

Justification for Emergency Rules Qualified Energy Project Tax Exemption

Governor Strickland signed S.B. 232 on June 17, 2010. S.B. 232 provides a tax exemption designed to attract qualified renewable and advanced energy projects to Ohio. Construction of these energy projects will create jobs and contribute to the development of renewable and advanced energy resources in Ohio.

The General Assembly provided a short window for qualified projects to apply for and obtain the tax exemption. Applications must be submitted to the Department of Development no later than December 31, 2011. In addition, renewable energy projects must be placed in service before January 1, 2013, and energy projects using clean coal technology, advanced nuclear technology or cogeneration technology must be placed in service before January 1, 2017.

Certification of energy projects as eligible for the tax exemption is critical to the decisions of developers to commit to construction or installation of energy projects in Ohio. A number of prospective energy projects have construction timelines that commence this fall. Construction delays during winter may affect the viability of some of those energy projects. In addition, construction will provide valuable job opportunities for Ohioans

To implement the energy project tax exemption, the Department of Development must adopt administrative rules. The Departments of Development and Taxation have consulted on draft rules that establish an application process, certification procedures, reporting obligations and procedures for the on-going review and administration of the energy project certification. Immediate implementation of the rules will enable developers to commit to renewable energy projects that will create construction jobs in Ohio during the remainder of 2010.

The Department of Development will proceed immediately upon the filing of the emergency rules to release an application for certification of energy projects as qualified energy projects eligible for the tax exemption. The Department of Development will also pursue the adoption of permanent rules through the regular rule-filing process.

September 28, 2010

*** DRAFT - NOT YET FILED ***

122:23-1-01

Definitions and Rules of Interpretation.

(A) As used in sections 122:23-1-01 through 122:23-1-11 of the Administrative Code:

- (1) "Applicant" means a person who applies to the director for certification of an energy project as a qualified energy project. As used in this chapter of the Administrative Code, "applicant" also includes a person who receives a certification of an energy project as a qualified energy project and any subsequent owner or lessee pursuant to a sale and leaseback transaction of the qualified energy project.
- (2) "Application for certification" means an application for certification of an energy project as a qualified energy project as provided in section 5727.75 of the Revised Code.
- (3) "Authorized representative" of an entity means an officer or other individual who has the actual authority to sign for, and make representations on behalf of, the entity.
- (4) "Business day" means any day other than Saturday, Sunday or a holiday recognized by the state of Ohio on which the offices of the department of development are not open for business.
- (5) "Commissioner" means the commissioner of the department of taxation of the state of Ohio.
- (6) "Director" means the director of the department of development of the state of Ohio.
- (7) "In service" with respect to any energy project means capable of producing electricity.
- (8) "Ohio-domiciled" means a person's permanent residence is in the state of Ohio.

(B) In the case of a county that has adopted a charter under Article X, Ohio Constitution, references to "board of county commissioners" and resolution will be interpreted in accordance with section 1.62 of the Revised Code.

Effective:

Certification

Date

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122:23-1-02

Energy Facility.

"Energy facility" has the meaning given that term in section 5727.01(P) of the Ohio revised code. If a person who owns the interconnected wind turbines, solar panels, or other tangible property used to generate electricity also owns a substation to which the generating equipment is connected, such substation is part of the energy facility. A substation connected to generating equipment but not owned by the same person who owns the generating equipment is not part of the energy facility. A person may own equipment sufficient to constitute an energy facility, as that term is defined in section 5727.01(P), without owning a substation through which the person's generating equipment is connected to the grid.

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122:23-1-03

Application Process.

- (A) An application for certification may be submitted to the director as provided in this section 122:23-1-03 of the Administrative Code. The application for certification shall be in the form and contain the substance required by the director from time to time. The director will make the form of application for certification available on the website maintained by the department of development. To be considered, the application for certification must be complete, accompanied by all required supporting documentation and signed by an authorized representative of the applicant. The director may collect information about an energy project or a prospective application for certification through a web-based process, but an application for certification will not be considered submitted to the director until a paper copy with an original signature of an authorized representative is received at the Columbus, Ohio office of the department of development. The director may also require applicants to submit a complete copy of the application for certification, including all supporting documentation, in electronic format. If an application for certification will not be considered because it is incomplete, the director shall notify the applicant and identify in reasonable detail the information or supporting documentation necessary to complete the application.
- (B) A paper copy of a complete application for certification must be submitted to the director at the Columbus, Ohio office of the department of development no later than the close of business on the last day for application as provided in section 5727.75(E) of the Revised Code. The director will mark each application for certification with the date on which it is received at the department of development. If an application for certification is incomplete as initially received by the director, the application will not be considered submitted until any information or supporting documentation necessary to complete the application is submitted. The submission date will not relate back to the date on which the initial incomplete application is received by the director.
- (C) An application for certification must identify the location where any tangible personal property or real property that is part of the energy project will be located as follows: each county in which any real or tangible personal property is located, the taxing units with territory located in each such county, and the permanent parcel numbers for parcels within each county on which any part of the energy project will be located. An application for certification must also provide a mailing address for the board of county commissioners of each county and for the taxing authority of each taxing unit listed in the application. A copy of the legal description of real property where the energy project is located must be submitted with the application for certification. The application shall also provide sufficient detail about the location of tangible personal property constituting the energy facility and the buildings, structures, improvements, or fixtures exclusively used to house, support, or stabilize the tangible personal property constituting the energy facility or that are

