

NOTICE OF RULE MAKING

Arizona Commerce Authority Rule Notice of Rule Making No. 23-01

1. Rule(s):

Arizona Motion Picture Production Program

2. Preamble.

A. A.R.S. § 41-1517

B. The proposed Rules will govern the Arizona Motion Picture Production Program. The Rules are necessary to implement the program, created by the Legislature in 2022.

3. The exact wording of the rule.

See attached.

4. The name and contact information of agency personnel with whom persons may communicate regarding the rule.

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

Arizona Commerce Authority
100 North 7th Avenue, Suite 400
Phoenix, Arizona 85007

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. Written submissions should be directed to:

Attention: Arizona Motion Picture Production Program
Arizona Commerce Authority
100 North 7th Avenue, Suite 400
Phoenix, Arizona 85007



Submissions also may be transmitted electronically within the same time period by directing the submission to:

Attention: Motion Picture Production Program
nathanp@azcommerce.com

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 23, 2023.

9. The deadline for the Authority to file a notice of adoption of the rule.

No later than 180 days from January 23, 2023.



**ARIZONA MOTION PICTURE PRODUCTION PROGRAM
RULES & GUIDELINES**

SECTION 1. OVERVIEW

The Arizona Motion Picture Production Program (A.R.S. § 41-1517) was established by the Arizona state legislature in 2022 to promote the workforce development and expansion of the commercial motion picture industry in Arizona. The goal of the Program is to create a competitive Motion Picture production industry presence and market in Arizona that will develop a substantial Motion Picture production industry workforce and encourage major capital investment in Qualified Production Facilities in Arizona. The Program accomplishes this goal by providing an income tax credit under A.R.S. § 43-1082 or § 43-1165 to qualified Motion Picture Production Companies.

The Arizona Commerce Authority (the “Authority”) may certify Motion Picture Production Companies that produce one or more Motion Pictures in Arizona beginning from and after December 31, 2022 through December 31, 2043.

SECTION 2. ELIGIBILITY REQUIREMENTS

- A. A Motion Picture Production Company is eligible for tax credits upon Completion of the Motion Picture Production and compliance with the requirements of A.R.S. § 41-1517.
- B. To qualify for tax credits, a Motion Picture Production Company must:
 - 1. Do either of the following:
 - a. Use a Qualified Production Facility in Arizona to produce the Motion Picture Production or
 - b. If the portion of the Motion Picture Production filmed in Arizona, is filmed primarily at a Practical Location, produce and film the Motion Picture Production primarily in Arizona and perform **all** preproduction, postproduction and editing at an Industry Standard Facility in Arizona, if such a facility for those functions is available. For the purpose of this section, “primarily” shall mean more than fifty percent (50%) of the total filming activity.
 - c. In the event the Motion Picture Production Company believes that an Industry Standard Facility is unavailable within the state, it may request an exception to this requirement.
 - 2. Maintain the Motion Picture Production Company’s Production Labor positions in Arizona.
 - 3. Include in the on-screen credits for each Motion Picture Production an acknowledgment that the production was filmed in Arizona, except in the case of a Motion Picture Production, such as a Commercial advertisement message, when on-screen credits are not practicable. The Motion Picture Production Company will coordinate with the Authority’s



Film Office to utilize any necessary artwork, files, logos, releases, etc. to provide acknowledgement that the production was filmed in Arizona in the Motion Picture's credits.

4. Submit a Substantially Complete Application and receive a pre-approval certification from the Authority.
5. Provide supporting statements and records requested by the Authority to demonstrate that the Motion Picture Production Company satisfies the requirements of A.R.S. § 41-1517(B).
6. Begin production on the Motion Picture Production listed in the pre-approval application within nine (9) months of approval and include the Authority's Film Program Director on the daily call sheet distribution list.
7. Submit a post-approval application and receive approval from the Authority.
8. Once post-approval is received, the tax credits may be claimed by filing a tax return with the Arizona Department of Revenue ("Revenue").

