

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 410.) The Governor's Office confirmed the notice was authorized to proceed through the rulemaking process on February 9, 2010.

[R10-20]

PREAMBLE

1. Sections Affected

Article 3
R20-1-301
R20-1-302
R20-1-303
R20-1-304
R20-1-305
R20-1-306
R20-1-307
R20-1-308
R20-1-309
R20-1-310

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 41-1511(V), 42-12006, 43-1083.01, 43-1164.01, and Laws 2009, Chap. 96, § 18
Implementing statute: A.R.S. § 41-1511

3. The effective date of the rules:

February 8, 2010

Under A.R.S. § 41-1032(A)(3), the Department respectfully requests an immediate effective date to enable it to comply with the January 1, 2010, deadline that the legislature established for operation of the renewable energy tax incentives program. The statute authorizing the program has been in effect only since September 30, 2009, so the need for an immediate effective date does not result from delay or inaction by the Department.

4. Is this rulemaking a renewal of a previous emergency rulemaking?

No

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

During its last session, the legislature enacted SB1403, which created a program to provide renewable energy tax incentives. The program is located within the Arizona Department of Commerce. The purpose of the program is to encourage business investment that will produce high quality employment opportunities in this state and enhance the position of the state as a center for production and use of renewable energy products. The legislation creating the program required the Department of Commerce to make rules that are necessary to accomplish the purposes of the act. This rulemaking fulfills that requirement.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

Those who apply for the renewable energy tax incentives will incur the cost of making application and making reports regarding compliance and continuing eligibility. However, the benefits from the renewable energy tax incentives greatly exceed these costs. Indeed, there are two possible benefits. The first is an income tax credit, which can equal 10 percent of a qualifying renewable energy investment. The state is committed to making \$70 million available annually through December 31, 2014, for income tax credits for qualifying renewable energy investment. The second benefit is a reduction in property taxes paid on a facility at which renewable energy operations are conducted. It is possible for a renewable energy company to be eligible to receive one or both of these benefits. The state anticipates that the cost of the income tax credits will be offset by expansion of the renewable energy business in this state and the creation of high-quality jobs. The reduction in property taxes will be offset by the spending and hiring that a renewable energy company does in the county in which the facility is located.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

A.R.S. § 41-1511(V) requires that the Department collaborate with the Arizona Department of Revenue to avoid duplication and inconsistencies in rules made by each department to accomplish the intents and purposes of the renewable energy tax incentives program. This collaboration has occurred.

10. Incorporations by reference and their location in the rules:

None

11. An explanation of the situation justifying the rule's making as an emergency rule:

Under Laws 2009, Chap. 96, § 18, the Department is authorized to make emergency rules under A.R.S. § 41-1026 to accomplish the intent and purposes of the act dealing with renewable energy tax incentives. The legislature authorized an emergency rulemaking to ensure that the renewable energy tax incentives program is operational by January 1, 2010.

The bill creating the renewable energy tax incentives program was signed into law by Governor Brewer on July 10, 2009 and became effective on September 30, 2009. The Department has not delayed taking action to create the required rules. The need for an emergency rulemaking is created by the deadline imposed by the legislature

12. The date of the Attorney General's approval of the emergency rule:

February 5, 2010

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

ARTICLE 3. ~~EXPIRED~~ RENEWABLE ENERGY TAX INCENTIVES PROGRAM

Section

- R20-1-301. ~~Expired~~ Definitions
- R20-1-302. ~~Expired~~ Renewable Energy Tax Incentives
- R20-1-303. ~~Expired~~ General Provisions
- R20-1-304. ~~Expired~~ Eligibility Requirements
- R20-1-305. ~~Expired~~ Application for Pre-approval
- R20-1-306. ~~Expired~~ Review and Action on an Application for Pre-approval
- R20-1-307. ~~Expired~~ Review and Action on an Application for Post-approval
- R20-1-308. ~~Expired~~ Claiming Renewable Energy Tax Incentives