otherwise necessary for the operation of that property so that the county auditor can determine the boundaries of the real property that may be entitled to exemption from taxation consistent with the definition of energy facility in section 5727.01(P) of the revised code.

(D) To satisfy the requirements for certification provided in section 5727.75, each applicant for certification of an energy project as a qualified energy project must submit the following supporting documentation with its application for certification:

(1) To evidence the date on which construction or installation of the energy facility begins, (a)(1) documentation from the power siting board (which may include a copy of a case docket) showing the date on which an application for a certificate under section 4906.20 was filed for the project with the power siting board or, (2) if such a certificate is not required by law, documentation showing the date on which an application for approval, consent, permit, or certificate for construction or operation of the project is first filed with any applicable authority, and (b), if the applicant has entered into a construction or installation contract on or before the application date, a copy of the contract for construction or installation of the energy facility (excluding any exhibits, appendices and attachments to the contract). Construction or installation of an energy facility begins on the earlier of the date of the application for a power siting board certificate or a construction permit, whichever applies, or the date of the construction or installation contract.

(2) A certificate of an authorized representative of the applicant that no portion of the energy facility was used to supply electricity before December 31, 2009. "Supply electricity" has the same meaning as "supplying of electricity" set forth in section 5727.02(A) of the Revised Code.

(3) To evidence applicant's compliance with all applicable regulations, a certificate by an authorized representative of the applicant that all licenses, permits, and other approvals required for the construction and operation of the energy project have been obtained or will be obtained as and when required, a list of all licenses, permits, and other approvals required for the construction and operation of the energy project, and copies of each such license, permit, or other approval that has been obtained by the applicant as of the application date. For any license, permit or other approval required for construction or operation of the energy project but which has not been obtained at the time the application for certification is submitted, the applicant shall indicate the status of such license, permit, or other approval.

(4) A list of fire and emergency responders for each jurisdiction in which any part of the energy project is located and a certificate from such fire and emergency responders to the director confirming that the applicant has consulted with the fire and emergency responders in developing a training plan for response to

emergency situations related to the energy project. If the applicant develops a joint training plan with multiple fire and emergency responders, one or more fire or emergency responders may be designated by the training plan to provide the certificate required by this paragraph.

- (5) A certificate of an authorized representative of the applicant that it has complied with the provisions of section 5727.75(F)(8) of the Revised Code regarding offers to sell power or renewable energy credits from the energy project to electric distribution utilities or electric service companies subject to renewable energy resource requirements under section 4928.64 of the Revised Code. This requirement will not apply to any application for certification filed after the expiration of all requests for proposal issued by electric distribution utilities and electric service companies on or before December 31, 2010 to purchase power or renewable energy credits.
- (E) In addition to the documentation described in paragraph (D) of this section 122:23-1-03 of the Administrative Code, an applicant for certification of an energy project with a nameplate capacity greater than two megawatts must submit to the director with its application for certification evidence that the applicant has established a relationship with a member of the university system or person offering an apprenticeship program that complies with the provisions of section 5727.75(F)(7) of the Revised Code to support workforce training. Such a relationship may be evidenced by an agreement with the institution or apprenticeship program or other written description of the relationship acknowledged by the institution or apprenticeship program.
- (F) In addition to the documentation described in paragraphs (D) and (E) of this section 122:23-1-03 of the Administrative Code, an application for certification for an energy project with a nameplate capacity of five megawatts or greater must satisfy the following requirements to be considered for certification by the director:
- (1) The director receives from the board of county commissioners of at least one county where any of the tangible personal property that is part of the energy project is located a certified copy of either (a) a resolution of such board approving the application for certification, or (b) a resolution declaring the county to be an alternative energy zone and all applications for certification delivered to the director after the adoption of such resolution to be approved. The certificate accompanying the resolution must be dated not earlier than thirty days prior to the date on which it is received by the director and confirm that the resolution was duly adopted, has not been amended, and has not been repealed.
 - (2) The director receives from the applicant a certificate of the county engineer for each county in which any part of the energy project is located to the effect that the applicant has complied with, or has entered into an agreement with the county to comply with, the provisions of section 5727.75(F)(4) regarding

