

## 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 takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for 1 or 2 180-day periods 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, BANKING AND INSURANCE

#### CHAPTER 1. DEPARTMENT OF COMMERCE

#### PREAMBLE

**1. Sections Affected**

Article 5  
R20-1-501  
R20-1-502  
R20-1-503  
R20-1-504  
R20-1-505  
R20-1-506  
R20-1-507

**Rulemaking Action**

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

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

Authorizing statute: A.R.S. § 41-1504(b)(4)

Implementing statutes: A.R.S. §§ 1-215, 41-1516, 43-1086, and 43-1174

**3. The effective date of the rules:**

February 27, 2001

**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 rulemaking:**

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

Since the mid 1990s, the Legislature has created several alternative fuel tax incentives and grants to encourage the use of alternative fuel and the purchase, lease, or conversion of alternative fuel vehicles. The goal of the Alternative Fuel Program is to reduce on-road vehicle emissions and dependence on foreign oil by increasing the number of alternative fuel vehicles in Arizona. In the 1999 legislative session, the Legislature established the Alternative Fuel Vehicle (AFV) Grant Program under A.R.S. § 41-1516 as one of several grant programs created under the Clean Air Act. The AFV Grant Program was further defined and expanded during the 2000 legislative session in SB 1504 and was signed into law on April 28, 2000. The AFV Grant Program's start date was July 1, 2000.

The AFV Grant Program statute authorizes the Arizona Department of Commerce to utilize one half of the monies received from the Clean Air Fund to provide grants to individuals and businesses that have purchased a factory-manufactured AFV or converted a conventionally fueled vehicle to an alternative fuel vehicle. The AFV Grant Program is authorized from FY 2000-2001 through FY 2009-2010. However, on October 20, 2000, the Legislature convened the 6th Special Session and imposed a one-year moratorium on the AFV Grant Program and other affiliated grant/tax credit programs. SB 1004 directs the Department not to provide grants or affidavits to any person who enters into a contract between October 20, 2000 and October 19, 2001.

Grants for new AFVs range from 30% to 50% of the cost of the vehicle or \$5,000 to \$10,000, whichever amount is greater. Provisions are also made for grants for previously owned vehicles and AFVs greater than 12,000 GVW. When available monies are exhausted from the Clean Air Fund, statute directs the Department to issue an affidavit for a refundable tax credit to qualified applicants in the same amount as the AFV Grant. Participants will submit the tax credit affidavit as part of their Arizona Income Tax Return. The Department of Revenue administers the tax credit provisions of the Clean Air Act.

The AFV Grant Program statute requires applicants to meet certain eligibility requirements and specifies that AFV Grant applications be prioritized for funding. Provisions are made for a Pre-Application process for vehicles on order or awaiting conversion. Qualified AFVs must use one of the specified alternative fuels and certain vehicles are excluded from the grant program.

This rule package implements statutory requirements by providing specific guidance and procedures for applicants. It will ensure fairness by establishing procedures for processing applications, awarding grants and issuing tax credit affidavits.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the repeal of 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 statement:**

The economic impact on Arizona small businesses and the public as a result of the proposed rules would be minimal in terms of cost and time resources. The proposed rule would require car dealers and conversion vendors to provide grant applicants with certain AFV certification documents and verify that documentation, if necessary. The small businesses and the public applying for a grant would be minimally affected by the costs of providing copies of documentation, for their application, and the time to compile the required documentation and complete the Application or Pre-application. The Office of the Attorney General would be minimally affected by the costs of providing emergency rule review and approval. The Secretary of State would be affected minimally by publishing the rules. The Department of Commerce would be substantially affected by the need for additional staff to process applications, to verify compliance with the rule, and to establish eligibility. The costs to the Department for developing communication materials and forms, printing and mailing will be moderate.

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

Not applicable

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

Not applicable

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

Although the initial Alternative Fuel Vehicle Grant (AFVG) program was created in 1999, the legislation lacked specificity. Many changes and necessary details were developed during the 2000 legislative session. Had the Department had enough information to initiate rulemaking in 1999, the current situation would still exist due to the numerous changes made in 2000.

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This rulemaking meets the required statutory A.R.S. § 41-1026(A) criteria. An emergency rulemaking is necessary to:

1. Comply with deadlines in amendments to the Department's governing law,
2. Avoid violation of other state law, and
3. Avoid serious prejudice to the public interest or the interest of the parties concerned.