R20-1-309. Expired Consequences of Failing to Comply

R20-1-310. Appeal of Department Actions

ARTICLE 3. ~~EXPIRED~~ RENEWABLE ENERGY TAX INCENTIVES PROGRAM

R20-1-301. ~~Expired~~ Definitions

A. The definitions at A.R.S. § 41-1511(W) apply to this Article.

B. In this Article, unless otherwise specified:

1. “ADOR” means the Arizona Department of Revenue.
2. “Affiliate” means a member of an Arizona affiliated group as defined by A.R.S. § 43-947 or a member who files a combined return pursuant to A.A.C. R15-2D-401.
3. “Assessor” means the County Assessor of the county in which a facility is located.
4. “Company” means a person, as defined at A.R.S. § 1-215(29), that is primarily engaged in renewable energy operations.
5. “Complete and correct” means all information needed by the Department to decide whether a company is:
 - a. Qualified for benefits under the renewable energy tax incentives program is provided with an application for pre-approval, or
 - b. Eligible for benefits under the renewable energy tax incentives program is provided with an application for post-approval.
6. “Department” means the Arizona Department of Commerce.
7. “Eligible” means a company for which an application for post-approval has been submitted and the Department has issued a notice of post-approval.
8. “Facility” means a building or group of buildings and the Arizona land on which the building or group of buildings is located at which qualifying investments are made and where a company engages in renewable energy operations.
9. “Full-time employment position” means an employment position that is:
 - a. Permanent;
 - b. For at least 1,750 regularly scheduled hours per year; and
 - c. Filled by an individual who is a U.S. citizen or legally authorized to work in the U.S.
10. “Net new” means the extent to which the average number of full-time employment positions in the current tax year exceeds the average number of full-time employment positions in the previous tax year at a facility;
11. “Party” has the meaning prescribed at A.R.S. § 41-1001.
12. “Permanent” means an employment position that is not established for a specified or limited period of time.
13. “Primarily engaged” means that more than 50 percent of a company’s business activity at a particular facility directly involves renewable energy operations, measured by revenues received, expenses incurred, square footage, or number of individuals employed.
14. “Priority placement number” means the order, based on date and time of receipt, in which applications for pre-approval are reviewed.
15. “Project” means activities undertaken by a company to expand or locate renewable energy operations in this state.
16. “Qualified” means a company for which an application for pre-approval has been submitted and the Department has issued a letter of qualification.
17. “Qualified employment position” means a full-time employment position that is:
 - a. Filled at least 90 days during the taxable year. An employment position that is filled less than 90 days during the taxable year may be considered qualified in the next taxable year.
 - b. Filled by an individual not previously employed by the company within the last 12 months.
 - c. Filled by an individual whose work duties are performed at the facility referenced in R20-1-305(A)(2).
 - d. Filled by an individual who is paid at least 125 percent of the median annual wage as computed annually by the Department, and
 - e. Filled by an individual to whom the company offers health insurance for which the company pays 80 percent of the plan administration costs.
18. “Qualifying investment” has the meaning prescribed at A.R.S. § 41-1511(W) but only if the cost is incurred by a pre-approved company or its affiliate and is directly attributable to the project for which the Department provided pre-approval. Qualifying investment does not include a cost incurred before the date of pre-approval, operating expenses, or employee payroll.
19. “Renewable energy” means electricity produced by sunlight, water, wind, geothermal heat, or other non-fossil renewable source.
20. “Renewable source” means a resource that is replaced by natural processes at a rate comparable to or faster than its rate of consumption by humans.

R20-1-302. ~~Expired~~ Renewable Energy Tax Incentives

A. The renewable energy tax incentives program offers two benefits to companies that are determined by the Department to

be eligible for the benefits:

1. Up to a 10 percent income tax credit based on the total amount of qualifying investment, and
2. Property tax reclassification resulting in a possible reduction in real and personal property taxes.