the repair, rebuilding, and reinforcement of roads, bridges, and culverts. If the applicant has an agreement with the county engineer, the county engineer must also certify to the director that the applicant is not then in default of any of its obligations under such agreement. The applicant must also provide a copy of each agreement it has with any county engineer related to the energy project and a copy of any bond provided to a county engineer or required by the power siting board related to the repair, rebuilding, and reinforcement of roads, bridges, and culverts affected by the energy project.

(3) The director receives from the applicant a certificate of fire and emergency responders for each jurisdiction in which any part of the energy project is located to the effect that the applicant has equipped, or has developed in consultation with such fire and emergency responders a plan for equipping, such fire and emergency responders with proper equipment as reasonably required to enable them to respond to emergency situations related to the energy project. If the applicant develops a plan for equipping multiple fire and emergency responders with shared equipment, one or more fire or emergency responders may be designated by the equipment plan to provide the certificate required by this paragraph.

(G) Notwithstanding any provision of division (A) or (B) of this section 122:23-1-03 to the contrary, the director may consider an application that is submitted without the supporting documentation described in this division (G) and may issue a conditional certification of the energy project as a qualified energy project. Any such conditional certification will continue in effect only through the time allowed for the condition to be satisfied. A conditional certification will expire automatically upon the expiration of the period allowed for the satisfaction of the condition if the condition is not satisfied during such period and, thereafter, the conditional certification shall have no effect as a certification of a qualified energy project. Expiration of a conditional certification is not a revocation of certification subject to the requirements of section 122:23-1-09 of the administrative code. Furthermore, the issuance of a conditional certification shall not be interpreted as compliance with the requirements for property to be exempt from taxation pursuant to section 5727.75 of the Revised Code. All statutory requirements for exemption must be satisfied for property to be exempt from taxation.

(1) The director may issue a conditional certification for an application that does not include the certificate from fire and emergency responders as described in paragraph (4) of division (D) of this section 122:23-1-03. The application must, however, include the list of fire and emergency responders described in that paragraph. The applicant must submit to the director the certificate described in paragraph (4) of division (D) of this section 122:23-1-03 so that it is received at the Columbus office of the department of development not later than the close of business on the earlier of (a) the date which is ninety days after the date of the conditional certification or (b) the date the energy project is placed in service. In addition, an authorized representative of the

applicant must certify to the director that the training plan for emergency situations related to the energy project during construction or installation was established and implemented prior to the date of the first construction activities at the site of the energy project. If the certificate of the fire and emergency responders and the accompanying certificate of the authorized representative of the applicant are not received by the director within the time permitted by this paragraph, the conditional certification will expire.

- (2) The director may issue a conditional certification for an application that does not include the certificate described in paragraph (5) of division (D) of this section 122:23-1-03. The applicant may submit to the director the certificate described in paragraph (5) of division (D) of this section 122:23-1-03 with the construction completion report described in division (E) of section 122:23-1-05 of the administrative code, and the applicant shall submit such certificate to the director so that it is received at the Columbus office of the department of development not later than the date on which the construction completion report is due. If such documentation is not received by the director within the time permitted by this paragraph, the conditional certification will expire.
- (3) The director may issue a conditional certification for an application that does not include the documentation described in division (E) of this section 122:23-1-03. The applicant must submit to the director the documentation described in division (E) of this section 122:23-1-03 so that it is received at the Columbus office of the department of development not later than the close of business on the earlier of (a) the date which is ninety days after the date of the conditional certification or (b) the date the energy project is placed in service. If such documentation is not received by the director within the time permitted by this paragraph, the conditional certification will expire.
- (4) The director may issue a conditional certification for an application that does not include the certificate(s) of the county engineer(s) and related agreement(s) as described in paragraph (2) of division (F) of this section 122:23-1-03. The applicant must submit to the director the certificate(s) and agreement(s) described in paragraph (2) of division (F) of this section 122:23-1-03 so that they are received at the Columbus office of the department of development not later than the close of business on the earlier of (a) the date which is ninety days after the date of the conditional certification or (b) the date the energy project is placed in service. In addition, an authorized representative of the applicant must certify to the director that the agreement(s) with respect to any repair, reinforcement, or rebuilding of roads, bridges, and culverts necessary for construction were in effect prior to the date of the first construction activities at the site of the energy project. If the certificate of the county engineer(s) and the accompanying certificate of the authorized representative of the applicant are not received by the director within the time permitted by this paragraph, the conditional certification will

expire.

