ARIZONA
COMMERCE
AUTHORITY

NOTICE OF EMERGENCY RULE MAKING

Arizona Commerce Authority Rule Notice of Rule Making No. 13-01

1. Rule(s):

Healthy Forest Enterprise Incentives Program

2. Preamble.

A. Reference to the specific statutory authority for the Rule(s).

A.R.S. § 41-1516

B. An explanation of the Rule(s), including the agency's reasons for initiating the rule making.

The proposed Rules will govern the Healthy Forest Enterprise Incentives program. The Rules are necessary to implement changes to the program made in 2012 by the Arizona legislature

3. The exact wording of the Rule(s).

See attached.

4. The name and contact information of agency personnel with whom persons may communicate regarding the Rule(s).

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5. Where written submissions on the proposed Rule(s) may be inspected (by appointment only).

Arizona Commerce Authority
333 North Central, Suite 1900
Phoenix, Arizona 85004

6. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.

Written submissions may be made within thirty (30) days after the date of posting of the Notice of Rule Making. No hearing to receive oral comments has been scheduled at this time.

7. Any known timetable for agency decisions or other action in the proceeding.

None at this time

8. The date of posting the Notice of Rule Making.

January 2, 2013

9. The deadline for the Authority to file a notice of adoption of the Rule(s).

One hundred and Eighty Days from the date of posting of the Notice of Rule Making.

10. Emergency Rule Making.

Pursuant to Section III(G)(1) (b) of the Arizona Commerce Authority Rules Policy, these rules are being adopted through Emergency Rule Making in order to align the provisional effective date of the Rules with the first business day of the tax year in which the Rules are operative.

Arizona Commerce Authority

HEALTHY FOREST ENTERPRISE INCENTIVES PROGRAM

Program Rules & Guidelines

"Preliminary – Pending ACA Rules Process"

Section 1. Overview

The Healthy Forest Enterprise Incentives Program (A.R.S. § 41-1516) was established by the Arizona state legislature in 2004 to promote forest health in the state. The program accomplishes this goal by offering incentives to qualified healthy forest enterprises that are primarily engaged in harvesting, processing or transporting qualifying forest products.

Since the inception of the program a number of modifications have been made by the legislature. In 2005, the statute was revised by Senate Bill 1283, which changed the requirements for business eligibility, revised certification procedures and definitions and added two incentives. In 2010, the legislature required the Arizona Commerce Authority (Commerce) to submit an annual report to the Joint Legislative Budget Committee. Most recently the statute was enhanced by House Bill 2332 (Laws 2012, Chapter 331). Noteworthy amendments include the addition of a workforce training income tax credit and reinstatement of use fuel tax and property tax reduction incentives. Eligibility was also expanded. The program is now available to companies with at least one full-time employee that engages in any processing of qualified forest products. The revised program is effective beginning August 2, 2012, and provides the following tax incentives to certified businesses:

- Use fuel tax reduction
- Transaction privilege tax exemption on purchased equipment
- Transaction privilege tax exemption on leased or rented equipment
- Transaction privilege tax exemption on construction contracts
- Transaction privilege tax exemption on equipment repair parts
- Transaction privilege tax exemption on motor vehicle fuel and use fuel
- Use tax exemption on equipment purchased out-of-state
- Use tax exemption on equipment repair parts
- Use tax exemption on motor vehicle fuel and use fuel
- Property tax reduction
- Employment income tax credits
- Workforce training income tax credits

Applying for the Healthy Forest Program

A business seeking tax incentives under this program must obtain certification by

Commerce and must enter into a Memorandum of Understanding with Commerce. A business must submit a copy of the certification to the Arizona Department of Revenue (Revenue) and Revenue must approve the certification prior to the business taking any tax incentives under the program. Each certificate is effective for sixty-months as long as the business maintains eligibility during the period. To maintain eligibility, a business must submit an Annual Report to Commerce no later than March 1st of each year; failure to do so can result in revocation of certification and incentives. A business can apply for recertification for an additional five year period; if it continues to meet the program requirements and executes a new Memorandum of Understanding with Commerce.