SECTION 3. TAX CREDIT CALCULATION

- A. Under A.R.S. § 43-1082 and 43-1165, for years beginning from and after December 31, 2022, a tax credit is allowed against the Production Costs paid by a Motion Picture Production Company in Arizona that are subject to taxation and that are directly attributable to a Motion Picture Production under A.R.S. § 41-1517.
- B. The amount of the tax credit for a qualified Motion Picture Production Company shall be determined as follows:
 1. An amount equal to a percentage of the total amount of the Qualified Production Costs as approved by the Authority, as follows:
 - a. 15% tax credit for Production Costs up to \$10,000,000
 - b. 17.5% tax credit for Production Costs more than \$10,000,000 but less than \$35,000,000
 - c. 20% tax credit for Production Costs more than \$35,000,000
 2. An additional 2.5% of the Motion Picture Production Company's Production Labor costs related to positions held by residents of Arizona as approved by the Authority.
 3. An additional 2.5% of the Motion Picture Production Company's Qualified Production Costs if the Motion Picture Production Company either:
 - a. Uses a Qualified Production Facility in Arizona to produce the Motion Picture Production.
 - b. Films primarily at a Practical Location, produces and films the Motion Picture Production primarily in Arizona and performs all preproduction, postproduction and editing at a Qualified Production Facility in Arizona.
 4. Or, an additional 2.5% of the total amount of Qualified Production Costs as approved by the Authority if the Motion Picture Production is produced and filmed in association with a



Long-Term Tenant of a Qualified Production Facility. Claiming of this additional credit excludes eligibility for the credit described in Section 3(B)(3).

SECTION 4. TAX INCENTIVE LIMITATIONS AND CALENDAR YEAR CAP MANAGEMENT

- A. The Authority may not pre-approve tax credits exceeding the following amounts in a calendar year, of which up to \$25,000,000 in each calendar year may be used for Motion Picture Productions that qualify for the Program pursuant to A.R.S. § 41-1517 (B)(1)(b):
 - 1. In calendar year 2023, \$75,000,000.
 - 2. In calendar year 2024, \$100,000,000.
 - 3. In calendar year 2025, and each calendar year thereafter, \$125,000,000.
- B. The pre-approval priority shall be based on the date and time that the Motion Picture Production Company submits an initial Substantially Complete Application to the Authority. The date and time stamp on an application determines the order in which the Authority approves and allocates the calendar year cap.
- C. The pre-approval amount applies against the applicable dollar limit for the calendar year in which the Initial Application was submitted regardless of whether the pre-approval period extends into the following year or years.
 - 1. If sufficient cap is unavailable when an initial Application is submitted to the Authority, the qualified Motion Picture Production Company may receive any remaining cap amount.

SECTION 5. INITIAL APPLICATION PROCESS FOR PRE-APPROVAL CERTIFICATION

- A. All pre-approval certification applications must be submitted through the Authority's electronic application system.
- B. The application shall include:
 - 1. The name, address, telephone number and website of the Motion Picture Production Company.
 - 2. The name, and address of an individual who will maintain records of expenditures in Arizona.
 - 3. The projected first pre-production date and last production date in Arizona.
 - 4. The production office address and office telephone number in Arizona.
 - 5. The estimated total budget of the production.
 - 6. The estimated total Production Cost expenditures in Arizona.
 - 7. The estimated total percentage of the production that will take place in Arizona.
 - 8. The estimated number and duration of full-time Production Labor employment positions in Arizona based on industry standard for the type of production.
 - 9. The estimated number of employees who are residents of Arizona in the cast and crew.
 - 10. The estimated median wage of Production Labor employment positions in Arizona.