- (5) The director may issue a conditional certification for an application that does not include the certificate from fire and emergency responders as described in paragraph (3) of division (F) of this section 122:23-1-03. The application must, however, include the list of fire and emergency responders described in that paragraph. The applicant must submit to the director the certificate described in paragraph (3) of division (F) of this section 122:23-1-03 so that it is received at the Columbus office of the department of development not later than the close of business on the earlier of (a) the date which is ninety days after the date of the conditional certification or (b) the date the energy project is placed in service. In addition, an authorized representative of the applicant must certify to the director that the equipment plan for emergency situations related to the energy project during construction or installation was established and implemented prior to the date of the first construction activities at the site of the energy project. If the certificate of the fire and emergency responders and the accompanying certificate of the authorized representative of the applicant are not received by the director within the time permitted by this paragraph, the conditional certification will expire.

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Certification

Date

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122:23-1-04

Communication with Local Jurisdictions regarding Application; Qualified Energy Project Certificate.

- (A) For each energy project with a nameplate capacity of five megawatts or greater, the director shall forward a copy of the application for certification to the board of county commissioners for each county and the taxing authority for each taxing unit identified by the applicant as a county in which any part of the energy project is located. The director may forward copies of applications for certification in electronic format. The director may request the board of county commissioners to review and confirm the list of taxing authorities provided in the application for such county.
- (B) A board of county commissioners to which an application for certification is forwarded for review as provided in section 5727.75(E)(1)(b) may request from the director an extension of time to consider a resolution approving or rejecting the application. Any such request shall be made in writing to the director. The board shall be entitled to receive, and the director shall grant, one extension of thirty days. The board may request a further extension of time to consider a resolution approving or rejecting the application, but any further extension may be granted or denied in the director's discretion.
- (C) If within thirty days after the director forwards an application for certification to boards of county commissioners for the affected counties (or within any extension of that time granted by the director upon request of a county or otherwise), no board of county commissioners for a county in which any part of the energy project is located provides a resolution approving the application for certification or an alternative energy zone for any county in which a part of the energy project is located, the director shall deny the application for certification. The director shall notify the applicant in writing of such denial and provide a copy of the denial notice to the tax commissioner, the board of county commissioners for each county in which any part of the energy project is located, and the taxing authority of each taxing unit within an affected county. If the statutory deadline for submitting an application for certification has not passed, the applicant may resubmit its application for certification. If the statutory deadline for submitting an application for certification has passed, the applicant may not resubmit its application for certification and the denial of certification shall be final.
- (D) The director shall review each application for certification and supporting documentation and determine if the application and supporting documentation satisfies the requirements of section 5727.75 of the Revised Code for certification of the energy project as a qualified energy project. The director shall notify the applicant in writing of such determination. For any energy project determined to be a qualified energy project, the director shall issue a certificate in the form determined by the director, in consultation with the commissioner. The certificate

shall identify the applicant, each county in which any part of the qualified energy project is located, the taxing units within each such county, the permanent parcel numbers for the parcels on which any part of the qualified energy project is located, and for qualified energy projects using renewable resources the first tax year for which the property will be exempt from taxation, and the certificate shall describe the tangible personal property and real property to be exempt from taxation in sufficient detail that the county auditor can determine the boundaries of the real property and the buildings, structures, or fixtures that are entitled to exemption from taxation. For any qualified energy project with a nameplate capacity of five megawatts or greater, the certificate shall also identify separately any county that affirmatively rejected or failed to approve the exemption for energy project property located in such county. The director shall provide to the commissioner, to the board of county commissioners and auditor of each county in which any part of the qualified energy project is located, and to the taxing authority of each taxing unit within an affected county a copy of the qualified energy project certificate issued by the director to the applicant.

(E) Upon receipt of the qualified energy project certificate from the director, the county auditor of each county for which an exemption was approved shall place the real property described in the certification on the exempt list and remit or refund taxes for such years as are necessary to give effect to the qualified energy property certificate. If the application for certification was subject to approval by the board of county commissioners and the board of county commissioners did not approve such application or designate the county as an alternative energy zone, then the county auditor for such county shall not place property on the exempt list as provided in this paragraph and any tangible personal property and real property comprising any part of the qualified energy project located in such county shall not be exempt from taxation.