Section 2. Recipients of Incentives

- Businesses primarily engaged (more than 50%) in the harvesting, processing or transporting of Qualified Forest Products in Arizona
- Subcontractors for the above who are primarily engaged in a Qualifying Project as demonstrated by their prime contractors Forester Approval Letter or other such documents

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Section 3. Eligibility Requirements

To become certified by Commerce as a **Qualified Healthy Forest Enterprise,** a business must:

1. Be primarily engaged in a qualifying project as evidenced by the Forester Approval Letter required in A.R.S. § 41-1516(B)(1).
2. Employ at least one full-time employee at the time of certification as required in A.R.S. § 41-1516(B)(2).
3. Agree to furnish information relating to the amount of state tax incentives it receives every year and the disclosure of that information in composite form as required in A.R.S. § 41-1516(B)(3).
4. Enter into a Memorandum of Understanding with Commerce as required in A.R.S. § 41-1516(B)(4).
5. Submit a copy of the Commerce certification to Revenue before taking any tax incentives as required in A.R.S. § 41-1516(B)(5).
6. Remit a non-refundable processing fee to Commerce.
7. Complies with the employer and business sanctions set forth in A.R.S. § 23-214(B) and A.R.S. §§ 35-391 and 35-393.

Section 4. Explanation of Tax Incentives

The Healthy Forest Enterprise Incentives (Healthy Forest) program provides the following Arizona tax incentives for businesses certified by Commerce:

1. **Use fuel tax reduction.** Under A.R.S. §§ 28-5606(B)(3) and 28-5614(B), fuel tax for use class motor vehicles certified to Commerce and used by a certified business to transport qualifying forest products is imposed at the rate of nine cents per gallon. The reduced rate is available to a business once it is certified but no earlier than September 1, 2012 through December 31, 2024. *To obtain the reduced tax, within six months from the date the fuel was purchased or invoices, a certified business may apply to the Arizona Department of Transportation (Transportation) for a refund. The refund amount is the difference between the amount of the use fuel tax paid and the use fuel tax calculated at the rate prescribed under this program. Visit Transportation's website to view the refund Forms 96-0425 & 96-0425A (http://www.azdot.gov/mvd/motorcarrier/FuelTaxRefunds.asp).*

2. **Transaction privilege tax exemption on purchased equipment.** Under A.R.S. § 42-5061(B)(22), the gross proceeds of sales or the gross income derived from the sales of qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a certified business for the harvesting or the processing qualifying forest products shall be deducted from the tax base. *To qualify for the deduction, at the time of purchase the certified business must present a current Revenue approved certification from Commerce.*

3. **Transaction privilege tax exemption on leased or rented equipment.** Under A.R.S. § 42-5071(B)(2)(b)(ii), the gross proceeds of sales or the gross income derived from the rental or lease of qualifying equipment that is leased from and after June 30, 2004 through June 30, 2014 by a certified business for the harvesting or the processing qualifying forest products shall be deducted from the tax base. *To qualify for the exemption, at the time the lease or rental agreement is executed, the certified business must present a current Revenue approved certification from Commerce.*

4. **Transaction privilege tax exemption on construction contracts.** Under A.R.S. § 42-5075(B)(19), the gross proceeds of sales or the gross income derived from a contract for the construction of any building, or other structure, project, development or improvement owned by a certified business for the harvesting or processing qualifying forest products shall be deducted from the tax base, if construction begins before January 1, 2024. *To qualify for the deduction, prior to beginning work under the contract, a business must be certified by Commerce and approved by Revenue. Further, before beginning work under the contract the prime contractor for the qualified project must obtain a Letter of Qualification from Commerce.*

5. **Transaction privilege tax on equipment repair parts.** Under A.R.S. § 42-5061(A)(57), the gross proceeds of sales or gross income derived from the sales of repair parts installed in qualifying equipment used directly by a qualified business in harvesting, processing or transporting qualifying forest products shall be deducted from the tax base. *To qualify for the deduction, at the time of purchase the certified business must present a current Revenue approved certification from Commerce.*

