act of 1999";
- y) *Renewable Energy Sources* – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis; and
- z) *WTO* – shall refer to the World Trade Organization.

**SEC. 4. *Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates.*** – Within six months from the effectivity of this Act, the DOE, according to duly accepted international standards, shall gradually phase out the use of harmful gasoline additives such as, but not limited to, MTBE.

**SEC. 5. *Mandatory Use of Biofuels.*** – Pursuant to the above policy, it is hereby mandated that all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components as follows:

5.1 Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume: *Provided*, That the ethanol blend conforms to PNS.

5.2 Within four years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country.

In the event of supply shortage of locally-produced bioethanol during the four-year period, oil companies shall be allowed to import bioethanol but only to the extent of the shortage as may be determined by the NBB.

5.3 Within three months from the effectivity of this Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel engine fuels sold in the country. *Provided, That the biodiesel blend conforms to PNS for biodiesel.*

Within two years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.

SEC. 6. *Incentive Scheme.* - To encourage investments in the production, distribution and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules and regulations, the following additional incentives are hereby provided under this Act.

a) Specific tax

The specific tax on local or imported biofuels component, per liter of volume shall be zero (0). The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.

b) Value Added Tax

The sale of raw material used in the production of biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

c) Water Effluents

All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and for other agricultural purposes are considered "reuse", and are therefore, exempt from wastewater charges under the system provided under Section 13 of R.A. No. 9275, also known as the Philippine Clean Water Act: *Provided, however,* That such application shall be in accordance with the guidelines issued pursuant to R.A. No. 9275, subject to the monitoring and evaluation by DENR and approved by DA.

d) Financial Assistance

Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or entities, at least sixty percent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling and transport of biofuel and biofuel feedstock, including the blending of biofuels with petroleum, as certified by the DOE.

SEC. 7. *Powers and Functions of the DOE.* – In addition to its existing powers and functions, the DOE is hereby mandated to take appropriate and necessary actions to implement the provisions of this Act. In pursuance thereof, it shall within three months from the effectivity of this Act:

- a) Formulate the implementing rules and regulations under Section 15 of this Act;

- b) Prepare the Philippine Biofuel Program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program;
- c) Establish technical fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;
- d) Establish guidelines for the transport, storage and handling of biofuels;
- e) Impose fines and penalties against persons or entities found to have committed any of the prohibited acts under Section 12 (b) to (e) of this Act;
- f) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of this Act, the PNS and corresponding issuances of the Department; and
- g) Conduct an information campaign to promote the use of biofuels.

*SEC. 8. Creation of the National Biofuel Board (NBB). -* The National Biofuel Board is hereby created. It shall be composed of the Secretary of the DOE as Chairman and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA, and the SRA, as members.

The DOE Secretary, in his capacity as Chairperson, shall, within one month from the effectivity of this Act, convene the NBB.

The Board shall be assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE. It shall be headed by a Director to be appointed by the Board. The number of staff of the Technical Secretariat and the corresponding positions shall be determined by the Board.

subject to approval by the Department of Budget and Management (DBM) and existing civil service rules and regulations.

**SEC. 9. *Powers and Functions of the NBB.*** – The NBB shall have the following powers and functions:

a) Monitor the implementation of, and evaluate for further expansion, the National Biofuel Program (NBP) prepared by the DOE pursuant to Section 7 (b) of this Act;

b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval of the Secretary of DOE. For this purpose:

1. The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels, in a format to be prescribed for this purpose; and

2. The NBB shall determine availability of locally-sourced biofuels and recommend to DOE the appropriate level or percentage of locally-sourced biofuels to the total annual volume of gasoline and diesel sold and distributed in the country.

c) Review and recommend to DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally-sourced biofuels: *Provided*, That the minimum blend may be decreased only within the first four years from the effectiveness of this Act. Thereafter, the minimum blends of five percent (5%) and two percent (2%) for bioethanol and biodiesel, respectively, shall not be decreased;

d) Recommend to DOE a program that will ensure the availability of alternative fuel technology for vehicles, engines and parts in consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels, including other biofuels;

- e) Recommend to DOE the use of biofuel-blends in air transport taking into account safety and technical viability; and
- f) Recommend specific actions to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment and social impact.

*SEC. 10. Security of Domestic Sugar Supply.* – Any provision of this Act to the contrary notwithstanding, the SRA, pursuant to its mandate, shall, at all times, ensure that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

To this end, the SRA shall recommend and the proper agencies shall undertake the importation of sugar whenever necessary and shall make appropriate adjustments to the minimum access volume parameters for sugar in the Tariff and Customs Code.

*SEC. 11. Role of Government Agencies.* – To ensure the effective implementation of the NBP, concerned agencies shall perform the following functions:

- a) The DOF shall monitor the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC);
- b) The DOST and the DA shall coordinate in identifying and developing viable feedstock for the production of biofuels;
- c) The DOST, through the Philippine Council for Industry and Energy Research and Development (PCIERD), shall develop and implement a research and development program supporting a sustainable improvement in biofuel

production and utilization technology. It shall also publish and promote related technologies developed locally and abroad;

d) The DA through its relevant agencies shall:

(1) Within three months from the effectivity of this Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the Administrators of the SRA and the PCA, and other DA-attached agencies shall, within their authority, develop and implement policies supporting the Philippine Biofuel Program and submit the same to the Secretary of the DA for consideration;

(2) Ensure increased productivity and sustainable supply of biofuel feedstocks. It shall institute a program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production; and

(3) Publish information on available and suitable areas for cultivation and production of such crops.

e) The DOLE shall:

(1) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;

(2) Ensure the access of workers to productive resources and social protection coverage; and

(3) Recommend plans, policies and programs that will enhance the social impact of the NBP.

f) The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements; and

g) The local government units (LGUs) shall assist the DOE in monitoring the distribution, sale and use of biofuels and biofuel-blends.

SEC. 12. *Prohibited Acts.* – The following acts shall be prohibited:

a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in this Act;

b) Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume in violation of the requirement under Section 5 of this Act;

c) Distribution, sale and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;

d) Noncompliance with the established guidelines of the PNS and DOE adopted for the implementation of this Act; and

e) False labeling of gasoline, diesel, biofuels and biofuel-blended gasoline and diesel.

SEC. 13. *Penal Provisions.* – Any person, who willfully aids or abets in the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation.

The commission of an act enumerated in Section 12, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from a minimum of One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00).

In addition, the DOE shall confiscate any amount of such products that fail to comply with the requirements of Sections 4 and 5 of this Act, and implementing issuances of the DOE. The DOE shall determine the appropriate process and the manner of disposal and utilization of the confiscated products. The DOE is also empowered to stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under this Act.

Further, the DOE is empowered to impose administrative fines and penalties for any violation of the provisions of this Act, implementing rules and regulations and other issuances relative to this Act.

**SEC. 14. *Appropriations.*** – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

**SEC. 15. *Implementing Rules and Regulations (IRR).*** – The DOE, in consultation with the NBB, the stakeholders and other agencies concerned, shall within three months from the effectivity of this Act, promulgate the IRR of this Act: *Provided*, That prior to its effectivity, the draft of the IRR shall be posted at the DOE website for at least one month, and shall be published in at least two newspapers of general circulation.

**SEC. 16. *Congressional Oversight Committee.*** – Upon the effectivity of this Act, a Congressional Committee, hereinafter referred to as the Biofuels Oversight Committee, is hereby

constituted. The Biofuels Oversight Committee shall be composed of fourteen (14) members, with the Chairmen of the Committees on Energy of both Houses of Congress as co-chairmen. The Chairmen of the Committees on Agriculture and Trade and Industry shall be *ex officio* members. An additional four members from each House, to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro-rata representation but shall have at least one representative in the Biofuels Oversight Committee.

**SEC. 17. *Benefits of Biofuel Workers.*** – This Act shall not in any way result in the forfeiture or diminution of the existing benefits enjoyed by the sugar workers as prescribed under R.A. No. 6982, or the Sugar Amelioration Act of 1991, in case sugarcane shall be used as feedstock.

The NBB shall establish a mechanism similar to that provided under the Sugar Amelioration Act of 1991 for the benefit of other biofuel workers.

**SEC. 18. *Special Clause.*** – This Act shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO<sub>2</sub>) and greenhouse gases (GHG) omission reductions by means of biofuels use.

**SEC. 19. *Repealing Clause.*** – The provisions of Section 148 (d) of R.A. No. 8424, otherwise known as Tax Reform Act of 1997, and all other laws, presidential decrees or issuances, executive orders, presidential proclamations, rules and regulations or parts thereof inconsistent with the provisions of this Act, are hereby repealed, modified or amended accordingly.

**SEC. 20. *Separability Clause.*** – If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SEC. 21. *Effectivity.* — This Act shall take effect fifteen (15) days after its publication in at least two newspapers of general circulation.

Approved,

*Joseph M. Arroyo*  
JOSE DE VENECIA JR.  
*Speaker of the House*  
*of Representatives*

*M. J. Villar*  
MANNY VILLAR  
*President of the Senate*

This Act which is a consolidation of Senate Bill No. 2226 and House Bill No. 4629 was finally passed by the Senate and the House of Representatives on November 29, 2006.

*Roberto P. Nazareno*  
ROBERTO P. NAZARENO  
*Secretary General*  
*House of Representatives*

*Oscar G. Yabes*  
OSCAR G. YABES  
*Secretary of the Senate*

Approved: JAN 12 2007

*Gloria M. Arroyo*  
GLORIA MACAPAGAL-ARROYO  
*President of the Philippines*



HGMA Hologram # 38273



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

DEPARTMENT CIRCULAR NO. DC 2007-05-0005, ts

**RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9367**

Pursuant to Sec. 15 of Republic Act No. 9367, otherwise known as Biofuels Act of 2006, the Department of Energy, in consultation with the National Biofuels Board, appropriate government agencies, and other stakeholders, hereby issues, adopts and promulgates the following implementing rules and regulations.

**Rule 1. General Provisions**

**Section 1. Title, Purpose, and Scope.**

1.1 This Department Circular shall be known as the Implementing Rules and Regulations (IRR) of Republic Act No. 9367, otherwise known as the Biofuels Act of 2006 and referred to as the "Act" in this IRR.

1.2 It shall cover the production, blending, storage, handling, transportation, distribution, use, and sale of biofuels, biofuel-blends, and biofuel feedstock in the Philippines.

1.3 Further, it clarifies specific provisions of the Act and the roles and functions of the different government agencies and their relationship with the National Biofuels Board.