- B.** A company may be eligible for either or both of the renewable energy tax incentives listed in subsection (A).
- C.** The Department shall calculate the actual dollar amount of the income tax credits to be reserved for a qualified company using the standards and formulas specified in A.R.S. § 41-1511(C)(1), (D) and (F).
- D.** The Department shall determine whether the fixed capital assets of a qualified company may be classified as class six for the purpose of property taxation using the standard at A.R.S. § 41-1511(C)(2) and (D).

R20-1-303. Expired General Provisions

- A.** The Department shall not pre-approve more than \$70 million in income tax credits in any calendar year except as specified in A.R.S. § 41-1511(J). There is no limit on the amount of property tax savings available under the renewable energy tax incentives program.
- B.** The Department shall not authorize a company to receive income tax credits that exceed 10 percent of the total amount of qualifying investment in a facility.
- C.** Except as provided in subsection (D), the Department shall not accept an application for pre-approval before January 1 of each year.
- D.** If the Department pre-approves the amount of income tax credits specified in subsection (A) by October 31 of a particular year, the Department shall accept initial applications for pre-approval during November and December of that year for the next calendar year. The Department shall ensure that pre-approval issued under this subsection is not effective until the first business day of the next year. If the Department determines to accept applications for pre-approval under this subsection, the Department shall provide notice of the application process in various ways including posting notice on the Department's web site, issuing press releases, and providing written notice to all persons that have requested notice.
- E.** A company that intends to undertake more than one project, including multiple projects at one facility, may make a separate application for pre-approval under R20-1-305 for each project. If a company receives pre-approval of multiple projects, the company shall comply with all requirements in A.R.S. § 41-1511 and this Article separately for each pre-approved project.
- F.** Only real and personal property that is constructed or installed from December 31, 2009 through December 31, 2014, and exclusively dedicated to renewable energy operations is eligible for property tax reclassification and the resulting reduction in property taxes. The Department shall determine whether real and personal property is eligible for reclassification as follows:
 1. If 10 percent or less of the aggregate full cash value of the real or personal property is derived from uses that are ancillary to and intrinsically associated with the renewable energy operations, the Department shall find that 100 percent of the property is eligible for reclassification; or
 2. Any unrelated use or if more than 10 percent of the aggregate full cash value of the real or personal property is derived from uses that are ancillary to and intrinsically associated with the renewable energy operations, the Department shall find that only the portion, as described by A.R.S. § 42-12006(9), of the property exclusively dedicated to renewable energy operations is eligible for reclassification.
- G.** Leased property may be eligible for property tax reclassification, such as when a lease creates a binding arrangement for transfer of ownership, or when outright ownership is prohibited by law. The Department shall determine whether a portion, up to 100 percent, of the leased property used by a company is eligible for reclassification using the standards and formulas specified in subsection (F) above, if:
 1. The owner of the real property consents to the reclassification in writing, and
 2. The applicant company meets all eligibility requirements for property tax reclassification.
- H.** If a company fails to comply with all eligibility requirements in A.R.S. § 41-1511 and this Article, the Department may rescind the company's letter of qualification as provided under R20-1-309.
- I.** If a company obtains reclassification of personal property under the renewable energy tax incentives program, the company shall not choose accelerated depreciation for the same personal property in the same valuation year.
- J.** Income tax credits under the renewable energy tax incentives program are specific to a particular company and are not transferrable.
- K.** The time during which real or personal property is eligible for property tax reclassification, as determined under A.R.S. § 41-1511(C)(2), is not extended even if the eligible company fails to claim the property tax reclassification during a year or if ownership of the real or personal property changes.
- L.** A determination by the Department that a company is eligible to receive renewable energy tax incentives does not guarantee that the company will receive the tax incentives.
- M.** An eligible company may voluntarily relinquish income tax credits by completing and submitting to the Department a form that is available from the Department. An eligible company that voluntarily relinquishes income tax credits may remain eligible to receive a property tax reduction.