6. **Transaction privilege tax on motor vehicle fuel and use fuel.** Under A.R.S. § 42-5061(A)(56), the gross proceeds of sales or gross income derived from the sales of motor vehicle fuel and use fuel to a qualified business for off-road use in harvesting, processing or transporting qualifying forest products shall be deducted from the tax base. *To qualify for the deduction, at the time of purchase the certified business must present a current Revenue approved certification from Commerce.*

7. **Use tax exemption on equipment purchased out-of-state.** Under A.R.S. § 42-5159(B)(22), there is no use tax on the storage, use or consumption in Arizona of qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2014 by a certified business for the harvesting or processing qualifying forest products. T*o qualify for the exemption, at the time of purchase the certified business must present a current Revenue approved certification from Commerce.*

8. **Use tax exemption on equipment repair parts.** Under A.R.S. § 42-5159(A)(52), there is no use tax on the storage, use or consumption in Arizona of repair parts for qualifying equipment that used directly by a certified business in harvesting, processing or transporting qualifying forest products. *To qualify for the exemption, at the time of purchase the certified business must present a current Revenue approved certification from Commerce.*

9. **Use tax exemption on motor vehicle fuel and use fuel.** Under A.R.S. § 42-5159(A)(51), there is no use tax on the storage, use or consumption in Arizona of motor vehicle fuel and use fuel to a qualified business for off-road use in harvesting, processing or transporting qualifying forest products. *To qualify for the exemption, at the time of purchase the certified business must present a current Revenue approved certification from Commerce.*

10. **Property tax reduction.** Real and personal property and improvements constructed or installed from and after December 31, 2004 through December 31, 2024 and owned by a certified business and used solely for the purpose of the harvesting, transporting or processing qualifying forest products from qualified projects may be designated as class 6 under A.R.S. § 42-12006(6), which qualifies the property for the assessment ratio in A.R.S. § 42-15006 for both primary and secondary tax purposes. *To obtain the reclassification the business must certified by Commerce and approved by Revenue. Further, the certified business must request by December 10th that the county assessor apply the provisions of these statutes to its property.*

11. **Employment income tax credits.** Under A.R.S. §§ 43-1076 and 43-1162, for taxable years beginning from and after December 31, 2004 through December 31, 2024, a tax credit is allowed for net increases in qualified employment positions by a certified business. *To obtain a tax credit, a business must be certified by Commerce and approved by Revenue. When filing Revenue's Form 332, a copy of the applicable Commerce certification must be attached.* The credits may be used to offset Arizona tax liability and unused amounts may be carried forward for up to five taxable years. Subject to the requirements and restrictions of the statutes, the amount of a credit is equal to:

- One-fourth of the taxable wages paid to an employee in a qualified employment position during the certification period, not to exceed $500 per qualified employment position, in the first year or partial year of employment up to a maximum of 200 new qualified employees.
- One-third of the taxable wages paid to an employee in a qualified employment position during the certification period, not to exceed $1,000 per qualified employment position, in the second year of continuous employment.
- One-half of the taxable wages paid to an employee in a qualified employment position during the certification period, not to exceed $1,500 per qualified employment position, in the third year of continuous employment.

Limitations: A tax credit may only be claimed on an original, not amended, tax return. A business that claims a Quality Jobs tax credit for new employment (Revenue Form 345) or Military Reuse Zone credit (Revenue Form 306) may not claim a tax credit with respect to the same employee under the Healthy Forest program. (A.R.S. §§ 43-1076(F) and 43-1162(F)) A business may claim credits only while certified. The certified business may take credits only if the following requirements are met:

1. If filing under a sixty-month certification, the business must employ at least one new full-time employee in a qualified employment position in the first taxable year in which a credit is claimed. To maintain eligibility, the business must have at least one full-time employee in each tax year.
2. If filing under a twelve-month certification, the business must employ at least three new full-time employees in qualified employment positions in the first taxable year in which a credit is claimed.
3. Job duties must primarily involve or directly support the harvesting, transporting or processing qualifying forest products removed from qualified projects into a product having commercial value.
4. All employees on whom a credit is claimed must reside in Arizona on the date of hire.
5. Each position for which a credit is claimed must be for a minimum of 1,550 hours.
6. The business must offer health insurance coverage for employees for which the business bears the premium or membership cost as follows:
   a. At least 25% of the cost in the third year the business claims a credit
   b. At least 40% of the cost in the fourth year the business claims a credit and
   c. At least 50% of the cost in the fifth year and each subsequent year the business claims a credit
6. An employer shall not reduce the amount of existing coverage provided to employees after certification.
7. An employer must pay each qualified employment position compensation at least equal to the wage offer by county as computed annually by the

Department of Economic Security Research Administration division and posted on the Commerce website at: http://www.azcommerce.com

8. An employee must have been employed for at least 90 days in the first taxable year to generate a tax credit.
9. Employee must not have been previously employed by the business within the twelve months prior to the current date of hire.
10. If certification is terminated or revoked, the incentives under this program are subject to recapture under A.R.S. §§ 43-1076(J) and 43-1162(J).
11. Second year credits are only allowed for positions on which first year credits were allowed and third year credits are only allowed for positions for which second year credits were allowed.

Calculation of Credit Amount: For specific instructions on how to calculate the credits to which the business is entitled, see Commerce written form "New Job Income Tax Credit Schedule" and Revenue Form 332.

Co-owners of a business (including partners in a partnership or shareholders of an S corporation) may each claim only the pro rata share of the credits allowed based on ownership interest. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business. (A.R.S. §§ 43-1076(H) and 43-1162(H))

12. **Workforce Training income tax credits.** Under A.R.S. §§ 43-1076.01 and 43-1162.01[1] for taxable years beginning from and after December 31, 2011 through December 31, 2024, a credit is allowed against the taxes imposed for expenses incurred in training new employees in qualified employment positions by a qualified business. *To obtain a tax credit, a business must be certified by Commerce and approved by Revenue. When filing Revenue's Form 332, a copy of the applicable Commerce certification must be attached.*

The credits may be used to offset Arizona tax liability and unused amounts may be carried forward for up to five taxable years. Subject to the requirements and restrictions of the statutes, the amount of a credit is equal to the net cost of training and certifying a new employee is a Qualified Employment Position not to exceed $3,000 per year for three consecutive taxable years of employment.

[1] A.R.S. §§ 43-1076.01(C) and 43-1162.01(C) incorporate subsections C though J of A.R.S. §§ 43-1076 and 43-1162, respectively. For clarity, the rules/guidelines refer to A.R.S. §§ 43-1076 and 43-1162 when citing these subsections.

Limitations: A tax credit may only be claimed on an original, not amended, tax return. A business that claims a Quality Jobs credit for new employment (Revenue Form 345) or military reuse zone credit (Revenue Form 306) may not claim a tax credit with respect to the same employee under the Healthy Forest program. (A.R.S. §§ 43-1076.01(F) and 43-1162.01(F)) A business may claim credits only while certified. The certified business may take credits only if the following requirements are met:

1. If filing under a sixty-month certification, the business must employ at least one new full-time employee in qualified employment position in the first taxable year in which a credit is claimed. To maintain eligibility, the business must have at least one full-time employee in each tax year.
2. If filing under a twelve-month certification, the business must employ at least three new full-time employees in qualified employment positions in the first taxable year in which a credit is claimed.
3. Job duties must primarily involve or directly support the harvesting, transporting or processing qualifying forest products removed from qualified projects into a product having commercial value.
4. All employees on whom a credit is claimed must reside in Arizona on the date of hire.
5. Each position for which a credit is claimed must be for a minimum of 1,550 hours.
6. The business must offer health insurance coverage for employees for which the business bears the premium or membership cost as follows:
   a. At least 25% of the cost in the third year the business claims a credit
   b. At least 40% of the cost in the fourth year the business claims a credit

and

   c. At least 50% of the cost in the fifth year and each subsequent year the business claims a credit
6. An employer shall not reduce the amount of existing coverage provided to employees after certification.
7. An employer must pay each qualified employment position compensation at least equal to the wage offer by county as computed annually by the Department of Economic Security Research Administration division and posted on the Commerce website at: http://www.azcommerce.com
8. An employee must have been employed for at least 90 days in the first taxable year to generate a tax credit.
9. Employee must not have been previously employed by the business within the twelve months prior to the current date of hire.
10. If certification is terminated or revoked, the incentives under this program are subject to recapture under A.R.S. §§ 43-1076(J) and 43-1162(J).
11. A taxpayer is limited to claiming credits on 200 first year qualified employment positions in any given year.
12. Second year credits are only allowed for positions on which first year credits were allowed and third year credits are only allowed for positions for which second year credits were allowed.