Current state law authorized the Alternative Fuel Vehicle Grant (AFVG) program to begin July 1, 2000. To meet this statutory timeline, the Department developed and released application materials. However, grants have not been released because rules need to be in place to assure clarity and fairness to all participants. Without emergency rules, the Department will not be able to meet the statutory requirement of providing grants and tax credit affidavits.

Further, the timeline inherent in the regular rulemaking process will cause serious prejudice to the public interest. Rules would not be in place until approximately May 2001 under the regular rulemaking process. The Department is currently processing more than 5,000 completed applications at the Office of Alternative Fuel Recovery. Applicants who will receive tax credits must file them with their 2000 tax returns. Emergency rules will ensure that the financial interests of these parties are not compromised.

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

February 27, 2001

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 1. DEPARTMENT OF COMMERCE**

**ARTICLE 5. ALTERNATIVE FUEL VEHICLE GRANT PROGRAM**

Section

<u>R20-1-501.</u>	<u>Definitions</u>
<u>R20-1-502.</u>	<u>Application Process</u>
<u>R20-1-503.</u>	<u>Eligibility Criteria</u>
<u>R20-1-504.</u>	<u>Grant Amount</u>
<u>R20-1-505.</u>	<u>Tax Credit Eligibility</u>
<u>R20-1-506.</u>	<u>Priority; Approval and Disapproval</u>
<u>R20-1-507.</u>	<u>Protest</u>

**ARTICLE 5. ALTERNATIVE FUEL VEHICLE GRANT PROGRAM**

**R20-1-501. Definitions**

The following definitions apply in this Article, unless the context otherwise requires:

1. "Actual purchase price" means for purchase or conversion of a new alternative fuel vehicle the amount paid for the vehicle including dealer options, minus the sum of any:
  - a. Customer rebates;
  - b. Document preparation fees;
  - c. Registration fees;
  - d. Title fees;
  - e. Amounts paid for extended warranties;
  - f. Amounts paid for aftermarket equipment installed on the vehicle;
  - g. Destination charges; and
  - h. For vehicles over 12,000# gross vehicle weight, any charges for attachments not associated with operation of the vehicle;
2. "Alternative fuel" has the same meaning as defined in A.R.S. § 1-215.
3. "Alternative fuel vehicle" has the same meaning as defined in A.R.S. § 43-1086.
4. "Amount actually paid" means the "actual purchase price" or "cost", as applicable.
5. "Applicant-owned vehicle" means a vehicle owned by an applicant at the time of conversion to an alternative fuel vehicle. However, when an applicant contracted to purchase a new vehicle and ordered its conversion at the same time and conversion occurs after applicant takes ownership, the vehicle shall not be deemed an applicant-owned vehicle.