R20-1-304. Expired Eligibility Requirements

- A.** Participation in the renewable energy tax incentives program requires four steps:
1. Pre-approval of a company by the Department.
 2. Maintenance of pre-approval by the company.
 3. Post-approval of the company by the Department, and
 4. Annual reporting by the company for 10 years following post-approval.
- B.** Pre-approval. A company is eligible to apply for pre-approval for either of the tax incentives described in R20-1-302(A) if the company:
1. Is expanding or locating renewable energy operations within Arizona;
 2. Intends to create net new full-time employment positions, of which:
 - a. For the income tax credits, at least 51 percent are qualified employment positions; and
 - b. For the property tax reclassification, at least 51 percent are paid at least 125 percent of the median annual wage as computed annually by the Department.
 3. Intends to spend at least \$250,000, as required under A.R.S. § 41-1511(M), in qualifying investments during each 12 months of pre-approval; and
 4. Submits an application for pre-approval under R20-1-305.
- C.** Maintenance of pre-approval. To maintain pre-approval, a company shall:
1. Submit to the Department annually, on the anniversary date of pre-approval, a 12-Month Interim Report, using a form that is available from the Department, and demonstrate that the company has incurred at least \$250,000 in qualifying investments during the 12 months;
 2. Maintain all records necessary to document the:
 - a. Amount of qualifying investment made.
 - b. Number of all full-time employment positions created.
 - c. Number of net new full-time employment positions paid at least 125 percent of the median annual wage as computed annually by the Department, and
 - d. Number of qualified employment positions created;
 3. Make the records required to be maintained under subsection (E)(2) available for review by the Department; and
 4. Allow audits or site inspections to be conducted by the Department.
- D.** Post-approval. A qualified company may apply for post-approval if the company:
1. Demonstrates that the company has begun renewable energy operations at the facility by submitting to the Department a certificate of occupancy for the facility or other documentation that renewable energy operations are allowed to be conducted at the facility; and
 2. Submits an application for post-approval to the Department, using a form that is available from the Department. The application for post-approval requires:
 - a. Documentation of the total amount and date of all qualifying investment;
 - b. Identification of fixed capital assets at the facility that were obtained after the date of pre-approval;
 - c. Documentation of all net new full-time employment positions created;
 - d. Documentation of net new full-time employment positions who are paid at least 125 percent of the median annual wage as computed annually by the Department;
 - e. Documentation of qualified employment positions created; and
 - f. Other information the Department determines is necessary to establish compliance with the requirements for renewable energy tax incentives.
- E.** Annual reporting following post-approval. For 10 years following post-approval, an eligible company shall annually demonstrate to the Department that it remains eligible to receive renewable energy tax incentives. To remain eligible to receive renewable energy tax incentives, the company shall submit a report no later than February 15 of each year following post-approval and include the following:
1. Documents that show the company continues to be primarily engaged in renewable energy operations.
 2. The amount of renewable energy tax incentives claimed during the previous calendar year; and
 3. Other information the Department determines is necessary to establish compliance with the requirements for renewable energy tax incentives.

R20-1-305. Expired Application for Pre-approval

- A.** As required under A.R.S. § 41-1511(B), to apply for pre-approval of a project, an officer of a company shall provide the following information using a form that is available from the Department:
1. About the company for which application is made:
 - a. Name;
 - b. Mailing address;
 - c. Business structure;
 - d. Federal employer identification number;