**Section 2. Declaration of Policy.**

It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and natural ecosystems consistent with the country's sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

- a) develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;
- b) mitigate toxic and greenhouse gas (GHG) emissions;
- c) increase rural employment and income; and
- d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

### Section 3. Definition of Terms.

3.1 As used in the Biofuels Act of 2006 and this Implementing Rules and Regulations (IRR), the following terms shall be defined as follows:

- a) Act - shall refer to the Biofuels Act of 2006;
- b) AFTA - shall refer to the ASEAN Free Trade Agreement initiated by the Association of Southeast Asian Nations;
- c) Alternative Fuel Vehicles/Engines - shall refer to vehicles/engines that use alternative fuels such as biodiesel, bioethanol, natural gas, electricity, hydrogen, and automotive LPG, instead of gasoline and diesel;
- d) Bioethanol - shall refer to ethanol ( $C_2H_5OH$ ) produced from feedstock and other biomass;
- e) Biodiesel - shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines with quality specifications in accordance with the Philippine National Standards (PNS);
- f) Bioethanol Fuel - shall refer to hydrous or anhydrous bioethanol suitably denatured for use as motor fuel, with quality specifications in accordance with the PNS;
- g) Biofuel - shall refer to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS;
- h) Biofuel blends - shall refer to gasoline or diesel that has been blended with biofuels such as, but not limited to, bioethanol and biodiesel;
- i) Biomass - shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and the biodegradable component of solid waste;
- j) DA - shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;
- k) DENR - shall refer to the Department of Environment and Natural Resources created under Executive Order No. 192, as amended;
- l) Diesel - shall refer to refined petroleum distillate, which may contain small amounts of hydrocarbon or nonhydrocarbon additives to

improve ignition quality or other characteristics, suitable for compression ignition engine and other suitable types of engines with quality specifications in compliance with the PNS;

m) DOE – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;

n) DOF – shall refer to the Department of Finance created under Administrative Orders Nos. 127 and 127-A;

o) DOLE – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;

p) DOST – shall refer to the Department of Science and Technology created under Republic Act No. 2067;

q) DOTC – shall refer to the Department of Transportation and Communications created under Executive Order No. 125-A, as amended;

r) DTI – shall refer to the Department of Trade and Industry created under Executive Order No. 133;

s) Feedstock - shall refer to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;

t) Gasoline - shall refer to volatile mixture of liquid hydrocarbon, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engine with quality specifications in compliance with the PNS;

u) Locally-sourced biofuels – shall refer to biofuels derived from feedstocks grown/planted, harvested and processed in the Philippines;

v) Motor Fuel – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles;

w) MTBE – shall refer to Methyl Tertiary Butyl Ether;

x) National Biofuels Program / Philippine Biofuels Program – shall refer to the program which the DOE is mandated to formulate under Section 7 of the Act;

y) NBB or BOARD – shall refer to the National Biofuels Board created under Section 8 of the Act;

z) Oil Company – shall refer to any entity that distributes and sells petroleum fuel products;

- aa) Oxygenate – shall refer to substances which, when added to gasoline, increase the amount of oxygen in that gasoline blend;
- bb) PCA - shall refer to Philippine Coconut Authority created under P.D. 232 as amended by Presidential Decrees 961 and 1468;
- cc) Petroleum Depot or Terminal - shall refer to the supply point of petroleum products (or bulk storage facilities) operated by oil companies;
- dd) PNS – shall refer to the Philippine National Standards consistent with Section 26 of R. A. No. 8749 otherwise known as the "Philippine Clean Air Act of 1999";
- ee) Renewable Energy Sources – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time;
- ff) SRA - shall refer to Sugar Regulatory Administration created under Executive Order No. 18 s. 1986;
- gg) Sugarcane industry – shall refer to the industry that integrates the agricultural production systems of growing sugarcane into the industrial processing of the same into sugar, ethanol and other products with the consequent production of by-products including but not limited to bagasse, filter cake, and molasses. The sugarcane industry also covers the processing and manufacture of any of the by-products (bagasse, filter cake, molasses and others) into other value-added products or commodities; and
- hh) WTO – shall refer to the World Trade Organization.

3.2 All other terms not covered in the Act or in this IRR shall be defined by concerned government agencies in the exercise of their respective regulatory and/or policy formulating functions.

## Rule 2. Operation of the Mandate

### Section 4. Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates

4.1 Pursuant to Section 4 of the Act, the DOE shall gradually phase out the use of harmful gasoline additives and/or oxygenates such as, but not limited to MTBE, according to duly accepted international standards.

4.2 The DOE, in consultation with the concerned government agencies and stakeholders, shall issue the appropriate department circular for the purpose within six (6) months from the effectivity of the Act.

## **Section 5. Mandatory Use of Biofuels.**

Pursuant to Section 5 of the Act, all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components as follows:

### **5.1 Bioethanol**

a. Within two (2) years from the effectivity of the Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum five percent (5%) bioethanol fuel by volume: *Provided, That the bioethanol blend conforms to the PNS.*

b. Within four (4) years from the effectivity of the Act, the NBB created under Section 8 of the Act is empowered to determine the feasibility and thereafter recommend to the DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country: *Provided, That the same conforms to the PNS.*

### **5.2 Biodiesel**

a. Within three (3) months from the effectivity of the Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel fuels sold in the country: *Provided, that the biodiesel blend conforms to the PNS.*

b. Within two (2) years from the effectivity of the Act, the NBB is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased after taking into account considerations including, but not limited to, domestic supply and availability of locally-sourced biodiesel component.

### **5.3 Other Biofuels**

In the event that fuels derived from biomass other than bioethanol and biodiesel are developed pursuant to the Act as technically validated by the DOST, the DOE shall issue, upon consultation with the entities concerned and upon the recommendation of the NBB, the appropriate department circular to promote the utilization of such fuels and provide the appropriate incentives consistent with the provisions of the Act: *Provided, That the appropriate PNS for such fuel is established and complied with.*

**5.4** The DOE shall issue, in consultation with the concerned government agencies and entities, further guidelines relative to the above provisions which shall include, among others, the standards and reportorial requirements to be complied

with. The issuance of these further guidelines shall not be a condition precedent to the implementation of the above provisions.

**Section 6. Importation in case of supply shortage of locally-produced bioethanol.**

6.1 Pursuant to Section 5.2 of the Act, in the event of a supply shortage of locally-produced bioethanol during the first four-year period of implementation of the Act, as may be confirmed by the NBB, oil companies shall be allowed to import bioethanol to the extent of the shortage as may be determined by the NBB.

6.2 Prior to the importation of bioethanol due to a supply shortage, the importing oil company may apply for the issuance of a DOE Certification to the effect that the bioethanol to be imported shall be used for the National Biofuels Program.

6.3 The DOE Certification may be used by the oil company to avail itself of reduced tariff on bioethanol pursuant to Executive Order No. 449.

6.4 The issuance of the DOE Certification shall be made in accordance with existing DOE guidelines.

**Section 7. Incentives under the Act.**

7.1 To encourage investments in the production, distribution, and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules, regulations, the following additional incentives are hereby provided:

a) **Specific Tax.** The specific tax on local or imported biofuels component of the blend per liter of volume shall be zero. For the purpose of availing a zero specific tax, local or imported bioethanol shall be suitably denatured into bioethanol fuel in accordance with existing revenue regulations. The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.

b) **Value Added Tax.** The sale of raw material used in the production of biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

The tax incentives provided under items (a) and (b) of this Section shall be subject to rules and regulations to be promulgated by the DOF.

c) **Water Effluents.** All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and for other agricultural purposes are considered "reuse" and are therefore, exempt from wastewater charges under the system provided under Section 13 of RA

9275, also known as the Philippine Clean Water Act; *Provided, however, that such application shall be in accordance with the guidelines issued pursuant to RA 9275, subject to the monitoring and evaluation by the DENR and approved by the DA; and*

d) **Financial Assistance.** Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor, and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino Citizens or Entities, at least sixty per cent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling, and transport of biofuel and biofuel feedstock, including blending of biofuels with petroleum, as certified by the DOE.

7.2 The appropriate government agencies shall issue the necessary guidelines for the availment of such incentives.

### **Rule 3. The National Biofuels Board**

#### **Section 8. Creation and Organizational Structure of the National Biofuels Board.**

8.1 Pursuant to Section 8 of the Act, the National Biofuels Board (NBB) is created and shall be composed of the Secretary of DOE as Chairman and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA and SRA, as members.

a. The Secretary of the DOE, as the Chairman, shall be assisted by a duly designated Undersecretary who shall act as his alternate; and

b. The member Secretaries and Administrators may assign alternate representatives who must be occupying at least the level of Assistant Secretary; *Provided, That only the Department Secretaries/Administrators sign official documents and issuances of the NBB.*

8.2 The NBB shall create a Technical Secretariat which shall provide for the administrative, policy, and technical services of the Board.

8.3 The NBB shall determine the appropriate compensation / remuneration of the members and the Technical Secretariat staff and personnel in accordance with existing laws, rules and regulations, and shall make appropriate requests and representations to the Office of the President and the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

## **Section 9. Meetings of the NBB.**

Regular meetings of the NBB shall be held at least once every quarter on a date and in a place fixed by the Board.

## **Section 10. Powers and Functions of the NBB.**

Pursuant to Section 9 of the Act, the NBB shall have the following powers and functions:

- a) Monitor the implementation of, and evaluate for further expansion, the National Biofuels Program prepared by the DOE pursuant to Section 7(b) of the Act;
- b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval by the Secretary of DOE. For this purpose:
  - i. The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels in a format to be prescribed for this purpose;
  - ii. The NBB shall determine the availability of locally-sourced biofuels and recommend to the DOE the appropriate level or percentage of locally sourced biofuels to the total annual volume of gasoline and diesel sold and distributed in the country;
  - iii. To ensure an adequate supply of bioethanol, the NBB shall recommend to the DOE the amount of bioethanol that may be imported at any given time by DOE-certified oil companies in the event of shortage in the supply of locally-sourced bioethanol during the first four years from the effectivity of the Act.
- c) Review and recommend to the DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally-sourced biofuels; *Provided*, That the minimum blend may be decreased only within the first four (4) years from the effectivity of the Act. Thereafter, the minimum blends of five percent (5%) and two percent (2%) for bioethanol and biodiesel, respectively, shall not be decreased;

In determining the availability of locally-sourced biofuels, the NBB may take into account factors such as, but not limited to, shortage in the supply of biofuels and feedstock and constraints or difficulties in the distribution of biofuel blends.

- d) Recommend to the DOE a program that will ensure the availability of alternative fuel technology for vehicles, engines and parts in

consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels, including other biofuels;

e) Recommend to the DOE the use of biofuel-blends in air transport taking into account safety and technical viability;

f) Recommend specific actions to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment and social impact; and

g) Exercise such other powers and functions as may be necessary or incidental to attain the objectives of the Act.

#### **Section 11. The Technical Secretariat.**

Pursuant to Section 8 of the Act, the NBB shall be assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE.

a) **Composition.** The Technical Secretariat shall be headed by a Director to be appointed by the NBB. The number of staff of the Technical Secretariat and corresponding positions shall be determined by the NBB subject to existing civil service rules and regulations and the approval of the Department of Budget and Management (DBM).

b) **Functions and responsibilities.** The Technical Secretariat shall have the following functions and responsibilities:

i. Provide administrative and general support services to the NBB in collecting, securing, and processing pertinent information / data from all entities engaged in the production, blending and distribution of biofuels and biofuel-blends including, but not limited to, actual and projected sales and inventory and data on the availability of locally-sourced biofuels;

ii. Provide all members of the NBB appropriate information / data on appropriate vehicle technologies, including air transportation, in consonance with the mandated minimum biofuel blends;

iii. Monitor and coordinate with all government entities the performance of their respective functions and responsibilities in the implementation of the National Biofuels Program;

iv. Identify issues, concerns and/or barriers on the implementation of the National Biofuels Program, including the mandated minimum biofuel blends, and propose measures / solutions to address the same, in coordination with all stakeholders of the biofuel industry; and

v. Perform such other functions, as may be directed by the NBB.

c) **Creation of an Interim Technical Secretariat.** Within one (1) month from the effectivity of this IRR, the NBB shall designate an interim technical secretariat to be known as the NBB-Project Management Office (NBB-PMO) to hold office for a period of one (1) year or until such time that the organization of the Technical Secretariat is completed, subject to existing rules and regulations of the Department of Budget and Management and the Civil Service Commission. Prior to the organization of the NBB-PMO, the Energy Utilization Management Bureau (EUMB) of the DOE shall serve as the Technical Secretariat of the NBB; and

The NBB-PMO staff and personnel shall be provided with appropriate compensation and remuneration in accordance with existing rules and regulations of the Department of Budget and Management and the Civil Service Commission.