11. A script or synopsis, the name of the proposed director and a preliminary list of the cast and producer.
 12. An affidavit that the Motion Picture Production Company will meet all of the requirements to qualify for the tax credits, including that the Motion Picture Production Company will use a Qualified Production Facility in Arizona to produce the Motion Picture Production or otherwise satisfy the requirements in A.R.S. § 41-1517 (B)(1).
- C. During the review of a Substantially Complete Application, the Authority may request additional information, conduct a site visit, or discuss the Application with the Motion Picture Production Company. If the Motion Picture Production Company does not satisfy the request within the allotted timeframe (maximum 28 calendar days as per definition of Substantially Complete), the Application will be considered inactive and withdrawn by the Motion Picture Production Company.
- D. The Authority will attempt to make a determination with regard to each initial Application within 60 calendar days after the date and time stamp of a Substantially Complete Application.
- E. The Authority shall deny an Application if the Authority determines that:
1. The Motion Picture Production Company does not meet all the established criteria in A.R.S. § 41-1517 (B).
 2. The Production would constitute an obscene motion picture film or obscene pictorial publication under Title 12, Chapter 7, Article 1.1.
 3. The Production violates the obscenity Laws under Title 13, Chapter 35.
 4. The Production would constitute sexual exploitation of a minor or commercial sexual exploitation of a minor under Title 13, Chapter 35.1.
- F. If the Authority denies an Application, the applicant may first request a reconsideration, and then if the decision remains a denial, the applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G. If the Authority determines that a Motion Picture Production Company qualifies for the Motion Picture Production Tax Credits, the Authority shall issue the Motion Picture Production Company a pre-approval certification and transmit a copy of the pre-approval certification to the Arizona Department of Revenue (“Revenue”).
- H. Prior to issuing a pre-approval certification, the Program Manager will request the company remit a non-refundable processing fee equal to one percent (1%) of the pre-approved credit amount, not to exceed \$100,000, and an additional administration fee equal to one percent (1%) of the pre-approved credit amount. Administration fee is refundable if the Authority is notified within 90 days from the pre-approval certification date that production will not commence. The fee payments may be made by credit card by accessing the Authority’s payment portal or made by check, ACH, or wire transfer.
- I. After receipt of the requested processing and administration fees, the Authority will issue a pre-approval certification to the Motion Picture Production Company, and the Authority shall send a copy of the pre-approval certification to Revenue.



- J. A pre-approval certification does not guarantee a company's ability to claim tax credits, the pre-approval certification is issued before final eligibility for tax credits is determined in accordance with the post-approval completion process.
- K. Any information gathered from Motion Picture Production Companies is considered confidential taxpayer information.

SECTION 6. PRE-APPROVAL PERIOD

- A. Within nine (9) months after pre-approval the Motion Picture Production Company must begin production and notify the Authority that the pre-approved production has begun on the Motion Picture Production, which the Authority may verify through a site visit. To verify production has begun, and avoid lapse of pre-approval, the Motion Picture Production Company shall provide one of the following:
 - 1. Notice and declaration of Commencement of Principal Photography with an estimated start date signed by the producer, the shooting schedule (when available).
 - 2. Documentation of its Arizona expenditure of the lesser of:
 - a. Ten percent (10%) of the estimated total Arizona budget of the pre-approved production.
 - b. Two hundred fifty thousand dollars (\$250,000).
 - 3. A Certificate of Insurance for the pre-approved Motion Picture Production. In addition, the Motion Picture Production Company must provide one of the following to the Authority:
 - a. A copy of a contract, loan out agreement, or deal memo with cameraman and crew.
 - b. A copy of the crew call sheet for the first day of production.
 - c. Evidence that residents of this state have been paid a total of at least five thousand dollars (\$5,000) for work on the pre-approved Motion Picture Production.
 - d. A copy of the contract or agreement directly attributable to the pre-approved Motion Picture.
- B. If the company fails to begin production and notify the Authority within nine (9) months, the pre-approval shall lapse, all applicable fees collected will be forfeited, and the company will not be eligible for tax credits. Any such reserved credits may then be eligible for distribution for other applicants.
- C. A pre-approval certification is effective for nine (9) months from the date of issuance of the pre-approval certification, and the expiration date shall be stated in the pre-approval certification.
- D. A Motion Picture Production Company may apply to the Authority to extend the pre-approval certification period if the Motion Picture Production Company can demonstrate that an act of force majeure occurred and that the pre-approval certification will expire before the Production is complete.