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- e. Tax year end date;
 - f. North American Industry Classification System Code;
 - g. Name and contact information for the individual with whom the Department will communicate regarding the application;
 - h. Description of the primary business activity of the applicant company and the percentage of overall business devoted to the primary activity;
 - i. A statement of whether another person, as defined at A.R.S. § 1-215(29), or an affiliate will be involved in the project with the applicant company and if so, the name, address, and federal employer identification number of each person or affiliate; and
 - j. A state of whether the applicant company has knowledge of another person, as defined at A.R.S. § 1-215(29), that will apply for renewable energy tax incentives for the project for which the applicant company is applying and if so, the name, address, and federal employer identification number of the other person;
2. About the proposed project:
 - a. Name;
 - b. Whether the project involves a manufacturing or headquarters facility;
 - c. Whether the project involves expanding an existing facility or establishing a new facility;
 - d. Physical address of the facility;
 - e. Parcel numbers of the real property associated with the facility;
 - f. Specific use of each portion of the real property associated with the facility;
 - g. Account numbers assigned by the Assessor to personal property associated with the facility;
 - h. Detailed description of the facility including a draft construction outline;
 - i. Estimated date construction is to begin;
 - j. Estimated date construction will be completed;
 - k. Estimated date the facility will begin renewable energy operations;
 - l. Name and contact information for the prime contractor of the facility, if available;
 - m. Number of the contract between the company and the prime contractor, if available;
 - n. Estimated total capital investment in the project; and
 - o. Estimated total qualifying investment amount for the project;
 3. Detailed budget information for the project including total capital and estimated qualifying investment;
 4. Detailed employment information for the project, including that specified in A.R.S. § 41-1511(B)(5)(b); and
 5. Other information that the Department determines is necessary.
- B.** The officer of the company that applies for pre-approval shall attach the following to the application:
1. A check made payable to the Arizona Department of Commerce for a non-refundable application fee. The amount of the application fee, which is based on the amount of total capital investment estimated in subsection (A)(2)(n), is as follows:
 - a. \$500 for projects less than \$5 million;
 - b. \$750 for projects between \$5 million and \$9,999,999;
 - c. \$1,000 for projects between \$10 million and \$14,999,999;
 - d. \$1,500 for projects between \$15 million and \$19,999,999;
 - e. \$2,000 for projects between \$20 million and \$24,999,999; and
 - f. \$2,500 for projects exceeding \$25 million;
 2. A form required by ADOR authorizing the Department to obtain confidential taxpayer information from ADOR;
 3. A copy of a Letter of Good Standing from ADOR;
 4. A copy of a Letter of Good Standing from the Assessor;
 5. Proof of participation in the federal E-Verify program;
 6. A copy of the fully executed contract between the company and the general contractor, if available; and
 7. Other information that the Department determines is necessary.
- C.** An officer of the company for which application is made shall sign and date the application and affirm that the officer understands and agrees to various renewable energy tax incentive program requirements, including the requirements specified in A.R.S. § 41-1511(B)(8), and that the information provided is true and correct to the best of the officer's belief and knowledge.
- D.** An officer of a company for which application for pre-approval is made shall ensure that the application materials described in subsections (A) through (C) are submitted to the Department by the U.S. Postal Service, private delivery service, or hand delivery. The Department shall not accept an application delivered by any other means. When an application is received, the Department shall date and time stamp the application and assign it a priority placement number.
- E.** If any of the information in the materials submitted under subsection (D) changes after the materials are submitted but before the Department acts on the application for pre-approval, an officer of the company for which application was made shall immediately inform the Department of the change.
- F.** If an application for pre-approval is received when the amount of income tax credits remaining in a particular calendar

year is less than the amount for which the applicant company might be qualified, the Department shall require the applicant company to choose one of the following options:

1. Withdraw the application for pre-approval and resubmit at a later date when sufficient income tax credits may be available, as described in R20-1-303(D) or in A.R.S. § 41-1511(K). If the applicant company chooses this option, the Department shall refund the application fee required under subsection (B)(1); or
2. Continue with processing the application for pre-approval and if qualified for pre-approval:
 - a. Accept pre-approval for any remaining amount of income tax credit available and any property tax reclassification.
 - b. Accept pre-approval for any income tax credit that might become available under A.R.S. § 41-1511(K) and any property tax reclassification, or
 - c. Irrevocably decline qualification for an income tax credit and accept any property tax reclassification.