#### **Rule 4. Role of the Department of Energy and other Government Agencies**

##### **Section 12. The Department of Energy.**

Pursuant to Section 7 of the Act, the DOE is mandated to take appropriate and necessary actions to implement the provisions of the Act, in addition to its existing powers and functions. In pursuance thereof, it shall, within three (3) months from the effectivity of the Act:

- a) Prepare the National Biofuels Program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program and the programs of other government agencies, such as, but not limited to, the feedstock supply program of the DA, PCA and SRA, technology research and development program of the DOST, and the vehicle development program of the DTI;
- b) Establish technical fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;
- c) Establish the guidelines for the transport, storage and handling of biofuels and biofuel-blends;
- d) Accredit producers and distributors of biofuels and developers / owners of biofuel production facilities following DOE's accreditation guidelines;
- e) Endorse qualified biofuel producers to the Board of Investments for the availment of appropriate fiscal incentives;

- f) Conduct regular monitoring, announced or unannounced inspections, sampling and laboratory testings of biofuels in all biofuel production facilities and feedstock production areas, and biofuel-blended gasoline and diesel in all blending/storage/distribution facilities and retail stations;
- g) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of the Act, the PNS and corresponding issuances of the Department;
- h) Impose fines and penalties against persons or entities found to have committed any of the prohibited acts under Section 12 (b) to (e) of the Act;
- i) Conduct various research and development activities and studies on biofuels, biofuel-blended gasoline and diesel, and/or other biomass-derived fuels for use in motors and engines, including air transport, and other vehicle technologies;
- j) Provide laboratory support services to other government entities and the private sector in the conduct of research and development activities on biofuels, biofuel-blends, and other biomass-derived fuels;
- k) Formulate guidelines for the importation of biofuels, taking into consideration relevant existing rules and regulations issued by the DOE and other government agencies; and
- l) Conduct, in coordination with biofuel stakeholders, information campaign to promote the use of biofuels.

#### **Section 13. The Department of Finance.**

The DOF shall monitor, in coordination with other concerned government agencies, the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC)

The DOF shall promulgate the rules and regulations necessary to implement its mandate under the Act.

#### **Section 14. The Department of Science and Technology.**

The DOST shall :

- a) Coordinate with the DA in identifying and developing viable feedstock for the production of biofuels;

b) Develop and implement, through the Philippine Council for Industry and Energy Research and Development (PCIERD), a research and development program supporting a sustainable improvement in biofuel production and utilization technology. For this purpose, the DOST shall establish a network of academic and research institutions; and

c) Publish and promote related technologies developed locally and abroad.

#### **Section 15. The Department of Agriculture.**

The DA, through its relevant agencies, shall have the following functions and responsibilities:

a) Coordinate with the DOST in identifying and developing viable and quality feedstock, including production and primary postharvest processing technologies for biofuels;

b) Within three (3) months from the effectivity of the Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the Administrators of the SRA and the PCA, and other DA-related agencies, within their authority, shall develop and implement policies in support of the National Biofuels Program and submit the same for consideration and approval by the Secretary of the DA;

c) Ensure increased productivity and sustainable supply of biofuel feedstocks. The DA shall institute a program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production;

d) Publish information on available and suitable areas for cultivation and production of biofuel crops, available and accessible technologies, sources of planting materials, and financial assistance;

e) In cooperation with SRA, PCA, other attached agencies, and bureaus, shall undertake the identification and publication of potential areas suitable for the expansion and production of raw materials as feedstocks for biofuels;

f) Undertake biofuel feedstock research and development which may include identifying new feedstock, developing high yielding varieties, and developing new processing technologies in cooperation with public and private research agencies, and international research institutes; and

g) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

#### **Section 16. The Sugar Regulatory Administration.**

Pursuant to its mandate under Executive Order No. 18 and the Act, the SRA shall:

- a. at all times ensure that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable; and
- b. together with the DA, PCA, and other DA-attached agencies, develop and implement policies supporting the National Biofuels Program and submit the same to the Secretary of the DA for consideration.

#### **Section 17. The Philippine Coconut Authority.**

Pursuant to its mandate to formulate and adopt a general program of development for the coconut and other palm oil industry in all its aspects, under PD 1468, Article II, Section (3) (a), the PCA shall develop, implement policies and programs within the coconut industry in support of the National Biofuels Program.

To this end, the PCA shall:

- a. Review and assess the policies, projects and activities of all other government agencies related to the National Biofuels Program and integrate/adopt them into the National Coconut Industry Development Program;
- b. Develop, formulate and implement a massive nationwide rehabilitation, planting, and replanting program using high-yielding coconut varieties including the strengthening of its organization, manpower and capabilities to fully support the National Biofuels Program;
- c. Formulate and implement the necessary regulatory measures to ensure the availability, sufficiency, quality, and sustainability of the supply of coconut raw materials for the National Biofuels Program;
- d. Require the accreditation/registration of reputable and credible oil mills who shall supply the coconut oil (CNO) requirements of coco biodiesel producers;
- e. Formulate industry policies and regulations which shall include the retention of CNO volume to support the required minimum of one percent (1%), and later on two percent (2%), coconut methyl ester (CME) of the biodiesel blends which may be increased later upon the recommendation of the NBB;
- f. Explore and expand the domestic and foreign markets of coconut biofuel products and by-products; and

g. Seek funds for its sustainable operation and continuous support for the National Biodiesel component program.

#### **Section 18. The Department of Labor and Employment.**

The DOLE shall:

- a) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;
- b) Ensure the access of workers to productive resources and social protection coverage;
- c) Recommend policies, plans, and programs that will enhance the social impact of the National Biofuels Program; and
- d) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

#### **Section 19. The Department of Trade and Industry.**

19.1 Pursuant to the State's policy of protecting public health through, among others, the reduction of toxic and greenhouse gas emissions, the DTI shall formulate and implement, in coordination with the DOTC and the DENR, a national motor vehicle inspection and maintenance program as a measure to substantially reduce emissions from motor vehicles pursuant to Art. 4, Section 21 (d) of RA 8749, otherwise known as the Philippine Clean Air Act of 1999;

19.2 Pursuant to its program under existing laws, the DTI shall promote the development of an alternative fuel technology for vehicles, engines and parts in consonance with the requirements of the mandated minimum biofuel-blends.

#### **Section 20. The Tariff Commission.**

The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements.

#### **Section 21. The Local Government Units.**

The Local Government Units shall assist the DOE in monitoring the distribution, sale and use of biofuels and biofuel-blends by:

- a) Ensuring strict implementation of local permitting requirements applicable to businesses engaged in the distribution and sale of biofuels and biofuel blends;
- b) Ordering the closure of any business engaged in the distribution and sale of biofuel and biofuel blends found to be operating without the necessary permits and licenses;
- c) Reporting to the DOE violations of the Act being committed by any person involved in the distribution, sale, and use of biofuels and biofuel-blends; and
- d) Revoking local permits previously issued to business entities found to have violated pertinent rules and regulations of the DOE and other concerned government agencies, upon the recommendation of the DOE or the concerned agency, as the case may be.

#### **Rule 5. Role of the Players In the Biofuels Industry**

##### **Section 22. Oil Companies.**

**22.1 Blending of Biofuels.** Blending of biodiesel and bioethanol with diesel and gasoline fuels, respectively, shall be undertaken by the oil companies using appropriate blending methodologies at their respective refineries, depots or blending facilities prior to the sale of biofuel-blends to consumers / end-users: *Provided*, That blending methodologies shall be in accordance with duly accepted international standards as well as guidelines issued by the DOE for this purpose: *Provided further*, That oil companies shall ensure compliance of the biofuel blends with the PNS.

**22.2 Supply and Distribution.** To ensure compliance of the minimum mandated biofuel blends with the PNS, oil companies shall observe the following guidelines, in addition to what may be prescribed by the DOE under subsequent issuances:

- a) Supply of biofuels shall be sourced only from biofuel producers accredited by the DOE. The procurement of biofuels may be covered by biofuels supply contracts or agreements;
- b) Ensure proper logistics and application of appropriate technologies in blending, handling, transporting, and distributing biofuel-blends; and
- c) Observe proper diligence in the supervision of company-operated, dealer-owned or dealer-operated retail service stations carrying their brand in order to ensure that the quality and integrity of PNS-compliant biofuels shall be maintained.

22.3. **Supply Shortage.** In the event of supply shortage of locally-produced bioethanol during the first four-year period from the effectiveness of the Act, oil companies may apply for the issuance of a certification to import bioethanol from the DOE in accordance with existing guidelines.

22.4. **Reportorial Requirements.** For proper monitoring of the compliance by oil companies with this IRR, each oil company shall submit to the DOE the following reports:

a. **Performance Compliance Report.** Every oil company shall submit on an annual basis a Performance Compliance Report containing its compliance plan with the minimum mandated biofuel blends as well as other information that may be required by the DOE. Such report shall be duly certified and signed under oath by an authorized responsible officer of the oil company who shall personally attest to the veracity and accuracy of its contents.

b. **Periodic Reports.** The oil companies shall likewise submit periodic reports as may be required by the DOE.

## **Section 23. Biofuel Producers.**

### **23.1 Accreditation of Biofuels Producers.**

a) Any individual or entity intending to engage in the production of biofuels shall apply for accreditation as a biofuel producer with the DOE. The DOE, in consultation with the stakeholders, shall issue the appropriate guidelines for this purpose, which shall indicate the requirements for quality assurance, quality management system, and analogous quality production standards.

b) Pending the issuance of these guidelines, only those biofuel producers who have existing accreditation or have been issued a permanent Certificate of Fuel Additive Registration (CFAR) and who have pending applications for accreditation pursuant to Memorandum Circular No. 55 shall be allowed to produce and sell biofuels.

23.2 All biofuels producers, in addition to what may be required by the DOE under subsequent guidelines, shall:

a) Register their distributors with the DOE;

b) Ensure proper logistics and application of appropriate technologies in handling biofuels;

c) Submit to the DOE the following data and information:

- i. Monthly production, sales and inventory of biofuels;
- ii. Monthly report on projected production, sales and inventory of biofuels;
- iii. Report on the application of technologies in the production, handling, storage and distribution of biofuels; and
- iv. Such other data and information as may be required by the DOE and/or the NBB.

- d) Maintain a minimum inventory of biofuels equivalent to its average monthly sales to meet the minimum mandate;
- e) Conduct and/or support local research and development to improve biofuels feedstock productivity; and
- f) Report to DOE the weekly price of biofuels.

**Section 24. Importer End-Users.** End users who are direct importers of diesel or gasoline shall also be subject to the required use of the mandated biofuel blend. To determine their compliance, such entities shall submit the following reports, in addition to what may be required by the DOE under subsequent guidelines:

- a) Monthly report to the DOE of its importation and consumption of gasoline/diesel; and
- b) Monthly report on the purchase and consumption of biofuels and biofuel blends.

#### **Rule 6. Standards for Biofuel and Biofuel Blends**

**Section 25. Quality Standards.** All biofuels and biofuel blends that qualify under the Act shall be limited to those compliant with the PNS.

Facilities for the production, handling, distribution and storage of biofuels and biofuel blends shall likewise conform to standards and guidelines set by the DOE.