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Certification

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122:23-1-05

Construction Reporting.

- (A) The applicant shall file construction progress reports as provided in this section 122:23-1-05 of the Administrative Code. Construction progress reports shall be in the form and contain the substance required by the director from time to time, provided that substantive changes to the form shall be made not less than ninety days prior to the reporting deadline. A construction progress report must be received by the director not later than the close of business on March 1 (or the first business day after March 1 if March 1 is not a business day) each year following any calendar year during which any construction or installation of the energy project occurs. A construction progress report will report on any construction activity on the energy project during the calendar year ending on December 31 prior to the reporting deadline. In each construction project report, the applicant will report the energy project's nameplate capacity and provide information about the status of construction of the energy project during the reporting period, including among other things a general description of the construction work undertaken and work remaining at the end of the reporting period to complete the energy project. The work remaining as of December 31 of the reporting period shall be expressed as a percentage of the total project.
- (B) For each application for certification filed at any time when a request for proposal that is issued by an electric distribution utility or an electric service company on or before December 31, 2010 to purchase power or renewable energy credits remains open, the construction progress reports shall include a certificate of an authorized representative of the applicant that it complied through the reporting period with the provisions of section 5727.75(F)(8) of the Revised Code regarding offers to sell power or renewable energy credits from the energy project to electric distribution utilities or electric service companies subject to renewable energy resource requirements under section 4928.64 of the Revised Code.
- (C) The construction progress report must include an employment report including the total number of full-time equivalent employees employed in the construction or installation of the energy project during the reporting period, the total number of such full-time equivalent employees domiciled in Ohio, the number of days during the reporting period that construction was in progress, and the number of days and hours worked by each individual employed in the construction or installation of the energy project. Each employee for which hours of employment are reported should be designated either as an Ohio-domiciled employee or an employee domiciled outside Ohio. For any energy project the construction of which does not continue for the entire calendar year reporting period, the calculation of the number of full-time equivalent employees shall be prorated based on the number of days during the reporting period that construction on the energy project was in progress. The prorated number of full-time equivalent employees will be determined by dividing the actual number of hours worked by employees on the construction or

installation during the reporting period by the product of the number of days during which construction was in progress during the reporting period, times eight.

- (D) The applicant must submit as supporting documentation with the employment report a list of individuals employed in the construction or installation of the energy project during the reporting period, their residence addresses, and a certificate from each employee with an Ohio address that he or she is Ohio-domiciled. The applicant shall retain in its records for a period of at least three years after the energy project is placed in service and make available to the director upon request the employee certificates of Ohio domicile together with evidence of each such employee's Ohio domicile. Evidence of Ohio domicile may include a copy of an unexpired drivers license issued by the state of Ohio to the employee showing an Ohio residence address, an Ohio voter registration card for the employee dated during the construction period, a utility bill dated during the construction period addressed to the employee at his or her Ohio residence address, or such other documentation as the director determines reasonably demonstrates that the employee's permanent residence is in the state of Ohio.
- (E) The applicant shall file with the director a construction completion report within 90 days after the energy project is placed in service; except that if the energy project was placed in service prior to the effective date of section 5727.75 of the revised code, the construction completion report shall be filed within 90 days after the form of construction completion report is published by the director and provided to those applicants who filed nameplate capacity certificates with the director as provided in section 5727.75(F)(2) of the revised code. The construction completion report shall be in the form and contain the substance required by the director from time to time. Among other things, the applicant shall identify the date(s) on which construction is completed and the energy project is placed in service, list each permanent parcel number for real property on which any part of the energy project is located, and report on the status of any repair or rebuilding of roads, bridges or culverts required by any agreement between the applicant and the county engineer. If post-construction work on roads, bridges, or culverts was required by agreement with a county engineer, the applicant shall also submit with its final construction report a certificate of the county engineer confirming the status of such work.
- (F) The date on which the energy project is placed in service must occur no later than the deadline provided in sections 5727.75(B) or (C), whichever applies. Therefore, the construction completion report of a qualified energy project using renewable energy resources must be delivered to the director no later than March 31, 2013, and the construction completion report for a qualified energy project using clean coal technology, advanced nuclear technology, or cogeneration technology must be delivered to the director no later than March 31, 2017.
- (G) The construction completion report must include an appendix listing each item of tangible personal property of a qualified energy project to be exempt from taxation, the cost of each such item of tangible personal property, and the county in which