R20-1-306. ~~Expired~~ Review and Action on an Application for Pre-approval

- A.** The Department shall review applications for pre-approval in the order established by the priority placement numbers. The Department shall endeavor to determine whether an application is complete and correct within 15 days after receipt of the application.
- B.** If the Department determines during the review of an application for pre-approval that the application is not complete and correct, the Department may request additional information regarding the company or the proposed project, conduct a site visit, or discuss the application with an officer of the renewable energy company. If the Department requests additional information, an officer of the company shall ensure that the requested information is supplied within 15 days. Upon request, either written or verbal, the Department shall provide one 15-day extension of time for the requested information to be supplied. The Department will notify the company in writing of the deadline as extended.
- C.** If all information needed to make an application for pre-approval complete and correct is not supplied within the time-frame specified in subsection (B), the Department shall inform the applicant company that:
 1. The application for pre-approval is considered withdrawn by the company.
 2. The priority placement number assigned to the application is cancelled.
 3. No further action will be taken on the application, and
 4. The application fee required under R20-1-305(B)(1) is non-refundable.
- D.** Within 30 days after receipt of a complete and correct application for pre-approval, the Department shall make a decision to pre-approve or deny pre-approval for the company to participate in the renewable energy tax incentives program.
 1. The Department shall pre-approve a company to participate in the renewable energy tax incentives program if the Department determines that the company meets all the requirements in A.R.S. § 41-1511 and this Article. The Department shall send a letter of qualification to a company that is pre-approved and shall send a copy of the letter of qualification to ADOR and the Assessor. The Department shall include the following information in the letter of qualification:
 - a. The name and address of the qualified company.
 - b. The name and address of the proposed project.
 - c. An estimate of the total dollar amount of income tax credits reserved for the qualified company as specified in R20-1-303(B).
 - d. The priority placement number of the company, and
 - e. The date of pre-approval.
 2. The Department shall deny pre-approval for a company to participate in the renewable energy tax incentives program if the Department determines that the company does not meet all the requirements in A.R.S. § 41-1511 and this Article.
- E.** The Department shall not allow a company to amend an application for pre-approval after the Department issues a letter of qualification under subsection (D)(1) to the company.

R20-1-307. ~~Expired~~ Review and Action on an Application for Post-approval

- A.** The post-approval review begins when a qualified company submits the information required under R20-1-304(D).
- B.** If the Department determines during the review of an application for post-approval that the application is not complete and correct, the Department may request additional information regarding the company or the completed project, conduct a site visit, or discuss the application with an officer of the company. If the Department requests additional information, an officer of the company shall ensure that the requested information is supplied. The Department shall not continue reviewing the application for post-approval until the application is complete and correct.
- C.** When the application for post-approval is complete and correct, the Department shall determine whether the company is eligible to receive renewable energy tax incentives.
 1. If the Department determines that the company is eligible to receive renewable energy tax incentives, the Department shall send a notice of post-approval to the company. The Department shall include the following information in the notice of post-approval:

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- a. Name of the eligible company;
 - b. The date of post-approval;
 - c. Name of the completed project;
 - d. The dollar amount of income tax credits that the eligible company may claim, which will be equal to or less than the amount estimated in the letter of qualification provided under R20-1-306(D)(1). The Department shall not authorize a company to claim income tax credits greater than the amount estimated under R20-1-306(D)(1) even if the amount of qualifying investment is greater than the amount estimated;
 - e. A statement of whether the eligible company may receive a property tax reduction and if so, the period of time the property is eligible for the property tax reduction; and
 - f. Information regarding claiming the renewable energy tax incentives;
2. If the Department determines that the company is not eligible to receive renewable energy tax incentives, the Department shall send a notice denying post-approval to the company.
- D.** The Department shall provide a copy of the notices specified under subsection (C) to ADOR and the Assessor.
- E.** If the Department determines that the dollar amount of income tax credits that an eligible company may claim is less than the amount estimated in the letter of qualification provided under R20-1-306(D)(1), the Department shall provide the company with the basis of its decision.