**Section 26. Quality Assurance.** All biofuels producers shall assure compliance with quality standards in accordance with the following guidelines, in addition to what may be required by the DOE under subsequent issuances:

- a) All biofuel deliveries must be accompanied by a Certificate of Quality to be issued by the distributor/supplier indicating the properties of the delivered biofuels, which must be in compliance with the PNS;

b) Biofuels packaged in individual containers shall be appropriately labelled and shall contain information such as DOE CFAR number, batch manufacturing date, and expiry date in accordance with the guidelines that will be issued by the DOE; and

c) Biofuel producers shall establish management systems covering quality assurance, environmental management and occupational health and safety standards in accordance with the accreditation guidelines to be issued by the DOE.

#### **Rule 7. Security of Domestic Sugar and Feedstock Supply**

##### **Section 27. Security of Domestic Sugar Supply.**

27.1. The SRA shall develop and implement policies within the sugarcane industry in support of the National Biofuels Program. It shall form a consultative body within the sugarcane industry to undertake the initiatives stated herein.

27.2. Towards this end, the SRA shall formulate the necessary guidelines in ensuring that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

a. The SRA shall ensure full utilization of sugarcane and adequate supply of sugar in the domestic market and for other requirements. To this end, it shall conduct a periodic assessment of the domestic sugar supply and demand situation, and report the same to the NBB on a regular basis: *Provided*. That in case of shortage of locally produced bioethanol, the SRA in consultation with stakeholders, shall initiate appropriate actions to increase local production and propose measures to the NBB to address the supply shortage.

b. The SRA shall develop appropriate schemes to facilitate orderly allocation of sugarcane for both sugar and ethanol. For this purpose, it shall report to the NBB the supply and demand situation of sugarcane and shall require regular submission of prescribed reports from bioethanol producers.

The SRA, pursuant to its existing mandate, shall formulate issuances consistent with its existing sugar classification functions, to effect an appropriate system of classification and allocation in terms of sugar and sugar equivalent.

##### **Section 28. Security of Domestic Biofuels Feedstock Supply.**

Pursuant to Section 11, paragraph (d)(2) of the Act, the DA shall ensure increased productivity and sustainable supply of biofuels feedstocks. Towards this end, the DA in consultation with PCA, SRA, and other entities concerned, shall

develop and implement appropriate programs and guidelines in order to ensure a reliable supply of biofuel feedstocks.

**Rule 8. Development of Social Amelioration and Welfare Program for Workers In the Production of Biofuels**

**Section 29. Objectives of the Program.** A Social Amelioration and Welfare Program ("Program") similar to that of the Sugar Amelioration Act of 1991 or R.A. 6982, shall be developed for the following objectives:

- a. Promote gainful livelihood opportunities;
- b. Facilitate productive employment through effective employment services and regulation; and
- c. Ensure the access of workers to productive resources and social protection coverage.

**Section 30. Coverage.** The Program shall cover all rank and file employees of biofuel plants, workers and farmers engaged in the production of crops used as feedstocks in biofuels.

**Section 31. Components of the Program.** The Program shall provide basic benefits and assistance that will augment the income and improve the standard of living of workers engaged in the production of biofuels. It may consist, among others, the following components:

- a) training and education assistance;
- b) livelihood assistance;
- c) social protection and welfare benefits; and
- d) distribution of financial benefits.

**Section 32. Establishment of Guidelines and Mechanisms.**

Pursuant to Section 17 of the Act, the NBB shall formulate and issue, through the appropriate NBB member-agency/ies, the guidelines covering or governing the mechanisms, management, and monitoring of the Program similar to that prescribed under R.A. 6982 or the Sugar Amelioration Act of 1991.

However, the Act and this IRR shall not in any way result in the forfeiture or diminution of the existing benefits enjoyed by the sugar workers as prescribed under the Sugar Amelioration Act, in case sugarcane shall be used as feedstock.

## **Rule 9. Prohibited Acts, Penal and Administrative Provisions**

**Section 33. Prohibited Acts.** Any person or entity found in violation of any provision of the Act and this IRR shall be subject to appropriate criminal, civil, and/or administrative sanctions as provided herein and other existing applicable laws, rules and regulations.

Under Section 12 of the Act, the following shall be prohibited:

- a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in the Act;
- b) Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume in violation of the requirement under Section 5 of the Act;
- c) Distribution, sale, and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;
- d) Non-compliance with the established guidelines of the PNS and DOE adopted for the implementation of the Act; and
- e) False labeling of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel.

## **Section 34. Penal Provisions.**

34.1 In accordance with Section 13 of the Act, any person, who wilfully aids or abets in the commission of a crime prohibited in the Act, or who causes the commission of any such act by another shall be liable in the same manner as the principal;

34.2 In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation; and

34.3 The commission of an act enumerated in Section 12 of the Act, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from One Million (P1,000,000) to Five Million pesos (P5,000,000).

## **Section 35. Administrative Liability.**

35.1 Without prejudice to incurring criminal liability, any person who commits any of the prohibited acts under Section 12 (b) to (e) of the Act, this IRR and other issuances relative to the implementation of the Act shall likewise be subject to administrative fines and penalties, in accordance with a schedule of administrative fines and penalties to be issued by the DOE.

For avoidance of doubt, administrative actions initiated pursuant to this section shall be separate and independent from any criminal actions that may arise for violations of Section 12 of the Act.

35.2 In addition to imposing fines and penalties, the DOE shall be authorized to:

- a) confiscate any amount of such products that fail to comply with the requirements of Sections 4 and 5 of the Act and implementing issuances of the DOE;
- b) determine the appropriate process and the manner of disposal and utilization of the confiscated products; and
- c) stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under the Act.

#### **Section 36. Administrative Procedures.**

36.1 The DOE may initiate *motu proprio*, or upon the filing of any complaint for the violation of any prohibited act under Section 12 (b) to (e) of the Act, the IRR or related issuances, an administrative proceeding against any such person or entity. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

36.2 The administrative proceeding will be conducted before the DOE to determine culpability of alleged offenders and to determine the applicable penalties. The administrative proceedings under this IRR shall be governed by the existing rules of practice and procedure before the DOE.

#### **Rule 10. Other Provisions**

#### **Section 37. Congressional Oversight Committee.**

37.1 Pursuant to Section 16 of the Act, a Congressional Oversight Committee, called the Biofuels Oversight Committee, is hereby constituted with fourteen (14) members, with the Chairpersons of the Committees on Energy of both Houses of Congress as co-chairpersons.

37.2 The Chairpersons of the Committees on Agriculture and on Trade and Industry in each chamber shall be ex officio members of the Biofuels Oversight Committee.

37.3 The Senate President and the Speaker of the House of Representatives shall each designate four members from their respective chambers to sit in the Biofuels Oversight Committee. In designating such four members, the minority in each chamber shall be entitled to pro-rata representation provided that at the very least, they shall have one representative in the Biofuels Oversight Committee.

**Section 38. Appropriations.** Funds necessary to finance the activities of concerned government agencies as provided in the Act and in this IRR shall be included in the annual General Appropriations Act.

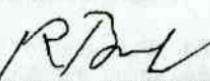
**Section 38. Special Clause.** The Act and this IRR shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO<sub>2</sub>) and greenhouse gases (GHG) emission reductions by means of biofuels use.

**Section 40. Village Level and/or Community-Based Facilities.** The promotion and utilization of biofuels for household and community equipment for lighting, cooking, farming, post harvest processing, off-road operations, and other analogous uses shall be included as part of the National Biofuels Program in accordance with the government policy adopted under the Act.

**Section 41. Separability Clause.** If any provision of this IRR is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

**Section 42. Effectivity.** This IRR shall take effect fifteen (15) days after its publication in two newspapers of general circulation.

Signed this 17 day of May 2007 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.



R P M. LOTILLA  
Secretary of Energy



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

DEPARTMENT CIRCULAR NO. DC 2011-02-0001

**MANDATORY USE OF BIOFUEL BLEND**

**WHEREAS**, Section 5.2 of Republic Act No. 9367 or the "Biofuels Act of 2006" provides:

"Within four years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country."

**WHEREAS**, the Department of Energy (DOE) recognizes and adheres to the policy, objectives and mandate of the Biofuels Act of 2006;

**WHEREAS**, after extensive public consultation with all stakeholders in 2009-2011, including scientific tests and studies conducted by technical experts, the National Biofuels Board (NBB) established the viability of implementing the general mandate of ten percent (10%) for bioethanol sold and distributed by every oil company under specific terms and conditions;

**WHEREAS**, in a resolution dated February 3, 2011, the NBB recommended to the DOE the implementation of the general mandate of ten percent (10%) blend of bioethanol for gasoline fuel under specific terms and conditions and the conduct of further public consultation to determine the feasibility of increasing the current two percent (2%) blend for biodiesel;

**NOW, THEREFORE**, in consideration of all the foregoing, the DOE hereby issues, adopts and promulgates the following mandatory use of biofuel blend:

**Section 1. Scope and Application.** This Circular shall apply to all participants in the downstream oil industry and the local biofuel producers.

**Section 2. Adherence to Declared State Policy.** By this Circular, the DOE strictly adheres to the importance and significance of the objective of the Biofuels Act of 2006 to mandate the use of biofuels as a measure to, among others, develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil, mitigate toxic and greenhouse gas emissions, increase rural employment and income and ensure availability of alternative and renewable clean energy without any

detiment to the natural ecosystem, biodiversity and food reserves of the country. All downstream oil industry participants and bioethanol producers are enjoined to strictly comply with the provisions of this Circular.

**Section 3. Bioethanol Blend.**

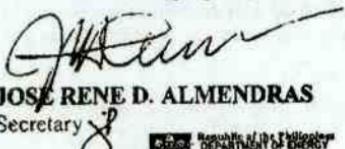
- 3.1 **Ten Percent (10%).** The ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country, subject to certain exempt gasoline grades, shall commence beginning August 6, 2011. This transition period shall allow all oil companies to put in place appropriate adjustments and logistics, including blending methodologies and facilities at their respective refineries, depots and blending facilities that are in accordance with duly accepted international standards and the Philippine National Standards (PNS).
- 3.2 **Exempt Gasoline Grades.** From August 6, 2011 until full implementation on February 6, 2012, the following gasoline grades as determined in accordance with the PNS, shall be exempt from the mandatory ten percent (10%) blend of bioethanol: (a) Regular Gasoline with minimum research octane number (RON) of 81 but only for use by off-road engines like farm machineries, threshers, irrigation pumps, power tillers and small motorized bancas; (b) Regular Gasoline with minimum RON of 87 but only for use by motorcycles; and (c) Premium Plus Gasoline with minimum RON of 97.
- 3.3 **Full Implementation.** On February 6, 2012, all gasoline fuels distributed and sold by each and every oil company in the country shall contain a minimum of ten percent (10%) blend of bioethanol by volume pursuant to the PNS without any exempt gasoline grades.
- 3.4 **Local Bioethanol Production.** Pursuant to the objective to develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil, accredited local bioethanol producers are enjoined to maximize their production to meet the increasing local demand of bioethanol.
- 3.5 **Mandatory NBB Review.** Within 30 days before February 6, 2012, the NBB shall review circumstances surrounding the full implementation of the ten percent (10%) bioethanol blend, including domestic supply and availability of locally-sourced bioethanol component and international and local prices of bioethanol, to determine economic viability of the mandate, as well as updated studies for its local technical viability.

Section 4. **Biodiesel Blend.**

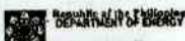
- 4.1 **Full Compliance.** Upon the determination by the NBB, the mandate under the Biofuels Act of 2006 for the mandated two percent (2%) blend of biodiesel by volume pursuant to the PNS has been sufficiently achieved and complied with.
- 4.2 **Public Consultations.** Consistent with the recommendation of the NBB and considering the supply of local biodiesel production in excess of local requirements, the DOE, together with the NBB, shall conduct further public consultations in 2011 to determine the feasibility of further increasing the current biodiesel blend.