Co-owners of a business (including partners in a partnership or shareholders of an

S corporation) may each claim only the pro rata share of the credits allowed based on ownership interest. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business. (A.R.S. §§ 43-1076(H) and 43-1162(H))

Section 5. Submittal of Forms

In an effort to streamline and expedite applications for incentives, Commerce is pleased to offer a new service that enables taxpayers to apply for incentives electronically. All materials submitted through the Electronic Application System (EASY), including without limitation applications and reports for Healthy Forest incentives, are subject to the terms and conditions. The EASY being utilized by Commerce will date and time stamp each application on the date of receipt.

If a taxpayer insists on submitting a written application, Commerce shall only accept original, applications delivered via private delivery service or hand delivery. Any other form of delivery for an Application or Report, including mailed, emailed or faxed copies, will not be accepted by Commerce. When a written form is submitted, Commerce will date and time stamp each form on the date of receipt.

In the instance where a form is submitted via the EASY at the same time a written form is submitted, the form submitted through EASY will take precedence.

Section 6. Processing Applications

A. Businesses or their subcontractors primarily engaged in harvesting, processing or the transporting of qualifying forest products may be certified for healthy forest incentives. A business may apply to Commerce for certification as a Healthy Forest Enterprise by submitting either 1) the EASY form "Healthy Forest Application" or 2) the two Commerce written Forms: "Healthy Forest Application for Certification" and "Healthy Forest Memorandum of Understanding".

   The application materials shall include a Forester Approval Letter from the U.S. Forest Service or State Forester documenting each qualifying project meets the eligibility requirements in A.R.S. § 41-1516(B). If a business is engaged in a project located on tribal land, the Regional Director of the Bureau of Indian Affairs will provide a letter documenting eligibility.

   - Subcontractors must make separate application and must independently meet the eligibility requirements. Since subcontractors will not have a Forester Approval Letter, a copy of the contractor's letter shall be submitted with the application forms. Additionally, the subcontractors shall submit a letter from the contractor in which the contract is acknowledged and specific information regarding contract activity is provided. A copy of the contract between the contractor and the subcontractor may be substituted for the letter.

- Processors and Transporters must also separately apply for tax incentives. Since processors and transporters may not have a Forester Approval Letter, a letter from the vendor can be substituted. The vendor letter must acknowledge the product purchased or being transported is Qualifying Forest Product. If a letter regarding the Qualifying Forest Product cannot be produced, the applicant should notify Commerce staff to discuss how to document eligibility.

The Forester Approval Letter must at minimum include the following information:

1. Contract name, number, cost and effective dates
2. Name of forest and the county in which the project is located
3. Description of the Healthy Forest Enterprise eligible activity to be performed under the contract
4. Documentation of eligibility that includes:
   a. The percentage of qualifying forest product, by weight, which will be harvested or processed for the project (must be at least 70% or more to be eligible) and the estimated weight of the project in tons
   b. The percentage of qualifying forest product, by weight, which will be harvested in Arizona for the project (must be at least 75% or more to be eligible) and the estimated weight of the project in tons
   c. The percentage of qualifying forest product to be transported that will be harvested in Arizona (must be 100% to be eligible) and the estimated weight of the project in tons
   d. The percentage of total miles for transporting qualifying forest products from or to qualifying projects (must be at least 75% or more to be eligible) and the estimated weight of the project in tons

B. The business must enter into a Memorandum of Understanding with Commerce for each certification period, which contains:

1. Employment goals set by the business. The business must report progress toward meeting the stated goals annually.
2. A commitment to continue in business and use the qualifying equipment primarily on qualifying projects in Arizona for the shorter of the term of the Memorandum of Understanding or the operational life of the equipment.
3. Acknowledgement that Commerce will notify Revenue, Transportation and the County Assessor of both certification and of noncompliance.
4. Agreement to submit a copy of the certification to Revenue for approval before use.
5. Acknowledgement that if the business is seeking a transaction privilege tax exemption on a construction contract, it must direct the prime contractor to Commerce to obtain a Letter of Qualification prior to beginning work under the contract. The certified business must provide the prime contractor with copies of the current Revenue approved certification from Commerce.
6. Authorization for Commerce to adjust, terminate or recapture all or part of the tax incentives for noncompliance with the law, noncompliance with the

Memorandum of Understanding or violation of the terms of any government contracts relating to the qualifying project.

7. Agreement to allow inspections and audits by Commerce, Revenue, Transportation and County Assessor.
8. An agreement to provide an annual report to Commerce no later than March 1st of every year. In the report the certified business shall verify the amount of incentives taken under the program. The business shall report all the business activities during the certification period during the previous calendar year. The report shall also include information with respect to both qualifying and non-qualifying projects. If at any time the business fails to meet the statutory requirements of the program, Commerce pursuant to the Memorandum of Understanding, may stop, readjust or recapture all or part of the tax incentives provided directly or indirectly to the taxpayer.
9. An agreement to apply for recertification at least 30 days prior to expiration of the current certification and confirm that the business continues to be engaged in a qualified project and that it continues to meet program requirements.

C. During review of a Substantially Complete Application, Commerce may request additional information, conduct a site visit or discuss the Application with the business. If the business does not satisfy the request for more information within the allotted timeframe (maximum of 28 calendar days as per the definition of Substantially Complete), the application will be considered inactive and withdrawn by the business.

D. Certification will be granted or denied within 60 calendar days after the date and time stamp of a Substantially Complete Application. Commerce will send written notice of approval or denial to the business.

E. If Commerce denies certification, the business may appeal the decision in accordance with A.R.S. Title 41 Chapter 6, Article 10. A business may appeal this decision; however, the denial prohibits a business from receiving tax incentives under the program, unless the appeal is successful.

F. If eligibility requirements are met, the Program Manager will request the Applicant to remit a non-refundable processing fee of fifty dollars ($50.00). Acceptable methods of payment include: check, cashiers check, or wire transfer. No other form of payment well be accepted by Commerce. After the fee has been processed, Commerce shall issue a Letter of Certification as a Healthy Forest Enterprise to the business and execute a Memorandum of Understanding, a copy of which will be sent to the business.

G. The certified business must submit a copy of the certification to Revenue for approval before taking incentives under the program. Approval will be granted or denied by within 60 calendar days after receipt of the certification by Revenue. Failure of Revenue to reply within the 60-day period constitutes approval of the certification.

Section 7. Processing Annual Reports

A. To maintain eligibility, a certified business must annually report information on all its business activities. The annual report must be submitted to Commerce no later than March 1st of every year during the certification period. Failure to annually report may result in termination, revocation or recapture of incentives already earned.

   A certified business can request an Acknowledgement Letter by submitting either 1) the EASY form "Healthy Forest Annual Report" or 2) the Commerce written form "Annual Report".

   The Annual Report shall include at a minimum:
   1. The amount of tax savings realized by the certified business in the previous calendar year
   2. Information with respect to both qualifying projects and other non-qualifying projects
   3. Details about qualifying business activity and other non-qualifying business activity
   4. The quantity, measured by weight, of qualifying forest products harvested, transported or processed
   5. Employment information to confirm eligibility for income tax credits under A.R.S. §§ 43-1076 and 43-1162
   6. Information about the qualifying equipment purchased by the certified business
   7. Information about the certified business' real and personal property
   8. Other information required by Commerce to effectuate the purpose of this program
   9. An affidavit signed by an officer of the applicant business or its authorized representative. By signing the affidavit the company agree, but is not limited, to the following:
      a. That Commerce, Revenue, Transportation and/or the County Assessor may conduct a site visit during normal business hours
      b. That the information contained in the Annual Report is true and correct under penalty of perjury

B. During review of a Substantially Complete Annual Report, Commerce may request additional information, conduct a site visit or discuss the report with the business. If the business does not satisfy the request within the allotted timeframe (maximum of 28 calendar days as per the definition of Substantially Complete) the annual report will be considered inactive and withdrawn by the business.