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6. “Attachment not associated with the operation of the vehicle” means an item not required for the normal and basic use of the vehicle, and includes items such as accessories relating to towing, accessories relating to specialized use of a vehicle, and items that are decorative rather than functional.
7. “Bi-fuel vehicle” has the same meaning as defined in A.R.S. § 43-1086.
8. “Conversion company” or “conversion vendor” means a business entity, other than applicant, that offers alternative fuel vehicle conversions to the general public or to other businesses. An automobile dealer may be a conversion company or a conversion vendor.
9. “Cost” means for the purchase of a used alternative fuel vehicle the amount paid for the vehicle minus the sum of any:
  - a. Customer rebates;
  - b. Document preparation fees;
  - c. Registration fees;
  - d. Title fees;
  - e. Amounts paid for extended warranties; and
  - f. Amounts paid for aftermarket equipment installed on the vehicle.
10. “Cost of conversion” means the price of a conversion kit or conversion parts, plus the price of installation if installed by a conversion company.
11. “Dealer-converted” means a new vehicle converted to operate on an alternative fuel by a dealer or by a third party at the request of a dealer.
12. “Dedicated vehicle” has the same meaning as defined in A.R.S. § 43-1086.
13. “Department” means the Department of Commerce of this state.
14. “Emission certification level” means a certification on a “State of Arizona Original Equipment Manufacturer Alternative Fueled Vehicle Emissions Certification Form,” provided by a dealer or conversion vendor, that the vehicle qualifies under applicable federal standards as a: low emission vehicle, inherently low emission vehicle, ultralow emission vehicle, super ultralow emission vehicle, or zero emission vehicle.
15. “Factory-manufactured alternative fuel vehicle” means a vehicle that meets the requirements for an alternative fuel vehicle at the time possession is transferred from the manufacturer to a dealer and the alternative fuel vehicle status is specified on manufacturer’s invoice or other manufacturer documentation.
16. “Gross vehicle weight” has the same meaning as defined in A.R.S. § 43-1086.
17. “Hybrid vehicle” or “hybrid” means a vehicle that operates on a combination of fuels that fails to meet all requirements of A.R.S. § 1-215(4)(f).
18. “In the possession of the taxpayer” means the legal ownership has been transferred to, or is in the process of being transferred to applicant, and applicant has actual physical control of the vehicle.
19. “Incremental cost” means the amount by which the cost of an alternative fuel vehicle exceeds the cost of the same model of conventionally fueled vehicle that is similarly equipped. For a zero emission vehicle incremental cost is assumed to be \$10,000 or 25% of the cost, whichever is more. For a conversion the incremental cost is the cost of conversion.
20. “Manufacturer’s base retail price” means the lowest suggested retail price of the make and model of a new motor vehicle suggested by the manufacturer, excluding any amount paid for an item installed in the vehicle that was not identified in the dealer’s wholesale invoice received from the vehicle manufacturer and that does not improve air quality in this state. For vehicles over 12,000# gross vehicle weight, the manufacturer’s base retail price does not include any charges for attachments not associated with operation of the vehicle.
21. “Neighborhood Electric Vehicle” has the same meaning as defined in A.R.S. § 43-1086.
22. “New” means the vehicle was never registered and titled anywhere before its manufacture as an alternative fuel vehicle or conversion to operate on alternative fuel. However, when an applicant contracted to purchase a new vehicle and ordered its conversion at the same time and conversion occurs after the vehicle is registered and titled, the vehicle shall be deemed to be a new vehicle.
23. “Original manufacturer’s base retail price” means the same as “manufacturer’s base retail price”.
24. “Paid in full” means that applicant’s obligation to the seller of a vehicle or to the conversion vendor, as applicable, has been fully satisfied by a cash payment (including value of a trade-in) or by a financing arrangement where the payment obligation is to a person other than seller or conversion vendor.
25. “Purchase” means to acquire full right, title, and interest, whether or not encumbered by a lien or otherwise. The term does not include a lease or other right to possess for a limited period of time.
26. “Self-converted” means converted by the applicant, or by a person other than a manufacturer, dealer, or conversion vendor, to operate as an alternative fuel vehicle.
27. “Trade-in” means a vehicle or other tangible or intangible item of value exchanged in a transaction with the effect of offsetting at least a portion of the cost of a vehicle.
28. “Used” has the same meaning as defined in A.R.S. § 43-1086.

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**R20-1-502. Application Process**

- A.** An applicant may submit an application packet:
1. Within one year after applicant takes possession of a new or used alternative fuel vehicle and the vehicle is titled and registered in Arizona in applicant's name; or
  2. For a conventionally fueled vehicle converted by a conversion vendor at applicant's request to operate on an alternative fuel, within one year after the last of the following to occur: completion of conversion, applicant takes possession of the converted vehicle, and the vehicle is titled and registered in Arizona in applicant's name.
  3. For a self converted vehicle, within one year after the last of the following to occur: completion of the conversion of the conventionally fueled vehicle to operate on an alternative fuel, the applicant obtains an "MVD Alternative Fuel Certificate" for the vehicle, and the vehicle is titled and registered in Arizona in applicant's name.
- B.** After December 17, 2000 applicant shall submit an application packet by mail or in person to the Office of Alternative Fuel Recovery at Suite 103, 1700 West Washington Street, Phoenix, AZ 85007. However, the Department shall process any applications already submitted to it. The packet shall include the following items placed in the following sequence:
1. Application form provided by the Department or by the Office of Alternative Fuel Recovery that contains:
    - a. Applicant's status as an individual or a business;
    - b. Application date;
    - c. Whether a pre-application was submitted;
    - d. Vehicle type:
      - i. New factory-manufactured alternative fuel vehicle;
      - ii. Used factory-manufactured alternative fuel vehicle;
      - iii. Conversion of new vehicle;
      - iv. Conversion of applicant-owned vehicle (including self-converted vehicle); or
      - v. Purchase of previously converted used vehicle;
    - e. Information personally identifying the applicant;
    - f. Vehicle Identification Number, year, make, and model;
    - g. Gross vehicle weight;
    - h. Whether vehicle is bi-fuel or dedicated;
    - i. Type of alternative fuel;
    - j. Emission certification level, for factory manufactured alternative fuel vehicles;
    - k. For new or used factory-manufactured alternative fuel vehicles if purchased at a dealership:
      - i. Dealership where purchased; and
      - ii. Dealer contact person and telephone number;
    - l. For all new or used factory-manufactured alternative fuel vehicles, the vehicle registration date;
    - m. For new or used converted vehicles if purchased at a dealership:
      - i. Dealership where purchased;
      - ii. Dealer contact person and telephone number;
    - n. For all converted vehicles:
      - i. Conversion company;
      - ii. Conversion company contact person and telephone number;
      - iii. Conversion date;
      - iv. Registration date;
      - v. Conversion kit manufacturer and kit number and, if applicable, serial numbers of conversion parts;
    - o. For all qualified electric or self-converted vehicles:
      - i. Conversion date as documented by "MVD Alternative Fuel Vehicle Certificate" date;
      - ii. Registration date; and
      - iii. Conversion kit manufacturer and kit number or, if applicable, serial numbers of conversion parts;
    - p. Date applicant took possession of vehicle or date applicant paid in full for vehicle;
    - q. Has applicant elected to take the opt-out option available under Laws 2000, 7th S.S., Ch. 1, § 33.
  2. In addition to the information required under subsection (1), the application shall include:
    - a. For a new low emission vehicle, 12,000# or less gross vehicle weight, actual purchase price;
    - b. For a used low emission vehicle, 12,000# or less gross vehicle weight, the cost;
    - c. For a new ultralow, inherently low, super ultralow, or zero emission vehicle, actual purchase price;
    - d. For a used ultralow, inherently low, or zero emission vehicle, the cost;
    - e. For a new low emission vehicle, over 12,000# gross vehicle weight:
      - i. Actual purchase price, and
      - ii. Price of any attachment not associated with the operation of the vehicle;
    - f. For a used low emission vehicle, over 12,000# gross vehicle weight:
      - i. Cost, and
      - ii. Price of any attachment not associated with the operation of the vehicle;