Section 5. **Effectivity and Publication.** This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation and shall remain in effect until revoked.

Fort Bonifacio, Taguig City, Metro Manila, February 6, 2011.

  
**JOSE RENE D. ALMENDRAS**

Secretary



REPLY MAIL MAIL CITE:  
SDOE11-000606





Republic of the Philippines  
DEPARTMENT OF ENERGY  
Merritt Road, Fort Bonifacio  
Taguig City, Metro Manila

FEB 05 2009

DEPARTMENT CIRCULAR NO. DC2009-02-0002

**MANDATING A MINIMUM OF 2% BLEND OF BIODIESEL IN ALL DIESEL AND 5% BIOETHANOL IN ANNUAL TOTAL VOLUME OF GASOLINE**

WHEREAS, Section 5.1 of Republic Act No. 9367 or the "Biofuels Act of 2006" mandates that, "Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume. Provided, that the ethanol blend conforms to PNS.";

WHEREAS, Section 5.3, paragraph 2 of Republic Act No. 9367 states, "Within two years from the effectivity of this Act, the NBB created under this Act, is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.";

WHEREAS, on January 19, 2009, the National Biofuels Board (NBB) established the viability of implementing the minimum blend of two percent (2%) for biodiesel sold and distributed by every oil company;

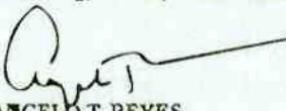
WHEREAS, in a resolution dated January 19, 2009, the NBB recommended to the DOE the implementation of the two percent (2%) blend (B2) for diesel;

NOW, THEREFORE, in consideration of the foregoing, all entities that distribute and sell petroleum fuel products are required to implement the following minimum biofuel blends by February 6, 2009, with specifications pursuant to the Philippine National Standards (PNS) for B2, and conventional gasoline and E10 grades:

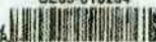
- c. At least five percent (5%) bioethanol in the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country;
- d. At least two percent (2%) blend of biodiesel by volume.

This Circular shall take effect immediately.

Signed this \_\_\_\_\_ day of February 2009 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

  
ANGELO T. REYES  
Secretary

Republic of the Philippines  
DEPARTMENT OF ENERGY  
MERRITT ROAD SITE  
SE09-010204



**JOINT ADMINISTRATIVE ORDER NO. 2008-1, Series of 2008**

**"GUIDELINES GOVERNING THE BIOFUEL FEEDSTOCKS PRODUCTION,  
AND BIOFUELS AND BIOFUEL BLENDS PRODUCTION, DISTRIBUTION  
AND SALE UNDER REPUBLIC ACT NO. 9367"**

Pursuant to Sections 7, 8, 9, 10, 11 and 17 of Republic Act (R.A.) No. 9367 otherwise known as "*The Biofuels Act of 2006*" (hereinafter referred to as the Act), and Rule 4 of its Implementing Rules & Regulations (IRR), the Department of Agriculture (DA), Department of Agrarian Reform (DAR), Department of Energy (DOE), Department of Environment and Natural Resources (DENR), Department of Finance (DOF), Department of Labor and Employment (DOLE), Department of Science and Technology (DOST), Department of Trade and Industry (DTI), Department of Transportation and Communications (DOTC), National Biofuels Board (NBB), National Commission on Indigenous Peoples (NCIP), Philippine Coconut Authority (PCA) and Sugar Regulatory Administration (SRA) hereby adopt the following guidelines that shall govern the biofuel feedstocks production, biofuels and biofuel blends production, distribution and sale for the information, guidance and compliance of all concerned.

**CHAPTER I  
GENERAL PROVISIONS**

**Section 1. Title.**

This Joint Administrative Order shall be known as "**GUIDELINES GOVERNING THE BIOFUEL FEEDSTOCKS PRODUCTION, AND BIOFUELS AND BIOFUEL BLENDS PRODUCTION, DISTRIBUTION AND SALE**", hereinafter referred to as the "Guidelines".

**Section 2. Objectives.**

Pursuant to Section 2 of the Act and its IRR, the following are the objectives of this Guidelines:

- a. To develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;

- b. To mitigate toxic and greenhouse gas (GHG) emissions;
- c. To increase rural employment and income;
- d. To ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country;
- e. To ensure that lands devoted to food crops shall not be utilized for biofuel feedstocks production except in cases provided herein;
- f. To ensure stability of the domestic supply of feedstock, biofuels and biofuel blends;
- g. To ensure the compliance of biofuels and biofuel blends producers, distributors and sellers with the Philippine National Standards (PNS) on biofuels and biofuel blends;
- h. To ensure compliance with the mandated biofuel blends under the Act;
- i. To promote the development of the biofuel industry in the country and encourage private sector participation and to institute mechanisms which will fast track investments in the biofuel industry; and
- j. To promote biofuel workers' welfare and protection.

**Section 3. Biofuel Production Site as One of the Priority Development Areas for Land Conversion.**

In accordance with the purpose of the Act, Section 6 of DAR Administrative Order No. 01, Series of 2002, is hereby amended to include a proposed biofuel production site as a Priority Development Area for Land Conversion and shall therefore read as follows:

X X X

**6.1.7 Agricultural Areas/Lands proposed to be developed as biofuel production site as certified by DA; Provided, that each production facility site shall not be more than twenty five (25) hectares; Provided, further, that a project that has a production capacity in excess of one hundred thousand (100,000) liters per day or where more than twenty five (25) hectares is required as a production facility site, the applicant can apply for exemption for the additional hectarage as production facility site subject to the approval of DAR.**



X X X

#### Section 4. Definition of Terms.

For purposes of this Guidelines, the following definitions shall apply:

- a. *Act* refers to Republic Act No. 9367, otherwise known as the "Biofuels Act of 2006";
- b. *Agricultural Lands* as amended by Section 3-B of R.A. No. 7881 (Amendments to the Comprehensive Agrarian Reform Law) refer to lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical, and not classified by law as mineral land, forest or timber, or national park nor reclassified as residential, commercial, industrial or other non-agricultural uses before June 15, 1988;
- c. *Ancestral Domain* refers to the areas generally belonging to Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial;
- d. *Applicant* refers to any person or entity who proposes to engage in biofuel feedstock production, and biofuel production, distribution and sale;
- e. *Biodiesel* refers to fatty acid methyl ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel-fed engines, with quality specifications in accordance with the PNS;
- f. *Bioethanol* refers to ethanol ( $C_2H_5OH$ ) produced from feedstock and other biomass that shall be technically proven and approved by the DOE for use in gasoline-fed engines, including hydrous ethanol, with quality specifications in accordance with the PNS, and for higher blends beyond the 10% blend, the DOE shall issue appropriate PNS;
- g. *Biofuel* refers to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS, and added or blended to petroleum fuels to enhance or alter

chemical or physical properties and improve performance/usage of the fuels;

- h. *Biofuel Blends* refer to gasoline or diesel that has been blended with biofuels such as, but not limited to, bioethanol and biodiesel;
- i. *Biofuel Distributor* refers to any person or entity engaged in the distribution of PNS-compliant biofuels of an accredited Biofuel Producer in the domestic market; *Provided*, that any person or entity engaged in distribution, supply and sale of PNS-compliant biofuels shall be deemed as a Biofuel Distributor;
- j. *Biofuel Feedstock Producer* refers to any person or entity engaged in farming and production of biofuel feedstocks and in the development, operation and management of biofuel feedstock areas;
- k. *Biofuel Producer* refers to any person or entity engaged in the production of PNS-compliant biofuels for the domestic market *Provided*, that any person or entity engaged in the production, distribution, and sale of PNS-compliant biofuels shall be deemed as Biofuel Producer;
- l. *Biofuel Production Site* refers to the area for biofuel production which includes, but not limited to the processing plant, waste management facilities and other facilities directly related to biofuel production;
- m. *Certificate of Compliance* refers to the Certificate issued by the NCIP attesting that the Applicant has complied for securing the affected ICCs/IPs' free and prior informed consent;
- n. *Certificate of Non-Overlap* refers to the Certificate issued by the concerned Regional Director of NCIP attesting to the fact that the area affected by a particular plan, program, project or activity does not overlap with any ancestral domain;
- o. *Certification Precondition* refers to the Certification issued by NCIP that the Applicant has complied with the requirements under Republic Act 8371 (RA 8371), otherwise known as the Indigenous Peoples Rights Act of 1997 and its IRR;
- p. *CFAR* refers to *Certificate of Fuel Additive Registration* issued by the DOE;
- q. *Community-based Biofuel Producer* refers to a people's organization, cooperative or group of people in a specific community who is engaged in the production of biofuel;



- r. *EUMB* refers to the Energy Utilization Management Bureau of the Department of Energy;
- s. *Feedstock* refers to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum, oil palm and other biomass used in the production of biofuels;
- t. *Free and Prior Informed Consent (FPIC)* refers to the consensus of all members of the ICCs/IPs which is determined in accordance with their respective customary laws and practices that is free from external manipulation, interference and coercion and obtained after fully disclosing the intent and scope of the plan / program / project / activity;
- u. *Fuel* refers to products used to produce heat, power or illumination by means of combustion, burning or oxidation. This includes gasoline, diesel, and biofuel;
- v. *Illegal Conversion* is the act of changing the current use of the land from agricultural to another agricultural or non-agricultural use, the effect of which is to exempt the land from CARP coverage without an order of conversion from DAR, or changing the use of the land other than that allowed under the order of conversion issued by DAR;
- w. *IRR* refers to DOE Department Circular No. DC 2007-05-0008, otherwise known as the "Implementing Rules and Regulations of Republic Act No. 9367;
- x. *Irrigable Lands* refer to lands which display marked characteristics justifying the operation of an irrigation system;
- y. *Irrigated Lands* refer to lands serviced by natural irrigation or irrigation facilities. These include lands where water is not readily available as existing irrigation facilities need rehabilitation or upgrading or where irrigation water is not available year-round;
- z. *Land Use Conversion* refers to the act or process of changing the current use of a piece of agricultural land into some other use as approved by the DAR;
- aa. *LGU* refers to the Local Government Unit;
- bb. *NIA* refers to the National Irrigation Administration;
- cc. *Oil Company* refers to any entity that distributes and sells petroleum fuel products;
- dd. *OIMB* refers to the Oil Industry Management Bureau of the Department of Energy;

- ee. *PFC refers to the Philippine Forest Corporation of the Department of Environment and Natural Resources;*
- ff. *PNS refers to the Philippine National Standards consistent with Section 26 of R. A. No. 8749 otherwise known as the "Philippine Clean Air Act of 1999";*
- gg. *Private Agricultural Lands refer to agricultural lands as defined herein and owned by natural or juridical persons or by the government in its proprietary capacity;*
- hh. *Raw Materials refer to bio-feedstocks ~~may it be in its original state or otherwise, such as, but not limited to, molasses, coconut oil, coconut, palm oil, oil palm, jatropha oil, jatropha, sugarcane, cassava, sweet sorghum and other biomass used in the production of biofuels;~~*
- ii. *Reclassification of Agricultural Lands refer to the act of specifying how agricultural land shall be utilized for non-agricultural uses such as residential, industrial and commercial, as embodied in the approved land use plan, subject to the requirements and procedure for land use reclassification. It also includes the reversion of non-agricultural lands to agricultural use;*
- jj. *Renewable Energy Sources refer to the energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis;*
- kk. *Social Amelioration and Welfare Program refers to the guidelines governing the mechanisms and implementation of amelioration and welfare program for the biofuel workers pursuant to Section 17 of the Act, which shall be issued by DOLE.*

## CHAPTER II

### BIOFUEL FEEDSTOCK PRODUCERS

#### **Section 1. Requirements for Biofuel Feedstock Producer.**

An Applicant who shall engage in the production of biofuel feedstock shall secure the following, prior to the production thereof:

- a. Environmental Compliance Certificate ("ECC") issued by the DENR, as applicable;
- b. Certification Precondition issued by the NCIP, as applicable; and
- c. Certification issued by the DA, as applicable.