SECTION 7. POST-APPROVAL APPLICATION SUBMITTAL AND PROCESSING

- A. On Completion of the Motion Picture Production, a Motion Picture Production Company that is pre-approved for the Motion Picture Production tax credits must submit a post-approval application through the Authority’s electronic application system. A production does not need to be released or distributed to be considered complete and to generate tax credits.
- B. The post-approval application shall include:
 - 1. A complete and viewable copy of the pre-approved Motion Picture Production, in a format acceptable by the Authority.
 - 2. An audited statement completed by a Certified Public Accountant, who is licensed in Arizona and who is approved by the Authority, to certify the total amount of Qualified Production Costs associated with the production. This statement shall include, but is not limited to the following information:
 - a. The total amount of Qualified Production Costs associated with the production.
 - b. Labor costs related to positions held by residents of Arizona as approved by the Authority, if applicable.
 - c. Any other information or combinations of information requested by the ACA.
- C. During the review of an application for post-approval, the Authority may request additional information, conduct a site visit, or otherwise discuss with the Motion Picture Production Company any issue related to or arising during the review.
- D. If a Motion Picture Production Company fails to provide any requested additional information by the earlier of (i) 14 calendar days after request by the Authority (or up to the number of additional days that may be expressly granted by the Authority if the Motion Picture Production Company seeks and receives an extension within the initial 14-day period.)
- E. The Authority shall provide post-approval to the Motion Picture Production Company that the company has met the eligibility requirements of A.R.S. § 41-1517(H) and notify the Arizona Department of Revenue (“Revenue”) that the Motion Picture Production Company may claim the tax credits under A.R.S. §43-1082 or 43-1165.
- F. Co-owners of a Motion Picture Production Company, including partners in a partnership, members of a limited liability company and shareholders of an S corporation, as defined in Section 1361 of the IRC, may each claim the pro rata share of the tax credit allowed based on ownership interests. The total of the tax credits allowed all such owners may not exceed the amount that would have been allowed a sole owner.
- G. The amount of the tax credits not used to offset Arizona income tax liability shall be paid pursuant to A.R.S. §43-1082(F).
- H. If the Authority denies a post-approval Application, the applicant may first request a reconsideration, and then if the decision remains a denial, the applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.

SECTION 8. DEFINITION OF PROGRAM TERMS



- A. For purposes of applying for and maintaining eligibility for the Motion Picture Production Tax Program, the following terms are either defined by the Authority, defined by A.R.S. § 41-1517. If a term is not defined, the most commonly accepted meaning will apply.
1. “Application” means the electronic application system form, and all required uploads an applicant must submit to apply for the tax credit.
 2. “Begin production” means a production company has either:
 - d. Notice and declaration of Commencement of Principal Photography with an estimated start date signed by the producer, the one-liner shooting schedule (when available), and the commitment to include the Authority’s Film Program Director on the daily call sheet distribution list.
 - e. Has Arizona expenditures of the lesser of:
 - i. Ten percent of the estimated total Arizona budget of the production.
 - ii. Two hundred fifty thousand dollars.
 - f. Attained a Certificate of Insurance demonstrating coverages and policies are in place on behalf of an Insured/Production. In addition, one of the following must have occurred:
 - i. Entered into a contract, loan out agreement or deal memo with cameraman and crew.
 - ii. The crew call has completed the first day of production.
 - iii. Has paid residents of Arizona a total of at least five thousand dollars for work on the pre-approved Motion Picture.
 - iv. Entered into a contract or agreement directly attributable to the pre-approved Motion Picture.
 3. “Certificate of Insurance” is a document which serves as the demonstration of coverages and policies in place on behalf of an Insured/Production and is often issued to 3rd Parties to provide proof of coverage. The certificate is issued on a standard form (ACORD 25) and should include the Insured/Production Company name, legal address, the broker/producer name, address, and contact information, applicable carriers, coverages and limits, policy numbers, and effective dates of all relevant policies and be signed by a responsible party for the broker/carrier.
 4. “Commencement of Principal Photography” means the first date within Arizona of principal ongoing filming of significant portions of a qualified film which is intended to be incorporated into the final product.
 5. “Commercial advertisement” means an advertising message designed for delivery through either:
 - a. A Motion Picture film or video medium to attract the attention of consumers or influence consumers’ feelings toward a particular product, service, event, or cause.