the item of tangible personal property is located. The tangible personal property must be identified as part of the "energy facility," as that term is defined in section 5727.01(P) of the Revised Code, "energy conversion equipment," as that term is defined in section 5727.01(O) of the Revised Code, or "interconnection equipment," as that term is used in the definition of energy facility. For purposes of this provision, "cost" means the cost reflected on the applicant's books and records, including all expenses incurred to put the property in place and in use. The applicant shall also include in the appendix a final complete list of permanent parcel numbers for the parcels of real property on which any part of a qualified energy project is located and sufficient detail about the location of tangible personal property constituting the energy facility and the buildings, structures, improvements, or fixtures exclusively used to house, support, or stabilize the tangible personal property constituting the energy facility or that are otherwise necessary for the operation of that property so that the county auditor can determine the boundaries of the real property that may be entitled to exemption from taxation consistent with the definition of energy facility in section 5727.01(P) of the revised code.

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122:23-1-06

Annual Service Payments.

- (A) Except with respect to solar energy projects, the amount of annual service payments in lieu of tax to be made by the owner or lessee pursuant to a sale and leaseback transaction of a qualified energy project according to the provisions of section 5727.75(G) varies according to the ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees during the construction or installation of the energy facility. The director shall calculate the ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees based on the employment report included by the applicant in the construction completion report. The director shall report in writing to the applicant, the tax commissioner, county auditor and the county treasurer of each county in which any part of the energy project is located the Ohio-domiciled employee ratio.
- (B) For an energy project not required to obtain certification from the power siting board as provided in section 4906.20 of the revised code, the director will project the number of full-time equivalent employees to be employed in the construction or installation of the energy project based on project information provided to the director by the applicant. Each such applicant shall include with its application a construction or installation plan that provides a reasonable estimate of the number of individuals to be employed and the duration of their employment and calculates the number of full-time equivalent employees to be employed in the construction or installation of the energy project based on such estimates. The applicant shall include a brief statement of the basis for its estimate, which may include the applicant's experience or industry statistics for comparable energy projects.
- (C) The director shall consult with the commissioner and publish on the department of development website a form of receipt to be used by county treasurers to certify receipt or non-receipt of annual service payments.

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122:23-1-07

Continuing Compliance with Requirements for Exemption.

(A) The applicant shall file annual nameplate capacity reports as provided in this section 122:23-1-07 of the Administrative Code. The annual nameplate capacity report shall be in the form and contain the substance required by the director from time to time, provided that substantive changes to the form shall be made not less than ninety days prior to the reporting deadline. An annual nameplate capacity report must be received by the director not later than the close of business on March 1 (or the first business day after March 1 if March 1 is not a business day) each year following any calendar year during which an exemption under section 5727.75 of the Revised Code is in effect for the energy project. The reporting period for each annual nameplate capacity report shall be the calendar year ending December 31 prior to the March 1 reporting deadline.

(B) The property tax exemption for a qualified energy project is also subject to revocation by the director. To satisfy the requirements provided in section 5727.75 for the qualified energy project exemption to continue, each applicant that receives such an exemption must provide to the director with its annual nameplate capacity report the following:

(1) To evidence the applicant's continued compliance with all applicable regulations, a certificate by an authorized representative of the applicant that all licenses, permits, and other approvals required for the operation of the energy project have been obtained (or renewed) or will be obtained (or renewed) as and when required, a list of all licenses, permits, and other approvals then required for the operation of the energy project, and copies of each such license, permit, or other approval that has been obtained by the applicant as of the annual report date. For any license, permit or other approval required for operation of the energy project, including any renewal of any license, permit, or other approval previously obtained for the qualified energy project, but which has not been obtained or renewed at the time the annual report is submitted, the applicant shall indicate the status of such license, permit, or other approval.

(2) Evidence that the applicant has made annual service payments as required by section 5727.75(G) of the Revised Code and, if applicable, any additional payments required by resolution of a board of county commissioners as provided in section 5727.75(E)(1)(b) of the Revised Code, including invoices or statements issued by each county to which such payments are made and copies of receipts, cancelled checks or other evidence of payment.

(3) A certificate of each county engineer with which the applicant has an agreement regarding the repair, rebuilding, and reinforcement of roads, bridges, and culverts that continues in effect beyond the completion of construction of the

energy project to the effect that the applicant is not then in default of any of its obligations under such agreement. The taxpayer is not required to submit a certificate from any county engineer for any reporting period that begins after the expiration or other termination of an agreement described in this paragraph.