The requirements above shall not be required for all existing feedstock areas, subject to DA policy guidelines. Existing coconut and sugarcane areas shall be subject to the regulations by PCA and SRA, respectively, as approved by the DA.

### **Section 2. Environmental Compliance Certificate.**

An Applicant who shall engage in the production of biofuel feedstocks shall secure an ECC from the DENR. The issuance thereof shall be subject to the following guidelines:

- a. For new biofuel feedstock production project with a total contiguous land area of one hundred (100) hectares up to one thousand (1,000) hectares and which involves land preparation, an Initial Environmental Examination (IEE) or IEE Checklist is required prior to the issuance of ECC;
- b. For new biofuel feedstock production project with a total contiguous land area of more than one thousand (1,000) hectares and which involves land preparation, an Environmental Impact Statement (EIS) is required prior to the issuance of ECC; and
- c. For existing biofuel feedstock production areas regardless of the total land area, an ECC is no longer required.

For the above purpose, DENR Administrative Order No. 30, Series of 2003 and DENR Memorandum Circular No. 2007 - 08, whenever applicable is hereby adopted as an integral part of this Guidelines (Annex "A" and "B", respectively).

### **Section 3. Certification Precondition.**

An Applicant shall secure a Certificate of Non-Overlap or Certificate of Compliance from the NCIP, subject to the following guidelines:

#### **Section 3.1. If the proposed site is outside the ancestral domain/land:**

If the proposed site for the project is outside the ancestral domain/land of the ICCs/IPPs, a Certificate of Non-Overlap shall be secured by the Applicant, which shall be issued by the concerned NCIP Regional Director after a field based investigation.

*[Signature]*

**Section 3.2. If the proposed site is within or overlaps the ancestral domain/land:**

- a. An Applicant shall secure the Free and Prior Informed Written Consent if the area to be covered by the project is located within or overlaps the ancestral domain/land of the ICCs/IPs.
- b. After securing the FPIC, an Applicant shall secure a Certificate of Compliance from the NCIP Head Office.

**Section 3.3. Documentary Requirements.**

For purposes of securing the Certification Precondition under Sections 3.1 and 3.2 hereof, the following documents are required to be submitted by the Applicant:

- a. Endorsement from the DENR;
- b. Project Profile of the Applicant; and
- c. Operational Plan.

For the above purpose, NCIP Administrative Order No. 1, Series of 2006, is hereby adopted as an integral part of this Guidelines (Annex "C").

**Section 4. DA Certification.**

An Applicant shall secure a DA certification that the feedstock or the proposed biofuel feedstock area may be utilized for the production of biofuel feedstock.

The DA Certification shall not be required if the feedstock to be used, (e.g. molasses), does not involve land utilization.

**Section 4.1. Criteria for DA Certification.** The following are the criteria for the issuance of DA certification:

- a. Cereals that can be used both for food and for biofuel production such as, but not limited to, corn and wheat shall not be used for biofuel production;
- b. The land to be used shall be consistent with the natural expansion of the municipality or locality, as contained in the approved physical framework and land use plan by the concerned municipality or locality;



- c. The area that will be used is not the only remaining food production area of the community.
- d. All agricultural areas classified hereunder shall not be utilized for biofuel feedstock production:
  - 1. All areas covered by government-funded irrigation facilities, either national agency or LGU, designed to support rice and other crop production, and all irrigated lands where water is not available for rice and other crop production but are within areas programmed for irrigation facility rehabilitation by DA and NIA;
  - 2. All irrigable lands already covered by irrigation projects with firm funding commitments as certified by NIA at the time of the application for land use conversion;
  - 3. All privately irrigated alluvial plain lands utilized for rice and corn production; and
  - 4. All agricultural lands that are ecologically fragile, the utilization of which will result in serious environmental degradation.

#### **Section 4.2. Issuance of Certification.**

The Certification may be issued, except for areas identified above, under the following conditions:

- a. Compliance with the SRA and PCA policy guidelines, as approved by DA, for the utilization of sugarcane and coconut areas and DA policy guidelines for the utilization of all other existing feedstock areas;
- b. The areas are evaluated by DA to be underutilized and marginal; and
- c. The proposed project is supportive to agro-industrial development, and will generate additional and alternative livelihood opportunities for the affected community.

#### **Section 4.3. Scope and Coverage.**

As used in this section, an Independent Biofuel Feedstock Producer shall refer to a Biofuel Feedstock Producer who has no marketing or supply agreement with a Biofuel Producer.



- a. Only an Independent Biofuel Feedstock Producer with an effective area exceeding twenty five (25) hectares, either contiguous or fragmented, shall be required to obtain a DA Certification.
- b. An Independent Biofuel Feedstock Producer whose effective area is twenty five (25) hectares or less is exempted from securing the DA Certification.
- c. A Biofuel Feedstock Producer who has a marketing or supply agreement with a Biofuel Producer shall not be required to secure a DA Certification; *Provided*, that the Biofuel Producer shall secure the DA Certification as provided in Chapter III, Section 2.4 of this Guidelines.

#### **Section 4.4. Documentary Requirements.**

The following documents and information are required to be submitted by the Applicant:

- a. Feasibility Study;
- b. List of Biofuel Feedstock supplier(s); and
- c. One (1) copy each of geo-referenced map, vicinity map and lot plan showing the feedstock production areas duly certified by the LGU.

### **CHAPTER III**

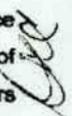
#### **BIOFUEL PRODUCER, DISTRIBUTOR AND SELLER**

##### **Section 1. Certificate of Registration and Accreditation.**

An Applicant shall secure a Certificate of Registration and Accreditation from the DOE prior to production, distribution and sale of biofuel. This shall apply to the following:

- a. Biofuel Producer that:
  1. Sells biofuels to Oil Companies; and
  2. Sells directly to the end users (for bio-diesel);
- b. Biofuel Distributor.

Community-based Biofuel Producers and/or individuals who produce biofuels for their own direct uses are exempt from securing a Certificate of Accreditation; *Provided*, however, that Community-based Biofuel Producers and/or individuals who sell their products commercially are required to secure a Certificate of Accreditation from DOE.



**Section 2. Requirements for Registration of Biofuel Producers with the DOE.**

The DOE shall issue a Certificate of Registration with Notice to Proceed with the construction of the facilities upon complete and satisfactory submission of the following:

- a. Duly accomplished DOE application form;
- b. Proof of payment of filing fees;
- c. Registration with the Securities and Exchange Commission (SEC), Philippine Economic Zone Authority (PEZA), Cooperative Development Authority (CDA) and/or the DTI, as applicable;
- d. Certification Precondition from NCIP for ancestral domains/lands, as applicable;
- e. Feasibility Study demonstrating the technical, economic and ecological viability of biofuel production and Construction/Work Plan;
- f. Developer's Profile;
- g. Letter of Intent to supply a volume of biofuel;
- h. DA Certification as specified in Chapter II of this Guidelines;
- i. SRA or PCA Registration, as applicable;
- j. Special Forest Land-use Agreement from DENR if the site is within untenured forest lands, as per existing rules and regulations;
- k. CARP Exemption based on HLURB certification that the land was classified prior to June 15, 1988 or DAR Land Use Conversion, as applicable;
- l. ECC from DENR; and
- m. LGU Clearance and Locational Clearance.

The Certificate of Registration with Notice to Proceed shall automatically be revoked upon failure to commence construction of the facilities within two (2) years from the issuance thereof.

**Section 2.1. Certification Precondition .**

An Applicant shall secure a Certificate of Non-Overlap or Certificate of Compliance from the NCIP, subject to the following guidelines:

**Section 2.1.1. If the proposed site is outside the ancestral domain/land:**

If the proposed site for the project is outside the ancestral domain/land of the ICCs/IPPs, a Certificate of Non-Overlap shall be secured by the Applicant, which shall be issued by the concerned NCIP Regional Director after a field based investigation.

**Section 2.1.2. If the proposed site is within or overlaps the ancestral domain/land:**

- a. An Applicant shall secure the Free and Prior Informed Written Consent if the area to be covered by the project is located within or overlaps the ancestral domain/land of the ICCs/IPs.
- b. After securing the FPIC, an Applicant shall secure a Certificate of Compliance from the NCIP Head Office.

**Section 2.1.3. Documentary Requirements.**

For purposes of securing the Certification Precondition under Sections 2.1.1 and 2.1.2 hereof, the following documents are required to be submitted by the Applicant:

- a. Endorsement from the DENR;
- b. Project Profile of the Applicant; and
- c. Operational Plan.

For the above purpose, NCIP Administrative Order No. 1, Series of 2006, is hereby adopted as an integral part of this Guidelines (Annex "C").

**Section 2.2. Issuance of ECC by DENR for Biofuel Production.**

An Applicant who shall engage in the production of biofuels shall secure an ECC from the DENR-EMB Regional Office. The issuance thereof shall be subject to the following guidelines:

- a. For Biofuel Processing Plants with annual production capacity of equal to or less than one hundred fifty (150) million liters (< 150 million liters per year), an Initial Environmental Examination (IEE) or IEE Checklist is required prior to the issuance of ECC; and
- b. For Biofuel Processing Plant with annual production capacity of more than one hundred fifty (150) million liters (>150 million liters per year), an Environmental Impact Statement (EIS) is required prior to the issuance of ECC.

For the above purpose, DENR Administrative Order No. 30, Series of 2003 and DENR Memorandum Circular No. 2007 - 08, whenever applicable is hereby adopted as an integral part of this Guidelines (Annex "A" and "B", respectively).

### **Section 2.3. DAR Conversion of Agricultural Lands to Biofuel Production Site.**

The following documents and information are required to be submitted by an Applicant to DAR for purposes of converting land from agricultural to biofuel production site:

- a. Proof of payment of filing fees and inspection costs;
- b. Posting of performance bond;
- c. Sworn application for conversion;
- d. Proof of land ownership or proof of right over the land (e.g. Transfer Certificate of Title, tax declaration, lease agreement, if applicant is Farmer Beneficiary under Comprehensive Agrarian Reform Law (CARP), a certification from LBP/PARO);
- e. DA certification as provided in Chapter II, Section 2.4 of this Guidelines;
- f. Feasibility Study containing among others, the Applicant's financial and organizational capability, and development plan;
- g. Joint venture agreements and other similar arrangements;
- h. Photographs of the property;
- i. Affidavit of Undertaking, as provided under DAR Administrative Order No.1, Series of 2002, as amended;
- j. MARO Certification as provided under DAR Administrative Order No.1, Series of 2002, as amended;
- k. Notice of LUC Application as provided under DAR Administrative Order No.1, Series of 2002, as amended;
- l. HLURB Certification or Sangguniang Panlalawigan Resolution, as the case may be;
- m. Lot Plan; and
- n. Maps:
  1. Vicinity Map;
  2. Directional Sketch Map; and
  3. Topographic Map, as applicable.

For the above purpose of converting the use of an agricultural land from agricultural to biofuel production site, DAR Administrative Order No.1, Series of 2002, as amended, in all aspect not inconsistent herewith, is hereby adopted as an integral part of this Guidelines (Annex "D").

