



Notices of Final Rulemaking

Web site: <http://www.azdor.gov/LegalResearch/DraftDocuments.aspx>.

- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**  
The rule will amend Subchapter C, Article 5 to address issues related to the renewable energy production tax credit. The rule is necessary to administer (1) the application process, (2) certification of the credit cap, and (3) the Credit Authorization List, as required by statute.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 9. A summary of the economic, small business, and consumer impact:**  
It is expected that the benefits of the new rule will be greater than the costs. Individual taxpayers will benefit by being informed of the approval process and administration of the annual credit cap. Individual taxpayers that apply for the credit are expected to incur minimal costs related to the new rule. This rule only provides guidance in the application of the statute - the statute allows for the credit and limits the amount of the credit. The Department of Revenue, the Governor's Regulatory Review Council, and the Secretary of State's Office will incur costs associated with the rule-making process.
- 10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**  
Minor grammatical, formatting, and clarifying changes were made between the proposed rulemaking and the final rulemaking, based on comments received from Governor's Regulatory Review Council staff.
- 11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**  
The Notice of Proposed Rulemaking provided for an oral proceeding on November 8, 2011, with the close of record scheduled to occur on that date. No interested taxpayers attended the oral proceeding. The only written comments received were from Governor's Regulatory Review Council staff.
- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**  
None

  - a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**  
No permit required.
  - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
None
  - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
None
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**  
None
- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**  
Not applicable
- 15. The full text of the rules follows:**

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE  
INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER C. INDIVIDUALS

ARTICLE 5. CREDITS

Section

R15-2C-503. Renewable Energy Production Tax Credit

ARTICLE 5. CREDITS

**R15-2C-503. Renewable Energy Production Tax Credit**

- A.** For each year for which an owner of a qualified energy generator plans to claim a renewable energy production tax credit, the owner shall file one of the following applications:
- 1.** An initial application in accordance with subsection (B) for:
    - a.** Energy produced in 2011 for which an owner of a qualified energy generator plans to claim a credit on the 2011 tax return filed in 2012, and
    - b.** Energy produced after 2011 for which an owner of a qualified energy generator did not have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1083.02(G).
  - 2.** A renewal application in accordance with subsection (C) for an owner of a qualified energy generator that did have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1083.02(G).
- B.** An initial application shall include the following information:
- 1.** The information required by A.R.S. § 43-1083.02(F).
  - 2.** The business structure of the applicant.
  - 3.** If the credit will be passed through to shareholders or partners, a list including the name, taxpayer identification number, and ownership percentage of each shareholder or partner. If the tax year end is other than December 31, and the shareholders or partners, or ownership percentages change, the applicant shall update the list for the tax year end by the due date of the applicant's Arizona return, including extensions.
  - 4.** The applicant's tax year end.
  - 5.** The name of the contact person, his or her title, telephone number and fax number.
  - 6.** If the applicant has any affiliates or subsidiaries, a list of the affiliates and subsidiaries, including the name, address, taxpayer identification number, and percentage of ownership. The applicant may substitute a federal Form 851, or other federal form with the required information, for this list.
  - 7.** Self-assigned name or identification number of the qualified energy generator.
  - 8.** Assessor's parcel number or numbers of the land on which the qualified energy generator is located or, if not available, the legal description.
  - 9.** The centrally valued property tax identification number for the personal property on the land.
  - 10.** The type of qualified energy resource used to generate electricity. If the qualified energy resource is biomass, the type of biomass.
  - 11.** The generating capacity of the qualified energy generator.
  - 12.** The number of kilowatt-hours of electricity produced for the calendar year.
  - 13.** Printouts for the calendar year from the production meter located at the qualified energy generator that:
    - a.** Measures the output from the qualified energy generator, and
    - b.** Provides the output information to a grid-tied energy management system.
  - 14.** A signed affidavit in which the applicant states that the information contained in the application is true and correct under penalty of perjury and that the qualified energy generator for which the applicant is claiming the credit did not produce electricity prior to 2011.
- C.** A renewal application shall include the information required by subsections (B)(1) through (6) and (B)(12) through (14). In addition, where the information required by subsections (B)(7) through (11) has changed since the prior year's application, the applicant shall provide the new information on the renewal application.
- D.** Copies of invoices or receipts from the electricity purchaser, verifying kilowatt-hours sold, shall be made available to the Department upon request.
- E.** If an owner owns more than one qualified energy generator, the owner shall submit a separate application for each qualified energy generator.
- F.** Each application shall be mailed separately in its own envelope by United States Postal Service Express Mail to: Arizona Department of Revenue, Renewable Energy Production Tax Credit Program, P.O. Box 25248, Phoenix, AZ 85002. Notwithstanding A.R.S. § 1-218(E)(1), the Department shall not accept applications through any other delivery method for purposes of this Section and A.R.S. § 43-1083.02.
- G.** For each initial application received in accordance with subsections (B) and (F), the Department shall assign a priority placement number that reflects the date and time on the Express Mail label, without regard to which time zone mailing took place.
- H.** If the Department receives more than one initial application in accordance with subsection (G) that it would assign the same priority placement number based on date and time on the Express Mail label, then the order received shall be determined by a random drawing of affected applications.