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- c. The “Statement of Acceptance” shall contain applicant’s waiver of applicant’s right to:
  - i. Elect the opt-out option under Laws 2000, 7th S.S., Ch. 1, § 33; and
  - ii. Seek reimbursement for a claim under Laws 2000, 7th S.S., Ch. 1, § 31;
- d. Under the “Statement of Acceptance,” an applicant shall retain the right to seek a tax credit for conversion or incremental costs when eligible.
- 2. If an application packet is complete and the Department’s review indicates that applicant meets eligibility requirements and grant funds are not available, the Department shall mail to applicant a tax credit affidavit to be filed with applicant’s tax return.
- 3. If an application packet is not complete, the Department shall notify applicant by phone, mail, or e-mail that the application cannot be processed because one or more items are missing or further action is needed. The notice shall specify each missing item or required action. Upon submission of all required information, the application shall be processed according to statute and these rules.
- 4. If the Department’s review of an application indicates that applicant is not eligible for an alternative fuel vehicle grant, the Department shall notify applicant in writing of the determination and shall state the reason for ineligibility.
- G. If an applicant submits an application that was available prior to the date this Article becomes effective, the Department may use the submitted application. However, if a determination of eligibility or grant amount requires information not contained in the submitted application but which may be requested under this Article, the Department may:
  - 1. Require the applicant to provide as supplemental information any information that may be requested under this Article; or
  - 2. Require the applicant to submit a new application that conforms to the requirements of this Article.