C. If eligibility requirements are met, the Program Manager will request the Applicant to remit a non-refundable processing fee of fifty dollars ($50.00).

Acceptable methods of payment include: check, cashiers check, or wire transfer. No other form of payment well be accepted by Commerce. After the fee has been processed, Commerce shall issue an Acknowledgement Letter within 60 days of the date and time stamp of a Substantially Complete Annual Report.

D. If the business does not demonstrate its continuing eligibility, Commerce shall revoke the business' certification and notify Revenue, the County Assessor and Transportation of the business' ineligibility. The business may appeal the decision in accordance with A.R.S. Title 41 Chapter 6, Article 10; however, the denial prohibits a business from receiving tax incentives under the program, unless the appeal is successful.

Section 8. Revocation of Certification and Recapture of Incentives

1. In the annual report a certified business must include documentation on all the business activity. A.R.S. § 41-1516(B)(1) provides that a business must document that more than 50 percent of the total business activity was in Qualifying Project(s) during the previous calendar year and throughout the certification period. **If a certified business doesn't meet the requirements during the previous calendar year or throughout the certification period, the business' certification will be revoked.** Commerce will notify the appropriate agencies of the revocation, which initiates denial of incentives and recapture of incentives already received during the certification period.

2. Revenue may terminate the certification if it obtains information indicating a failure of the business to qualify for incentives and comply with program requirements. Revenue may require the taxpayer to file appropriate amended tax returns reflecting the recapture of the tax incentives.

3. Both the employment income tax credit and training income tax credit amounts claimed shall be recovered as follows: If, within five taxable years after a credit was first received, the certification is terminated or revoked other than for reasons beyond the control of the business as determined by Commerce, the credits allowed the business are subject to recapture by increasing the amount of taxes imposed in the year following the year in which the certification was terminated or revoked by an amount determined by multiplying the full amount of all credits previously allowed under the program by a percentage determined as follows:

   - 100% if the initial credit was allowed for the taxable year immediately preceding the taxable year of termination or revocation
   - 80% if the initial credit was allowed two taxable years before the taxable year of termination or revocation
   - 60% if the initial credit was allowed three taxable years before the taxable year of termination or revocation
   - 40% if the initial credit was allowed four taxable years before the taxable year of termination or revocation

- 20% if the initial credit was allowed five taxable years before the taxable year of termination or revocation

Section 9. Definition of Program Terms

For the purposes of applying for and maintaining certification for the Healthy Forest program, the following terms are either defined in A.R.S. § 41-1516(L) or by Commerce. If a term is not defined, the most commonly accepted meaning will apply. For purposes of this program:

1. "Acknowledgement letter" means the written correspondence from Commerce indicating the continued eligibility of the Qualified Healthy Forest Enterprise.
2. "Annual Report" or "report" means either 1) the EASY form "Healthy Forest Annual Report" and all required uploads or 2) the Commerce written form "Annual Report" and all required attachments to maintain eligibility as a Qualified Healthy Forest Enterprise.
3. "Application" means either 1) the EASY form "Healthy Forest Application" and all required uploads or 2) the two Commerce written Forms: "Healthy Forest Application for Certification" and "Healthy Forest Memorandum of Understanding" and all required attachments to apply for certification as a "Qualified Healthy Forest Enterprise."
4. "Forest health" means the degree to which the integrity of the forest is sustained, including reducing the risk of fire, insect infestation, benefiting wild land habitats, watersheds and communities.
5. "Forester approval letter" means the written correspondence from the U.S. Forest Service, the State Forester, the U.S. Department of Interior, Bureau of Land Management or Bureau of Indian Affairs to the business describing the Qualifying Project as required by A.R.S. § 41-1516(B)(1).
6. "Harvesting" means all operations relating to felling or otherwise removing trees and other forest plant growth and preparing them for transport for subsequent processing.
7. "Letter of certification as a healthy forest enterprise" means the written correspondence from Commerce indicating the business' eligibility for tax incentives under A.R.S. § 41-1516. The certification is valid for sixty calendar months if the business maintains eligibility.
8. "Primarily" means more than 50 percent.
9. "Processing" means
    a. Any change, in the physical structure of qualifying forest product removed from a qualifying project into a marketable commercial product or component of a product that has commercial value to a consumer or purchaser and that is ready to be used with or without further altering its form.
    b. Burning qualifying forest products in the process of commercial electric generation or commercial thermal energy production for heating or cooling, regardless of the physical structure of the forest product before burning.