Notices of Final Rulemaking

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**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The rule will amend Subchapter D, Article 10 to address issues related to the renewable energy production tax credit. The rule is necessary to administer (1) the application process, (2) certification of the credit cap, and (3) the Credit Authorization List, as required by statute.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

It is expected that the benefits of the new rule will be greater than the costs. Taxpayers will benefit by being informed of the approval process and administration of the annual credit cap. Taxpayers that apply for the credit are expected to incur minimal costs related to the new rule. This rule only provides guidance in the application of the statute – the statute allows for the credit and limits the amount of the credit. The Department of Revenue, the Governor's Regulatory Review Council, and the Secretary of State's Office will incur costs associated with the rulemaking process.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

Minor grammatical, formatting, and clarifying changes were made between the proposed rulemaking and the final rulemaking, based on comments received from Governor's Regulatory Review Council staff.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

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**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

No permit required.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

None

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

None

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable

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

**TITLE 15. REVENUE**

**CHAPTER 2. DEPARTMENT OF REVENUE  
INCOME AND WITHHOLDING TAX SECTION**

**SUBCHAPTER D. CORPORATIONS**

**ARTICLE 10. CREDITS**

Section

R15-2D-1002. Renewable Energy Production Tax Credit

**ARTICLE 10. CREDITS**

**R15-2D-1002. Renewable Energy Production Tax Credit**

- A.** For each year for which an owner of a qualified energy generator plans to claim a renewable energy production tax credit, the owner shall file one of the following applications:
1. An initial application in accordance with subsection (B) for:
    - a. Energy produced in 2011 for which an owner of a qualified energy generator plans to claim a credit on the 2011 tax return filed in 2012, and
    - b. Energy produced after 2011 for which an owner of a qualified energy generator did not have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1164.03(G).
  2. A renewal application in accordance with subsection (C) for an owner of a qualified energy generator that did have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1164.03(G).
- B.** An initial application shall include the following information:
1. The information required by A.R.S. § 43-1164.03(F).
  2. The business structure of the applicant.
  3. If the credit will be passed through to shareholders or partners, a list including the name, taxpayer identification number, and ownership percentage of each shareholder or partner. If the tax year end is other than December 31, and the shareholders or partners, or ownership percentages change, the applicant shall update the list for the tax year end by the due date of the applicant's Arizona return, including extensions.
  4. The applicant's tax year end.
  5. The name of the contact person, his or her title, telephone number and fax number.
  6. If the applicant has any affiliates or subsidiaries, a list of the affiliates and subsidiaries, including the name, address, taxpayer identification number, and percentage of ownership. The applicant may substitute a federal Form 851, or other federal form with the required information, for this list.
  7. Self-assigned name or identification number of the qualified energy generator.
  8. Assessor's parcel number or numbers of the land on which the qualified energy generator is located or, if not available, the legal description.
  9. The centrally valued property tax identification number for the personal property on the land.
  10. The type of qualified energy resource used to generate electricity. If the qualified energy resource is biomass, the type of biomass.
  11. The generating capacity of the qualified energy generator.
  12. The number of kilowatt-hours of electricity produced for the calendar year.
  13. Printouts for the calendar year from the production meter located at the qualified energy generator that:
    - a. Measures the output from the qualified energy generator, and
    - b. Provides the output information to a grid-tied energy management system.
  14. A signed affidavit in which the applicant states that the information contained in the application is true and correct under penalty of perjury and that the qualified energy generator for which the applicant is claiming the credit did not produce electricity prior to 2011.
- C.** A renewal application shall include the information required by subsections (B)(1) through (6) and (B)(12) through (14). In addition, where the information required by subsections (B)(7) through (11) has changed since the prior year's application, the applicant shall provide the new information on the renewal application.
- D.** Copies of invoices or receipts from the electricity purchaser, verifying kilowatt-hours sold, shall be made available to the Department upon request.
- E.** If an owner owns more than one qualified energy generator, the owner shall submit a separate application for each qualified energy generator.

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- F.** Each application shall be mailed separately in its own envelope by United States Postal Service Express Mail to: Arizona Department of Revenue, Renewable Energy Production Tax Credit Program, P.O. Box 25248, Phoenix, AZ 85002. Notwithstanding A.R.S. § 1-218(E)(1), the Department shall not accept applications through any other delivery method for purposes of this Section and A.R.S. § 43-1164.03.
- G.** For each initial application received in accordance with subsections (B) and (F), the Department shall assign a priority placement number that reflects the date and time on the Express Mail label, without regard to which time zone mailing took place.
- H.** If the Department receives more than one initial application in accordance with subsection (G) that it would assign the same priority placement number based on date and time on the Express Mail label, then the order received shall be determined by a random drawing of affected applications.
- I.** If the Department denies an application or approves a smaller amount of credit than the amount requested on the application, the Department's decision is an appealable agency action as defined in A.R.S. § 41-1092(3) and the applicant may appeal the decision under subsection (J) and A.R.S. Title 41, Chapter 6, Article 10.
- J.** To appeal a decision made under subsection (I), the applicant shall file a petition, in accordance with Section R15-10-105(B) and A.R.S. § 41-1092.03(B), within 30 days of receipt of the Department's decision.
- K.** For each decision made under subsection (I), the Department shall reserve the portion of the cap that the applicant would have been entitled to if the Department had approved the application in full, up to the generator cap limit, until the applicant waives or exhausts the appeal rights in subsection (J).
- L.** For the cap reserved under subsection (K), once the applicant waives or exhausts the appeal rights in subsection (J), the Department shall certify the cap to the next eligible applicant on the Credit Authorization List, until the full cap is certified.
- M.** In addition to the definitions provided in A.R.S. § 43-1164.03, unless the context provides otherwise, the following definitions apply to this Section and to implementation of A.R.S. § 43-1164.03:
  - 1. "Cap" means the annual tax credit limit of \$20 million in A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).
  - 2. "Generator cap" means the annual tax credit limit of \$2 million per qualified energy generator in A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).