**R20-1-503. Eligibility Criteria**

- A. To be eligible to receive an alternative fuel vehicle grant, an applicant and an applicant’s vehicle shall meet all eligibility requirements under this Article and applicable statutes, and the applicant shall, on or after January 1, 2000 and within timeframes required by statute:
  - 1. Purchase an alternative fuel vehicle; or
  - 2. Convert a conventionally fueled vehicle to operate on an alternative fuel.
  - 3. If applicant is an individual, be not less than 16 years of age.
- B. To be eligible for a grant under this Article an applicant shall not elect the opt out option under Laws 2000, 7th S.S., Ch. 1, § 33.
- C. To be eligible for a grant under this Article an applicant shall not, for a period of 36 months after the date of initial registration of the vehicle, transfer the vehicle to any person other than to a member of the applicant’s immediate family or to a person who resides in the same household as applicant. This provision shall not apply if transfer occurs after:
  - 1. The vehicle is demolished; or
  - 2. The applicant’s death.
- D. To be eligible for a grant under this Article the vehicle shall remain registered in Arizona for a period of 36 months.
- E. To be eligible for a grant under this Article, if the vehicle is a bi-fuel vehicle that operates on liquefied petroleum gas, applicant shall meet the fuel use requirements of § 43-1086(E)(4) or § 43-1174(E)(4).
- F. To be eligible for a grant under this Article, if the vehicle is a bi-fuel vehicle that operates on compressed natural gas, applicant shall meet the fuel use requirements of § 43-1086(E)(5) or § 43-1174(E)(5).
- G. To be eligible for a grant under this Article the vehicle shall comply with the emission inspection requirements for alternative fuel vehicles prescribed in A.R.S. Title 49, Chapter 3, Article 5.
- H. To be eligible for a grant under this Article an applicant shall not elect to seek reimbursement for a claim under Laws 2000, 7th S.S., Ch. 1, § 31.
- I. The following vehicles are not eligible for alternative fuel vehicle grants:
  - 1. Neighborhood Electric Vehicles;
  - 2. Golf carts;
  - 3. Hybrid electric vehicles;
  - 4. Motorcycles;
  - 5. Vehicles using alcohol fuel that do not meet the requirements of A.R.S. § 1-215(4)(e);
  - 6. Leased vehicles; and
  - 7. Any vehicle not meeting eligibility requirements under this Article and applicable statutes.

**R20-1-504. Grant Amount**

- A. Subject to the availability of monies for grants and subject to limitations of this Article and applicable statutes, the amount of a grant shall be equal to the amount of the applicable credit specified in A.R.S. § 43-1086(B) or § 43-1174(B), and shall be subject to the limitations and restrictions contained in A.R.S. § 43-1086 or § 43-1174. However, in the event that remaining funds do not equal the grant amount, applicant shall instead of a grant receive an affidavit pursuant to R20-1-505 for a tax credit equal to the grant amount.

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- B.** The total amount of a tax credit or of a grant and tax credit combined shall not exceed the amount actually paid for the vehicle, including the cost of conversion.

**R20-1-505. Tax Credit Eligibility**

- A.** If monies are not available in the fund for grants and an applicant meets all requirements for a grant, the Department shall provide an affidavit to that applicant.
- B.** The affidavit shall include information confirming that:
1. Monies are not available in the Arizona Clean Air Fund for grants;
  2. Applicant meets eligibility criteria and would qualify for a grant if monies were available in the fund, and
  3. Applicant is eligible for a tax credit under A.R.S. § 43-1086 or A.R.S. § 43-1174.

**R20-1-506. Priority; Approval and Disapproval**

- A.** To qualify for a grant under A.R.S. § 41-1516 or an affidavit for a tax credit under A.R.S. § 43-1086 or § 43-1174 an applicant shall:
1. Meet the eligibility requirements of this Article and applicable statutes, and
  2. Apply for a grant under this Article within the time limits established by R20-1-502.
- B.** The Department shall prioritize qualifying pre-applications based on order date of vehicle or order date of conversion, provided applicant has made at least a 10% down payment on the vehicle or conversion. If down payment date is later than order date, priority shall be based on date of down payment of at least 10%. When more than 1 applicant has the same priority based on date, the Department shall use a computerized randomization process to establish order for funding when necessary. However, Department shall not disburse a grant or issue an affidavit based upon priority under this subsection until applicant has submitted a qualifying application pursuant to requirements of R20-1-502.
- C.** When a qualifying pre-application has not been submitted, following receipt of a qualifying application the Department shall prioritize the qualifying application based on:
1. Date of validated registration in applicant's name for new and used factory manufactured or dealer converted alternative fuel vehicles and used converted alternative fuel vehicles;
  2. Date of conversion for vehicles converted by a conversion company at applicant's request; and
  3. Date of the "MVD Alternative Fuel Certificate" for self-converted vehicles.
- When more than 1 applicant has the same priority based on date, the Department shall use a computerized randomization process to establish order for funding when necessary.
- D.** The Department shall disburse grants based upon priority established under this Section. When funds are not sufficient for a grant, the Department shall issue a tax credit affidavit pursuant to R20-1-505.

**R20-1-507. Protest**

- A.** Any interested party may file a protest of a Department determination or proposed Department determination of:
1. Eligibility for a grant under this Article, or
  2. The amount of a grant under this Article.
- B.** The Director shall resolve a protest arising under subsection (A).
- C.** Any interested party may appeal the Director's resolution of a protest to the Director of the Department of Administration.
- D.** A protest under subsection (A) or an appeal under subsection (C) shall be resolved in accordance with rules of procedure contained in 2 A.A.C.7, Article 9.