R20-1-308. ~~Expired~~ Claiming Renewable Energy Tax Incentives

- A.** A company is not eligible to claim renewable energy tax incentives until the company receives a notice of post-approval as described in R20-1-307(C)(1).
- B.** As specified in A.R.S. §§ 43-1083.01(H) and 43-1164.01(H), a company shall not claim an income tax credit under the renewable energy tax incentives program for an employment position if the company claims an income tax credit for the employment position under A.R.S. §§ 43-1074, 1077, 1079, 1161, 1165, or 1167.
- C.** The Department determines only whether a company is eligible to receive renewable energy tax incentives. After the Department determines that a company is eligible, the company shall:
1. Comply with requirements of ADOR to receive income tax credits, and
 2. Comply with requirements of the Assessor to receive a property tax reduction.
- D.** As provided in A.R.S. § 41-1511(G)(3), an eligible company shall claim the income tax credits authorized under R20-1-307(C)(1) in five equal installments over five consecutive tax years.
- E.** As provided in A.R.S. § 42-12057, to obtain reclassification of real and personal property, an eligible company shall annually submit documentation to the Assessor by a date established by the Assessor. The eligible company shall include with the documentation a copy of the notice of post-approval provided under R20-1-307(C)(1).

R20-1-309. ~~Expired~~ Consequences of Failing to Comply

- A.** Failing to maintain pre-approval. If a qualified company fails to comply with all requirements in R20-1-304(C) the company's qualification for income tax credits and property tax reclassification lapses. The Department shall endeavor to determine whether a qualified company has complied with all requirements in R20-1-304(C) within 60 days after the date specified in R20-1-304(C)(1).
- B.** Post-approval.
1. If the Department determines that an eligible company fails to meet all terms and conditions required to receive renewable energy tax incentives, including compliance with the requirements in R20-1-304(E), the Department shall rescind the company's eligibility unless the Department determines that the failure to meet all terms and conditions results from extraordinary hardship due to factors beyond the control of the eligible company.
 2. If the Department rescinds a company's eligibility to receive renewable energy tax incentives, the Department shall provide notice of the rescission to ADOR and the Assessor.
- C.** As required by A.R.S. § 41-1511(R), a qualified or eligible company shall separately comply with all environmental, employment, and other regulatory measures. The Department may revoke the qualification or eligibility of a company that fails to comply with all applicable requirements.
- D.** If a company is involved in an action involving liquidation of assets or relocates outside of Arizona within five years after the date of post-approval, as specified in the notice provided under R20-1-307(C), the state claims the position of a secured creditor of the company in the amount of income tax credits claimed. The company will provide any documents that the state may require to perfect its position as a secured creditor.

R20-1-310. Appeal of Department Actions

- A.** When the Department takes an action under this Article that determines the legal rights, duties, or privileges of a party, the Department shall provide the notice required under A.R.S. § 41-1092.03(A) to the party.
- B.** A party that receives a notice described in subsection (A) may appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 10, by filing a notice of appeal or request for hearing with the Director of the Department within 30 days after receiving the notice provided under subsection (A).
- C.** As required under A.R.S. § 41-1092.03(B) a party that files a notice of appeal or request for hearing under subsection (B)

shall ensure that the notice or request identifies the party and the party's address, the agency, the action being appealed, and a concise statement of the reasons for the appeal.

- D.** If a notice of appeal or request for hearing is timely filed, the Department shall notify the Office of Administrative Hearings to schedule a hearing regarding the notice or request.
- E.** The Department shall provide written notice of a hearing scheduled under subsection (D) to the appellant. The Department shall ensure that the notice of hearing includes the information required under A.R.S. § 41-1092.05(D) and is provided to the party at least 30 days before the date of the scheduled hearing.
- F.** In addition to a hearing scheduled under subsection (D), under A.R.S. § 41-1092.06, the appellant may file a written request for an informal settlement conference with the Director of the Department at least 20 days before the date of the scheduled hearing.
- G.** If a settlement is not reached, the Office of Administrative Hearings shall conduct the hearing scheduled under subsection (D) as prescribed in A.R.S. § 41-1092.07 and 2 A.A.C. 19.
- H.** Within 30 days after receiving a recommended decision from the Office of Administrative Hearings, the Director of the Department shall issue a final decision and provide written notice of the final decision to the appellant.