#### **Section 2.4. DA Certification.**

All Biofuel Producers shall declare their proposed source of feedstock for evaluation of DA if the proposed biofuel feedstock production area is compliant with the prescribed criteria as specified in Chapter II, Section 4.1 of this Guidelines. The DA shall subsequently issue a certification to that effect.

A Biofuel Producer who shall have new biofuel feedstocks producer-supplier or new feedstock production areas, is required to submit to DA the list of its new feedstock producer-supplier or new feedstock production areas for evaluation based on the criteria as specified in Chapter II, Section 4.1 of this Guidelines. Moreover, every Biofuel Producer shall declare his/her biofuel feedstocks producer-supplier and the location of the feedstock production area.

A Biofuels Producer or Biofuel Blend Producer who shall have agricultural lands as biofuels and biofuel blend production site is required to apply to the DA National Technical Committee on Land Use Matters (NTECLUM) for the purpose of securing the DA Certification of Eligibility for Reclassification of Agricultural Lands as a requirement of DAR. The following information and documents are required :

- a. Notarized Sworn Declaration of Application for Land Use Reclassification;
- b. Proof of ownership of land e. g. photocopy of the OCT / TCT and/or other documents establishing ownership duly certified by the Register of Deeds not later than thirty (30) days prior to filing. If at the time of application the landholding is an untitled agricultural land, the following shall be required in lieu of the OCT / TCT:
  - i. Certification of the DENR Community Environment and Natural Resources Officer (CENRO) that the landholding has been classified as alienable and disposable;
  - ii. Certification of the DENR CENRO (for administrative confirmation of imperfect title) or the Clerk of Court of regular courts (for judicial confirmation of imperfect title)

that the titling process / proceeding has commenced, and there are no adverse claimants;

- iii. If the land title has any encumbrances or mortgages, a certification by the lending institution / mortgagee that he has no objection to the application is required.
- c. Special Power of Attorney (if the Petitioner is other than the owner of the land) or Board Resolution (with the signature of the members) if the landowner is a Corporation;
- d. Map of the Area / Parcellary Map prepared by a licensed geodetic engineer indicating the Name of Owner, Title No., and Lot Area;
- e. Location Map with sufficient reference points for proper identification of lot/s applied for;
- f. Zoning Certification from HULRB;
- g. Photographs of the area (Size: 5R) with captions duly certified by a member of the DA-Regional Land Use Technical Working Group (RLUTWG) Inspection Team;
- h. Certification from the NIA ( areas of 5 hectares and above to be signed by the Regional Irrigation Manager);
- i. Certification from the SRA, as applicable;
- j. Certification from the PCA, as applicable;
- k. Certification from the Fiber Industry Development Authority, as applicable;
- l. Certification from the Bureau of Fisheries and Aquatic Resources, as applicable;
- m. Field Investigation Report by the DA-RLUTWG.

### **Section 3. Certificate of Accreditation from DOE.**

The DOE shall issue a Certificate of Accreditation prior to commercial operations upon the submission and compliance with the following:

- a. Rated production capacity in million liters per year;
- b. Certificate of Fuel Additive Registration from the DOE for biofuels, as applicable;
- c. Completion of DOE's inspection of the facilities and on-site sample taking of the biofuels produced;
- d. Product compliance with the PNS;
- e. Distribution networks and authorized distributors, if any; and
- f. Program of quality management system.



The Certificate of Accreditation shall be valid for a period of five (5) years, unless earlier revoked or suspended as provided in this Guidelines.

**Section 3.1. Renewal of Certificate of Accreditation.**

The Certificate of Accreditation may be renewed every five (5) years subject to compliance with the minimum requirements as provided by this Guidelines, pertinent laws, rules and regulations and other DOE issuances. The following documents shall be submitted for the renewal of the Accreditation:

- a. Proof of payment of renewal fee;
- b. Completion of DOE's inspection of the facilities and on-site sample-taking of the biofuels produced;
- c. Proof of compliance with PNS;
- d. BIR tax clearance for the immediately preceding year;
- e. Updated distribution networks and authorized distributors; and
- f. Updated local government licenses and permits.

**Section 3.2. Amendment of Certificate of Accreditation.**

The Biofuel Producer shall send a Letter-request to DOE for the amendment of the Certificate of Accreditation, thirty (30) days prior to the intended amendment, if the any of the following is attendant:

- a. Increase or decrease of production capacity;
- b. Change in the process flow, technology or feedstock to be used for the biofuel production; and
- c. Change in the ownership of the biofuel production project.

**Section 4. Reportorial Requirements and Other Submissions for Biofuel Producers.**

An accredited Biofuel Producer shall be required to submit the following reports and documents to the DOE:

- a. Monthly accomplishment reports which shall include, among others, the following:
  1. Actual monthly biofuel production, sales and inventory report;
  2. Projected monthly biofuel production, sales and inventory report;
  3. Safety and accident reports, if applicable;

4. Reports on product analysis in compliance with the PNS;
5. Feedstock production reports and technology enhancements, if any;
6. Biofuel Supply Contract with oil company and other end users or Sworn Sales Report;
7. Updated list of distributors; and
8. Updated feedstock supplier.

- b. Annual local government licenses and permits; and
- c. Any and all data, information and reports which may be required by the NBB, the DOE, or any other government regulating agencies. For this purpose, the DOE shall formulate a standard and harmonized reporting system for the purpose of consolidating and harmonizing all the reportorial requirements of the regulating agencies concerned.

#### **Section 5. Registration of a Distributor with the DOE.**

An Applicant shall register with the DOE for the distribution of the biofuels. The Certificate of Registration shall be issued by the DOE upon submission and compliance with the following:

- a. Registration with the SEC and/or the DTI;
- b. Business and Mayor's permit;
- c. Certification by an accredited Biofuel Producer as its duly authorized distributor for a particular biofuel product; and
- d. Proof of compliance with PNS.
- e. Registration certificates, certifications and other clearances as maybe required by other government entities.

The Certificate of Registration shall be renewed annually subject to compliance with the minimum requirements as provided for by this Guidelines, pertinent laws, rules and regulations and other DOE issuances.

Upon registration, the authorized Biofuel Distributor shall submit to the DOE, through the EUMB, monthly accomplishment reports that shall include among others, monthly biofuel sales and inventory of biofuels.

#### **Section 6. Issuance of Receipts.**

All transactions involving the production, distribution and sale of biofuels must be evidenced by an official receipt bearing the name and address of the Biofuel Producer, and Distributor and indicating the quantity and price of the

biofuel product sold, the date of the transactions and such other information required under existing laws and rules on national internal revenue. Duplicate copies of official receipts shall be made available for verification by DOE inspectors/personnel.

**Section 7. Permit to Export Biofuels.**

Prior to each exportation of the biofuels, the Biofuel Producer and/or Biofuel Distributor shall submit to the DOE a written application to export; *Provided*, that DOE shall only allow exportation in the event that there is excess of supply of biofuels for domestic consumption.

The following documents and information are required to be submitted by the Biofuel Producer:

- a. Product type and volume to be exported and cost of product shipment;
- b. Country of destination;
- c. Percentage of volume to be exported to plant's current production capacity; and
- d. Payment of appropriate application or processing fees per shipment; and
- e. Export Clearance from PCA, SRA, and other appropriate regulatory agency for coconut-based, sugarcane / sugar / molasses-based biofuels, and other biofuels, respectively.

**CHAPTER IV**  
**OIL COMPANIES**

**Section 1. Responsibilities of Oil Companies**

All Oil Companies shall undertake the blending of biodiesel and bioethanol with diesel and gasoline, respectively, using appropriate blending methodologies at their respective refineries, depots or blending facilities within the period required in Section 5 of the Act and Section 5 of the IRR, and shall ensure that the biofuel blends comply with the PNS set forth under the pertinent laws in addition to quality/property requirements provided under pertinent laws or guidelines applicable to petroleum and/or petroleum products.

An Oil Company shall source its biofuels only from Biofuel Producers accredited by the DOE or from Biofuel Distributors registered with the DOE.

Unless otherwise authorized by DOE to import in case of shortage of supply of locally-produced bioethanol as provided for under Section 5.2 of the Act, an oil company's failure to source its biofuels from accredited Biofuel Producers and/or registered Biofuel Distributors is a prohibited act under this Guidelines and shall be subjected to the sanctions provided herein.

In the event that an oil company's retail stations, carrying its name, company-operated, dealer-owned, and/or dealer owned, are found to be selling biofuel blends that do not conform with the PNS, the oil company shall be equally responsible with such retail stations for the violation of this Guidelines.

## **Section 2. Reportorial Requirements for Oil Companies**

Every oil company shall submit to the DOE the following:

- a. Within the month of January every year, Performance Compliance Report of the prior year containing its compliance plan with the minimum biofuel blends, as well as other information that may be required by the DOE. Such report shall be duly certified and signed by an authorized responsible officer of the oil company.
- b. Periodic reports as may be required by the DOE, including the following:
  1. Local Purchases Report/Receiving Reports. On a per supplier basis, the names and addresses of the suppliers of biofuels;
  2. Sales Reports/Removal Reports. The names and addresses of customers/consignees, the volume of biofuels sold/transferred and volume thereof;
  3. Inventory Summary Reports. On a per company basis, the inventory stocks including in-transit volume of biofuels; and
  4. Imports. Names and address of foreign suppliers, dates, volume and price of actual importation of Bioethanol, as applicable (for verification against the Notices of Importation).

## **Section 3. Issuance of Receipts.**

All transactions involving the sale of biofuel blends must be evidenced by an official receipt bearing the name and address of the Oil Company and indicating the quantity and price of the biofuel blends sold, the date of the transactions and such other information required under existing laws and rules on national internal revenue. Duplicate copies of official receipts shall be made available for verification by DOE inspectors/personnel.

#### **Section 4. Importation of Bioethanol by Oil Companies.**

In the event of supply shortage of locally-produced Bioethanol during the four -year period provided under Section 5.2 of the Act, an Oil Company may apply for the issuance of a certification to import bioethanol from the DOE-OIMB, provided that the NBB certifies the shortage of bioethanol supply in the country. For this purpose, DOE Department Circular No. DC2006-08-0011, is hereby adopted as an integral part of this Guidelines and hereby attached as Annex "E".

#### **Section 5. Local Purchases of Denatured Bioethanol by Oil Companies**

Consistent with the reportorial requirements of DOE, an Oil Company shall report and file a Notice to the DOE-OIMB for every purchase of locally-produced denatured bioethanol for the proper monitoring of quality standards and the volume of bioethanol actually sold and distributed. Further, such purchases of denatured bioethanol shall be sourced from a DOE accredited Biofuel Producer.

### **CHAPTER V**

### **ONE-STOP SHOP**

#### **Section 1. Creation of One-Stop Shop.**

A One-Stop Shop under the supervision of the NBB is hereby created. The One-Stop Shop shall:

- a. Accept, screen and undertake preliminary evaluation of the applications for feedstock production, biofuels and biofuel blends production and distribution;
- b. Assist in the processing of applications and forward the same to the concerned government agency(ies) in securing the necessary certificates, licenses and permits; *Provided*, that any application which involves issuances and certifications from DA, DAR, DENR, and NCIP shall be transmitted also to the DA-DAR-DENR Convergence Initiative Technical Secretariat for facilitation and monitoring. The DA, DAR and DENR are currently undertaking convergence efforts which primarily focus on development of idle lands for agricultural purposes;
- c. Coordinate and liaise with the concerned government agency on the status of the said applications; and
- d. Collect the applicable fees, including facilitation fee.

**Section 2. Rules and Regulations Governing the Operations of the One-Stop Shop.**

The NBB is hereby empowered to promulgate the necessary rules and regulations governing the operations of the One-Stop Shop.