- (4) If the applicant has developed a training plan for fire and emergency responders that continues beyond the completion of construction of the energy project, a report of training activities undertaken during the reporting period and a certificate of each such fire or emergency responder to the effect that the planned training has been provided or facilitated by the applicant in accordance with the training plan. If the applicant develops a joint training plan with multiple fire and emergency responders, one or more fire or emergency responders may be designated by the training plan to provide the certificate required by this paragraph. The applicant is not required to submit a certificate from any fire or emergency responder for any reporting period that begins after the expiration or other termination of a training plan described in this paragraph.
- (5) If the applicant has developed a plan for equipping fire and emergency responder that is not fulfilled prior to, or that otherwise continues beyond, the completion of construction of the energy project, a report of equipment provided to fire or emergency responders during the reporting period and a certificate of each such fire or emergency responder to the effect that the applicant has provided equipment in accordance with the equipment plan developed by the applicant in consultation with such fire and emergency responders. If the applicant's plan for equipping multiple fire and emergency responders provides for shared equipment, one or more fire or emergency responders may be designated by the equipment plan to provide the certificate required by this paragraph. The applicant is not required to submit a certificate from any fire or emergency responder for any reporting period that begins after the expiration or other termination of an equipment plan described in this paragraph.
- (6) If the applicant has an arrangement that continues during the reporting period with a member of the university system of Ohio or apprenticeship program to support workforce training as required by section 5727.75(F)(7) of the Revised Code, a report of the status of the workforce training relationship and a certificate from the educational institution or apprenticeship program to the effect that the applicant is not then in default of any of its obligations with respect to the workforce training relationship.
- (C) If ownership of the qualified energy project changes during the reporting period, the applicant shall identify the transferee of the energy project and provide the following information about the sale or other transfer of the energy project: the date on which ownership changed; the nature of the transaction in which property

comprising the energy project was transferred; a description of the property transferred; and the acquisition price paid by the transferee.

- (D) If the applicant decommissioned any part of the energy project during the reporting period covered by an annual nameplate capacity report, the applicant shall include with the nameplate capacity report an appendix listing each item of tangible personal property of the qualified energy project decommissioned during the reporting period and for each such item of tangible personal property the original cost and year it was placed in service. If the decommissioning of any item of equipment is temporary, the applicant shall report the duration of the decommissioning. For purposes of this provision, "cost" means the cost reflected on the applicant's books and records, including all expenses incurred to put the property in place and in use. The applicant shall also include in the appendix a list of permanent parcel numbers for real property on which the decommissioned property was located and indicate for each permanent parcel number whether any tangible property that is part of the qualified energy project remains on such real property. The applicant shall certify to the director that any decommissioning was undertaken in a manner that complied with all applicable regulations. In addition to a list of equipment decommissioned during the reporting period, the applicant shall also report to the director any decommissioning planned by the applicant as of the date of the nameplate capacity report to occur during the calendar year in which the nameplate capacity report is filed.

Effective:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5727.75(H)
Rule Amplifies: 5727.75

*** DRAFT - NOT YET FILED ***

122:23-1-08

Signature; Failure to Report; Trade Secrets.

- (A) The application for certification and each report submitted by an applicant pursuant to the rules in sections 122:23-1-01 through 122:23-1-11 of the Administrative Code shall include a certification signed by an authorized representative of the applicant that the information contained in the application or report is true, correct, and complete.
- (B) If the applicant fails to submit to the director any report as and when the report is due, or if the applicant submits a report that omits any required information, the applicant will not be in compliance with the requirements of section 5727.75 of the Revised Code. The director will notify the applicant in writing of any failure to file a report as required. If the applicant does not file the report or the omitted information within thirty days after the date of the director's notice, the director may initiate the process to revoke the certification of the applicant's qualified energy project as provided in section 122:23-1-09 of the Administrative Code. If information omitted from a report is a certificate to be provided by a third party, including a public official or public authority, and the certificate is omitted because the third party has not responded to a timely request for such information for a reason other than the applicant's noncompliance with requirements related to the certificate, the director will not consider the report to be delinquent if the applicant includes in the report a copy of the request made to the third party for the certificate, pursues the request for the certificate diligently, and provides a copy of the certificate to the director promptly after it is received.
- (C) Information that qualifies as a trade secret under Ohio law may be exempt from release as a public record. State law generally requires that documents containing both trade secret information and non-confidential information be disclosed with trade secret information redacted. To assist the director in identifying trade secret information submitted to the director as part of an application for certification or otherwise in connection with the certification of a qualified energy project, the applicant should mark trade secret information by placing an asterisk before and after each line containing trade secret information and underlining the information considered to be a trade secret.

Effective:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	5727.75(H)
Rule Amplifies:	5727.75

122:23-1-09

Revocation of Certification by the Director.