10. "Purchased" means the date in which the certified business commits to buying an item.
11. "Qualified employment position" has the meaning in A.R.S. §§ 43-1076(C)(3) and 43-1162 (C)(3).
12. "Qualifying equipment" means equipment used directly in the harvesting or processing qualifying forest products removed from a qualifying project. Qualifying equipment does not include self-propelled vehicles required to be licensed by this state, but may include other licensed vehicles as provided by this paragraph. Qualifying equipment includes:
    a. Forest thinning and residue removal equipment, including mulching and masticating equipment, feller-bunchers, skidders, log loaders, portable chippers and grinders, slash bundlers, and delimbers, log trailers, chip trailers and other trailers that are uniquely designed for handling forest products and that are licensed for operation on public highways.
    b. Forest residue receiving and handling equipment, including truck dumpers, log unloaders, scales, log decking facilities and equipment and chip pile facilities.
    c. Sorting and processing equipment, including portable and stationary log loaders, front end loaders, forklifts and cranes, chippers and grinders, screens, decks and debarkers, saws and sawmill equipment, firewood processing, wood residue baling and bagging equipment, kilns, planning and molding equipment and laminating and joining equipment.
    d. Forest waste and residue disposal and processing equipment, including:
        i. Processing and sizing equipment, hogs, chippers, screens, pelletizers and wood splitters.
        ii. Transporting and handling equipment, including loaders, conveyors, blowers, receiving hoppers, truck dumpers and dozers.
        iii. Waste use equipment, including fuel feed, storage bins, boilers and combustors.
        iv. Waste project use equipment, including generators, switchgear and substations and on-site distribution systems.
        v. Generated waste disposal equipment, including ash silos, and wastewater treatment and disposal equipment.
        vi. Shop and maintenance equipment and major spares having a value of more than $5,000 each.
13. "Qualifying forest product" means dead standing and fallen timber and forest thinnings associated with the harvest of small diameter timber, slash, wood chips, peelings, brush and other woody vegetation, removed from federal, state and other public forest land and from private forest land.
14. "Qualified healthy forest enterprise" means a business that meets the eligibility requirements of these rules and guidelines and A.R.S. § 41-1516; and is certified by Commerce.

15. "Qualifying project" means harvesting, transporting or processing qualifying forest products as required for certification pursuant to this section.
16. "Small diameter timber" means standing, live trees less than 16 inches diameter at breast height (DBH).
17. "Substantially complete" means all questions in the Application or Annual Report are fully addressed by the applicant and all documents required by Commerce are attached or can be supplied within 14 calendar day after receipt of notification by Commerce of any deficiencies. One extension of an additional 14 calendar days may be requested and granted by the program manager. Applications or Annual Reports that are not made Substantially Complete within the stated timeframe will be considered inactive and withdrawn by the applicant.
18. "Units" means all vehicles used on a qualified project and listed in the Commerce written form "Use Fuel Vehicle Schedule" or added to the schedule within 15-days of acquisition, addition or replacement.
19. "Use class motor vehicle" means a motor vehicle that uses use fuel on a highway in this state and that is a road tractor, truck tractor, truck or passenger carrying vehicle having a declared gross vehicle weight of more than twenty-six pounds or having more than two axles.

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