**Section 3. Staffing**

The One-Stop Shop shall be manned by duly designated staff of the concerned government agencies for at least one year upon the effectivity of this Guidelines or until such time that the NBB Technical Secretariat has developed or gained the necessary expertise on the functions of the One-Stop Shop.

**CHAPTER VI**  
**SOCIAL AMELIORATION AND WELFARE PROGRAM**

**Section 1. Benefits of Biofuel Workers.**

Pursuant to Section 17 of the Act, R.A. No. 6892 or the Sugar Amelioration Act of 1991 and its Implementing Rules and Regulations are hereby made as integral parts of this Guidelines and hereby attached as Annexes "F" and "G".

**Section 2. Social Amelioration and Welfare Program for Biofuel Workers.**

Pursuant to Sections 11 (e) and 17 of the Act, and per authority granted by the NBB, the DOLE, shall be the implementing agency for the development and management of the Social Amelioration and Welfare Program of Biofuel Workers, and in consultation with concerned government agencies and other stakeholders, shall lead in the formulation of appropriate policies and guidelines governing the mechanisms, management and monitoring of the Social Amelioration and Welfare Program (SAWP) for biofuel workers.

Considering the peculiarities of the technological aspects, and institutional arrangements and systems in the biofuel feedstocks production, and biofuels production, distribution and sale, separate and specific SAWP guidelines shall be formulated and issued for the workers in each biofuel feedstock. All guidelines to be formulated and issued by DOLE relative to the implementation of the SAWP for biofuel workers are hereby made integral part(s) of this Guidelines.



## **CHAPTER VII**

### **FUNCTIONS OF OTHER GOVERNMENT AGENCIES**

In addition to the functions of the concerned government agencies as specified in the Act, its IRR, and other existing and pertinent laws, the DOST, DA and its attached agencies, DENR-PFC and the PNOC-AFC are hereby tasked to identify, develop and propagate the biofuel feedstocks to be used in the country.

In the case of Jatropha and other biofuel feedstocks, the primary regulatory agency shall be the DA or its designated unit under the Department.

For the development and production of non-land based biofuel feedstocks or feedstocks not derived from agricultural and agro-forestry products and residues, the DOST or its designated unit shall be the coordinating agency.

The Agribusiness Lands Investment Center, under the management of the Philippine Agricultural Development and Commercial Corporation (PADCC) of the DA, shall be a member of the DA Evaluation Team tasked with the identification and validation of biofuel feedstock production areas.

The NBB shall be the repository of data and information on the biofuels industry and the concerned government agencies are hereby tasked to forward such data and information to the NBB.

## **CHAPTER VIII**

### **PROHIBITED ACTS AND SANCTIONS**

#### **Section 1. Prohibited Acts.**

A fine of Two Hundred Thousand Pesos (P200,000.00) for each violation, shall be imposed by the DOE upon any person or entity that has been found to have committed any of the following acts:

- a. Diversion of biofuels, whether locally produced or imported, for purposes other than those stated in the Act, the IRR, this Guidelines, the Certificate of Accreditation, and any other legislation or administrative issuances that may be subsequently promulgated.

- b. Sale of biofuel and biofuel blends which fail to conform with the PNS. A person or entity that commits this prohibited act shall be guilty of the act of Adulteration. The possession of biofuel blend which does not conform to the PNS shall *prima facie* constitute Adulteration.
- c. Distribution, sale and/or use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB or the DOE;
- d. Refusal to sell biofuel and/or biofuel blends shortly before a price increase or in times of tight supply thereof, where the buyer or end-user has the ability to pay for the product; and/or undue accumulation of biofuel and/or biofuel blends in times of tight supply or shortly before a price increase. A person or entity who commits this prohibited act shall be guilty of Hoarding.

For the purpose of this Guidelines, "undue accumulation" means to keep or stock quantities of biofuel products beyond inventory levels as determined by the DOE, for a period of thirty (30) days immediately preceding the period of tight supply or price increase;

- e. Production, distribution and/or sale of biofuels without having been issued the requisite Certificate of Accreditation/Registration;
- f. Distribution, sale and/or delivery of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel with false or incorrect labels or information, or without the appropriate labels or information such as DOE CFAR, batch manufacturing date, expiry date, and such other label or information that the DOE shall subsequently require; and
- g. An Oil Company's failure to source its biofuels from other than accredited Biofuel Producers or registered Biofuels Distributors.

The DOE shall likewise cause the cessation of the operation of such business found to have committed a prohibited act upon compliance with the administrative procedures provided under Section 36 of the Act's IRR. The DOE may subsequently issue an order to authorize resumption of the operation of the business of the violator upon proper showing, with sufficient proof and to the satisfaction of the DOE, that necessary corrective measures have been applied and duly effected, and after full payment of the said fines. An additional fine of Ten Thousand Pesos (P10,000.00) per day shall be imposed in case such



person continues to operate after an Order or Notice of cessation of operation of business has been issued by the DOE.

*Provided*, that a fine of Three Hundred Thousand Pesos (P300,000.00) shall be imposed against a person or entity who is found to have committed the same prohibited act for the second time and shall be a ground for revocation of the Accreditation or Registration granted to such person.

#### **Section 2. Other Prohibited Acts.**

The following acts are likewise prohibited under this Guidelines:

- a. Exportation of biofuels and biofuel blends without the permit to export from the DOE shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00);
- b. Failure to provide copies of official receipts when so required by the DOE inspectors/personnel shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00);
- c. Failure to issue a Certificate of Quality accompanying the delivered biofuels and/or biofuel blends shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00). All biofuels and biofuel blends deliveries must be accompanied by a Certificate of Quality to be issued by the Biofuel Producer, Distributor or Seller indicating the properties of the delivered biofuels and biofuel blends, and to the effect that the delivered products are in compliance with the PNS; and
- d. Refusal to allow inspection by the DOE or other concerned government agency shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00). The DOE or other concerned government agency shall have the right to enter, within reasonable hours of the day, a plant or any distribution or retail station to conduct actual inspection and product sampling. Any person or entity that refuses to allow access or entry of authorized inspectors from the DOE after proper presentation of reasonable identification papers shall be subject to the sanctions herein provided and such refusal to allow access or entry shall furthermore constitute *prima facie* evidence of commission of the prohibited acts under Section 1 (a, b, c, d, and e) above, against the entity refusing such access.
- e. Violation of the criteria for utilization of land as provided under Chapter II, Section 4 of this Guidelines, after the Certificate of

Accreditation has been issued shall be penalized with a fine of Fifty Thousand Pesos (P50,000.00) and the be a cause of revocation of the Certificate of Accreditation.

*Provided*, that a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed against a person or entity that is found to have committed the same prohibited act for the second time. The DOE shall further order the immediate cessation of the operation of the business of such person found to have committed any of the abovementioned prohibited acts, upon compliance with the administrative procedures provided under Section 36 of the Act's IRR. The DOE may subsequently issue an order to authorize resumption of the operation of the business of the violator upon proper showing, with sufficient proof and to the satisfaction of the DOE, that necessary corrective measures have been applied and duly effected, and after full payment of the said fines. An additional fine of Ten Thousand Pesos (P10,000.00) per day shall be imposed in case such person continues to operate after an Order of cessation of operation of business has been issued by the DOE.

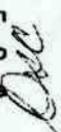
A fine of Two Hundred Thousand Pesos (P200,000) shall be imposed against a person who is found to have committed the same prohibited act for the third time and such violation shall be a ground for the revocation of the Accreditation or Registration granted to such person.

### **Section 3. Confiscation of Biofuel Products.**

In addition to the sanctions provided above, the products that fail to comply with the requirements under Sections 4 and 5 of the Act, shall be confiscated as provided under Section 13 of the Act. The DOE shall determine the appropriate process and manner of disposal and utilization of the confiscated products.

### **Section 4. Non-compliance with Registration and Reportorial Requirements.**

A penalty of Two Hundred Thousand Pesos (P200,000.00) plus Ten Thousand pesos (P10,000.00) a day shall be imposed upon any person who fails, without any justifiable reason, to submit documents required to be submitted under this Guidelines.



### **Section 5. Issuance of Notice and Warning.**

The penalty provided in the preceding sections shall be imposed only after compliance with the administrative procedures under Section 36 of the Act's IRR.

### **Section 6. Criminal Liability.**

The imposition of any administrative sanction is without prejudice to any criminal action that may be filed, if warranted, under Section 13 of the Act, IRR, existing laws, rules and regulations.

## **CHAPTER IX**

### **FINAL PROVISIONS**

#### **Section 1. Transition Period.**

The validity of all accreditations and provisional registrations issued by DOE pursuant to Memorandum Circular No. 55 shall automatically expire six (6) months after the effectivity of this Guidelines. Biofuel Producers accredited or registered provisionally under the said memorandum circular shall be required to submit the following to the DOE, in addition to the requirements under Chapter III, Section 3 of this Guidelines, for the issuance of a new Certificate of Accreditation:

- a. Letter of Intent to supply a volume of biofuel or biofuel blends; and
- b. Certification from the DA on feedstock supply and land use as specified in Chapter II of this Guidelines.

#### **Section 2. Interpretation of this Guidelines.**

In the event that a conflict arises in the interpretation of this Guidelines, it shall be liberally construed by the concerned agencies in favor of the Biofuel Feedstock Producer, and Biofuel and Biofuel Blends Producer, Distributor and Seller.

#### **Section 3. Amendments.**

Amendment/s to any part of this Guidelines and to the pertinent parts of the Department orders, circulars, memoranda or other issuances which were made part as Annexes of this Guidelines shall be done through a consultation of the concerned agencies and stakeholders and concurrence of the majority of the signatories herein.

**Section 4. Separability Clause.**

If for any reason, any section or provision of this Guidelines is declared unconstitutional or invalid, such parts not affected shall continue to remain in full force and effect.

**Section 5. Suppletory Provisions.**

The DOE, in consultation with the concerned agencies and the biofuel sector, is hereby authorized to promulgate rules, suppletory in character, for the proper implementation of this Guidelines.

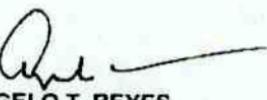
**Section 6. Repealing Clause.**

Department orders, circulars and other issuances of the concerned departments and other government agencies not consistent with this Guidelines are hereby deemed repealed or amended accordingly.

**Section 7. Effectivity.**

This Guidelines shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

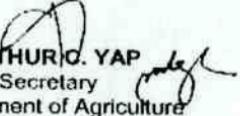
Issued in Taguig City, Metro Manila this 8th day of October, 2008.



**ANGELO T. REYES**

Secretary

Department of Energy and  
Concurrent Chairman  
National Biofuels Board



**ARTHUR O. YAP**

Secretary

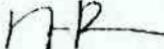
Department of Agriculture



**MARGARITO B. TEVES**

Secretary

Department of Finance



**NASSER C. PANGANDAMAN**

Secretary

Department of Agrarian Reform



**JOSE L. ATIENZA, JR.**

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Department of Environment and  
Natural Resources



**MARIANITO D. ROQUE**

Secretary

Department of Labor and Employment



**ESTRELLA F. ALABASTRO**  
Secretary  
Department of Science and  
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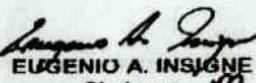
**PETER B. FAVILA**

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**LEANDRO R. MENDOZA**  
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Department of Transportation and  
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**EUGENIO A. INSIGNE**

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**RAFAEL L. COSCOLLUELA**  
Administrator  
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Vice-Chairman  
National Biofuels Board