- b. Still photography that is used in national or international print media to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event, or cause.
6. "Completion of the Motion Picture Production" means the completion of Principal Photography and a complete and viewable copy of the Motion Picture is available.
7. "Full-time employee" means an individual who works an average of at least 8 hours a day (during his/her employment periods) on productions identified in the pre-approval application throughout the pre-approval period and for whom a qualified company or its authorized payroll service company is required to remit federal or state withholding tax.
8. "Industry Standard Facility" means a facility that, in the judgment of the Authority, has the required equipment and capabilities to meet the needs of the Motion Picture Production.
9. "Long-Term Tenant" means a person that enters into a lease of at least five years for the use of a Qualified Production Facility.
10. "Motion Picture" means a single medium or multimedia program, including a commercial advertisement, music video or television series.
 - a. Motion Picture does not include any production featuring actual news, current events, weather, locally produced and locally broadcast television productions, financial market reports, concerts, internet broadcasts, talk shows and interviews, game shows, sporting events, award or other gala events, a production whose sole purpose is fundraising, podcast, a production used for corporate or organizational training or in-house corporate advertising or other similar production activities.
11. "Motion Picture Production" means a single medium or multimedia program, including a feature film, episodic series, or commercial advertisement message, that:
 - a. Is created by production activities conducted in this state.
 - b. Can be viewed or reproduced.
 - c. Is intended for commercial distribution or licensing in the delivery medium used.
12. "Motion Picture Production Company" means any person or business entity primarily engaged in the business of producing motion pictures and that has a physical business office in this state.
13. "Music video" means a filmed or videotaped rendition of a song or songs, portraying musicians performing the song or other visual images set to the lyrics of the song.
14. "Practical Location" means a physical location at which a Motion Picture Production is filmed, that is not and that does not use an industry standard sound stage or production facility to produce and film the Motion Picture Production.
15. "Production Costs" means the following costs that are incurred and taxable in Arizona:
 - a. All compensation paid to talent, writers, directors, and management.
 - b. All compensation paid for Production Labor.



- c. Set construction and operation costs paid pursuant to construction contracts with contractors who are licensed under Title 32, Chapter 10
 - d. Wardrobe, props, accessories, and related services.
 - e. Photography, sound synchronization, lighting, and related costs.
 - f. Editing and related services.
 - g. Rental of Qualified Production Facilities.
 - h. Rental of equipment.
 - i. Catered food, drink and condiment purchased from a Qualified Production Facility.
 - j. Other direct in-state costs of producing the Motion Picture Production pursuant to Rules adopted by the Authority.
 - k. Does not include payments for penalties and fines or fees or deposits established by the Authority or the Revenue to administer the Program.
16. "Production Labor" means all laborers working on a production that are not talent, writers, producers, or management.
17. "Program" means the Arizona Motion Picture Production Program implemented pursuant to A.R.S. § 41-1517
18. "Qualified Production Facility" means a structure that is built for film industry purposes, is located in this state, is at least ten thousand square feet and meets generally accepted industry standards, including standards for soundproofing, lighting, air conditioning, and Motion Picture Production quality technology for producing, filming or otherwise creating a Motion Picture Production.
19. "Script" means the storyline, dialogue, scenes and directions written for a Motion Picture.
20. "Substantially complete" means all questions in the initial application are fully addressed by the company and all documents required by the Authority are attached or can be supplied within 14 calendar days after receipt of notification by the Authority of any deficiencies. One extension of an additional 14 days may be requested and granted by the program manager. Applications that are not made Substantially complete within the stated timeframe will be considered inactive and withdrawn. The date and time stamp on the withdrawn Application is void and the cap is authorized to the next eligible applicant.
21. "Synopsis" means a condensed written outline or summary of the Motion Picture.
22. "Television series" means a group of productions created or adapted for television broadcast with a common series title, related to each other in subject or theme, which is produced seasonally for and with or without a predetermined number of episodes. Such programming is broadcast via over-the-air, satellite, cable, or streaming service. Television series includes a pilot production for promotion or introduction of a television series.