- (A) The director may revoke a certification of a qualified energy project if the director determines that the applicant, or a subsequent owner or lessee pursuant to a sale and leaseback transaction of the qualified energy project, fails to comply with any requirement of section 5727.75 of the Revised Code. Failure by the applicant to comply with any regulation applicable to the qualified energy project or its certification will be a failure to comply with a requirement of section 5727.75 of the Revised Code. The director may become aware of circumstances suggesting noncompliance as a result of the director's review of applicant reporting, complaints from third parties or otherwise. The director's investigation of any circumstances suggesting noncompliance shall include written notice to the applicant and an opportunity for the applicant to respond. The director's notice shall describe in reasonable detail (taking into account information available to the director) the nature of the alleged noncompliance. The applicant shall have thirty days to respond to the director's notice.
- (B) In the event the applicant admits or the director otherwise determines that the applicant is not in compliance with any requirement of section 5727.75 of the Revised Code and the noncompliance can be cured or otherwise resolved with the applicable regulatory authority, the applicant shall have an opportunity to cure or otherwise resolve the noncompliance in the manner and timeframe provided by the applicable regulatory authority. If no specific cure period otherwise applies, the director shall allow the applicant sixty days to resolve the noncompliance with the applicable regulatory authority. Except for the allowance of time described in the preceding sentence, this rule is not intended and will not be interpreted to provide the applicant any allowance or mechanism for cure or resolution not provided by the applicable regulatory authority.
- (C) If the applicant fails to cure or otherwise resolve during any applicable cure period any failure of the applicant to comply with any requirement of section 5727.75 of the Revised Code, the director may notify the applicant of the director's intention to revoke the certification of the applicant's qualified energy project if the director determines that the noncompliance is material. The director may rely on the advice of the applicable regulatory authority in determining if noncompliance is material. In addition, any violation of health or safety regulations not cured or otherwise resolved as provided in paragraph (B) of this section and any noncompliance by an applicant that has engaged in a pattern of noncompliance or that has repeatedly failed to comply with the same statutory or regulatory requirement shall be considered material. The director shall deliver any notice of intention to revoke in writing to the applicant at the address provided for the applicant in its filing most recently made with the director and provide a copy of the notice to the tax commissioner. The director will describe the basis for revocation in reasonable detail in the notice of intention to revoke.

- (D) The applicant shall have thirty days (or such longer period as provided by the director) to respond in writing to the notice of intention to revoke the certification. In addition to, but not in lieu of, a written response, the applicant may request a hearing on the proposed revocation. The request for hearing must be included with the applicant's written response.
- (E) If a hearing is not requested, the director shall make a final determination regarding the revocation based on the written record. If a hearing is requested, the director shall make a final determination regarding the revocation based on the written record and any additional information provided at the hearing. The hearing shall be conducted in a manner that complies with section 119.09 of the Revised Code.
- (F) The director shall notify the applicant in writing of the director's final determination and provide a copy of the final determination to the commissioner, to the auditor of each county in which any part of the qualified energy project is located, and to the taxing authority of each taxing unit within an affected county. Promptly after receipt of such notice, the county auditor shall restore the real property to the tax list as of the year immediately following the tax year in which the revocation is issued.
- (G) No action or decision by the director with respect to alleged or actual noncompliance with the requirements of section 5727.75 of the Revised Code shall affect the obligations or liability of the applicant to any regulatory authority, including any other state agency or local government, or any other person.

Effective:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5727.75(H)
Rule Amplifies: 5727.75

*** DRAFT - NOT YET FILED ***

122:23-1-10

Delegation of Functions.

Except as provided in this rule, each and any of the powers and duties of the director under this chapter, including the making, signing and issuance of allocation agreements and determinations, accepting or refunding of fees, and exercise of recapture, may be performed by the assistant director of development or such other officers and employees of the department of development as may be designated in writing by the director or such assistant director. Any such designation under this chapter shall continue to be effective unless and until it is terminated or superseded in writing, notwithstanding any succession in the office of director or assistant director. Any reference in this chapter to the director includes the assistant director or such other designated officers or employees.

Effective:

Certification

Date

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Statutory Authority: 5727.75(H)
Rule Amplifies: 5727.75

*** DRAFT - NOT YET FILED ***

122:23-1-11

Severability.

If any clause, provision or application of any rule in this chapter of the Administrative Code is determined to be invalid or unenforceable, such determination shall not affect the remainder of such rule, other application of the rule, or application of other rules of this chapter, which shall be applied as if the invalid or unenforceable portion, application or references to the invalid or unenforceable portion did not exist.

Effective:

Certification

Date

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Statutory Authority: 5727.75(H)
Rule Amplifies: 5727.75